

Queensland



CHILD CARE ACT 1991

**Reprinted as in force on 1 October 1992
(Act not amended up to this date)**

Reprint No. 1

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy

Information about this reprint

This Act is reprinted as at 1 October 1992. The opportunity has also been taken, under section 7 of the *Reprints Act 1992*, to do the following—

- omit the enacting words as permitted by section 7(1)(a) of that Act;
- use citations and references permitted by Division 2 of that Act;
- use punctuation and expressions consistent with current legislative drafting practice as permitted by sections 27 and 29 of that Act;
- reorder definitions as permitted by section 30 of that Act;
- use the names for instruments and provision units permitted by sections 31 and 32 of that Act;
- use aspects of format and printing style consistent with current legislative drafting practice as permitted by section 35 of that Act;
- omit provisions that are no longer required as permitted by section 40 of that Act.
- correct minor errors as permitted by section 44 of that Act;

Also see Endnotes for—

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**

Queensland



CHILD CARE ACT 1991

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	5
2	Commencement	5
3	Definitions	5
4	Objects of Act	7
PART 2—ADMINISTRATION		
5	Administration of Act	8
6	Functions and powers of chief executive	8
7	Delegations	8
PART 3—LICENSING REQUIREMENTS		
8	Licences	8
9	Requirement for licences	9
10	Applications for licences or renewals	9
11	Inspection before issue or renewal of licences	9
12	Issue and term of licences	10
13	Disqualification from holding licence	10
14	Applicant's duty to disclose charges, convictions etc.	11
15	Chief executive may require further information	12
16	Retention of documents by chief executive	12
17	Conditions of licences	13
18	Licensee to inform chief executive of relevant changes	13
19	Application for renewal of licence to be determined before expiry of licence	14
20	Written notice of refusal to issue licence to be given	14

PART 4—FUNCTIONS OF LICENSEES

21	Licensee to permit access by parents	14
22	Licensee to ensure that advertisement of child care service not false or misleading	15
23	Licensee to provide safe and suitable child care service	15
24	Licensee not to use disqualified premises	16
25	Licensee to comply with Act and licences	16
26	Licensee to keep records	16
27	Licensee to maintain insurances	17
28	Display of current licence at places of child care service	17
29	Unauthorised alteration of licence	17
30	Minimum qualifications or certificate of endorsement to act as director of or group leader at child care centre	18
31	Only fit and proper persons to be engaged by licensee	19
32	Notification of disqualification of or charges against certain persons	19
33	Direction by chief executive to licensee to take action	20
34	Amendment of licence	20
35	Suspension or revocation of licence	21
36	Application for lifting of suspension of licence	22
37	Application for lifting of suspension of licence to be determined within 30 days	22
38	Inspection of child care service and place before lifting of suspension of licence	23
39	Cancellation of licence	23
40	Continuation of licence for limited period in case of death or liquidation	24

PART 5—REVIEW PROVISIONS

41	Application for review of chief executive's decisions	24
42	Decision on review	25
43	Preliminary hearing	26

PART 6—CHILD CARE REVIEW TRIBUNAL

44	Establishment of Child Care Review Tribunal	27
45	Constitution of Tribunal	27
46	Appointment of chairperson of Tribunal and approved panel	27

47	Vacation of office	27
48	Acting chairperson of Tribunal	28
49	Remuneration of chairperson and members	28
50	Proceedings of Tribunal	28
51	Jurisdiction of Tribunal	29
52	Power to summon witnesses	29
53	Failure of witness to attend	30
54	Power to administer oath or affirmation	30
55	Refusal to be sworn or to answer questions	30
56	Contempt of hearing	31
57	Allowances to witnesses	31
58	Publication of certain material prohibited	31
59	Reports by chairperson of Tribunal to Minister	32

PART 7—REGISTER

60	Register to be maintained	32
61	Copies from register	32

PART 8—AUTHORISED PERSONS

62	Authorised persons	32
63	Authorised person to produce identity card	33
64	Entry and search—monitoring compliance	33
65	Entry and search—evidence of offences	34
66	General powers of authorised person in relation to places	35
67	Monitoring warrants	36
68	Offence related warrants	37
69	Offence related warrant may be granted by telephone	38
70	Authorised person may require name and address	39
71	Obstruction etc. of authorised persons	40
72	False or misleading statements	40
73	Powers of authorised person where unauthorised child care is provided	41

PART 9—MISCELLANEOUS

74	Secrecy	42
75	Disclosure of criminal history	43

76	Attempts to commit offences	44
77	Proceedings for offences	44
78	Evidence	44
79	Powers of local authority officers to monitor compliance	45
80	Approval of care providers	45
81	Duty to provide proper and appropriate care of children	46
82	Chief executive may prohibit a person from caring for children	46
83	Exemptions	46
84	Regulations	47
88	Transitional and savings	48

ENDNOTES

1	Index to Endnotes	50
2	Date to which amendments incorporated	50
3	List of legislation	50
4	List of annotations	51
5	Table of corrected minor errors	51

CHILD CARE ACT 1991

[reprinted as in force on 1 October 1992²]

An Act to regulate the provision of child care services and for related purposes

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Child Care Act 1991*³⁻⁵.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Definitions

3. In this Act—

“**affairs**”, in relation to an unincorporated association, has the meaning given by section 53 of the Corporations Law;

“**applicant**” means an individual who, or a body (whether incorporated or unincorporated) that, has applied for a licence;

“**approved panel**” means the approved panel appointed under section 46;

“**authorised person**” means a person appointed under section 62;

“**care provider**” means a person who is approved to practise family day care within a family day care scheme and is issued with, or whose name is endorsed on, a certificate of approval under section 80 by the licensee of the scheme;

“**chief executive**” means the chief executive of the department;

“child” means a minor;

“child care” means the provision of care of a prescribed type, on a regular basis, of a child, but does not include the provision of care of a child in the child’s home or preschool education within the meaning of the *Education (General Provisions) Act 1989*;

“child care centre” means premises in or from which child care (other than family day care) is, or is proposed to be, provided;

“child care service” means operations, or proposed operations, concerned with child care;

“committee of management”, in relation to an unincorporated body, means the group or body of persons, by whatever name called, that manages the affairs of the association;

“coordinator”, in relation to family day care, means an individual engaged by a licensee of a family day care scheme to coordinate the scheme;

“director”, in relation to a body corporate, has the meaning given by section 60 of the Corporations Law;

“director”, in relation to a child care service, means a person engaged by a licensee to be in charge of a child care centre;

“exemption” means exemption under section 83 from compliance with any provision of this Act;

“family day care” means child care provided at a home by a care provider;

“family day care scheme” means a scheme to organise, coordinate and monitor the provision of family day care;

“group leader” means a person engaged by a licensee to be in charge of children within a child care centre;

“licence” means a licence to conduct a child care service;

“parent” includes an individual in place of a parent of a child;

“person engaged by the licensee”, in relation to a child care service, includes—

- (a) care providers; and
- (b) coordinators; and
- (c) directors; and

- (d) ancillary staff;
engaged by the licensee for the service;

“place” includes—

- (a) vacant land or premises; and
- (b) a vehicle or vessel;

“premises” includes—

- (a) a building or structure, or part of a building or structure, of any kind; and
- (b) the land on which a building or structure is situated; and
- (c) a vehicle or vessel;

“register” means the Register of Child Care Services kept under Part 7;

“Tribunal” means the Child Care Review Tribunal from time to time constituted under this Act.

Objects of Act

4.(1) The objects of the Act are—

- (a) to provide for an effective system of licensing child care services; and
- (b) to provide a statutory basis for the establishment of child care regulations that set standards for the provision of quality child care; and
- (c) to ensure that child care services provide care that is a safe, positive, nurturing and educational experience for children; and
- (d) to require child care services to provide child care programs that promote the emotional, intellectual, social and physical development of children; and
- (e) to support families by enabling the development of a range of child care services responsive to different needs and appropriate to different stages of child rearing; and
- (f) to encourage and support the planning and delivery of culturally appropriate child care in a multicultural society; and

- (g) to promote the positive involvement of consumer parents and other members of the community in child care services; and
- (h) to support the development of a cohesive and integrated child care sector.

(2) The interests of children are to be regarded as the paramount consideration under this Act.

PART 2—ADMINISTRATION

Administration of Act

5. Subject to the Minister, the chief executive is to administer this Act.

Functions and powers of chief executive

6. The chief executive has the functions and powers conferred by and under this Act.

Delegations

7. The chief executive may delegate all or any of the powers of the chief executive under this Act to any senior or prescribed officer of the department.

PART 3—LICENSING REQUIREMENTS

Licences

8.(1) A licence may be issued in relation to a prescribed type of child care service.

(2) Different types of child care services may be prescribed by regulation.

Requirement for licences

9.(1) A person must not provide child care of a prescribed type in or on any place—

- (a) otherwise than under the authority of a licence; or
- (b) otherwise than in accordance with the terms and conditions of the licence.

Maximum penalty—100 penalty units.

(2) A person who is not authorised under a licence must not hold himself or herself out as providing child care of a prescribed type.

Maximum penalty—100 penalty units.

Applications for licences or renewals

10. An application for a licence, or the renewal of a licence—

- (a) must be made to the chief executive in a form and way approved by the chief executive; and
- (b) must be accompanied by the prescribed fee; and
- (c) must be accompanied by such relevant information (and documents) as the chief executive reasonably requires; and
- (d) in the case of an application for renewal—must be made at least 90 days, or such shorter time as the chief executive in the particular case allows, before the current licence is due to expire.

Inspection before issue or renewal of licences

11.(1) An authorised person may inspect a place at which child care is proposed to be provided under a licence for which—

- (a) an application has been made; or
- (b) an application for renewal has been made.

(2) Despite section 64, the authorised person may under this section enter or board the place and exercise the powers set out in section 66.

Issue and term of licences

12.(1) The chief executive may issue or renew a licence to an applicant who is not disqualified from holding a licence unless the chief executive is of the opinion that, in the interest of the wellbeing or safety of children, the application should not be granted.

(2) In deciding whether to issue or renew the licence, the chief executive must consider—

- (a) whether—
 - (i) the facilities provided or proposed to be provided are adequate for the provision of child care; and
 - (ii) the applicant is a fit and proper person or body to be providing child care; and
 - (iii) each person proposed to be engaged to provide child care services is a fit and proper person to be providing the services; and
 - (iv) the applicant can provide the services in respect of which the licence is being sought; and
- (b) any relevant information given by or in relation to the applicant under this Act.

(3) A licence continues in force for such term (no longer than 2 years) specified in the licence and is renewable for such further term as the chief executive determines from time to time.

Disqualification from holding licence

13.(1) A person is not qualified to hold a licence if the person has, at any time, been convicted of an offence under—

- (a) Part 4 or 5 of the Criminal Code; or
- (b) section 69(1) or (1A) of the *Children's Services Act 1965*; or
- (c) any law outside Queensland that if committed in Queensland would be an offence mentioned in paragraph (a) or (b).

(2) Sections 6, 8 and 9 of the *Criminal Law (Rehabilitation of Offenders) Act 1986* do not apply to or in relation to an applicant for a licence or a

licensee.

(3) Subsection (1) does not apply to an applicant for a licence to the extent that an offence of which the applicant has been convicted is not an offence when the application is made.

Applicant's duty to disclose charges, convictions etc.

14.(1) An applicant for a licence must disclose by written notice with the application and, in the case of a later event, immediately after the event to the chief executive particulars of—

- (a) any indictable offence of which the applicant has been convicted (whether or not charged on indictment); and
- (b) any charge of an offence laid (whether before or after the making of the application) against the applicant where, if convicted, the applicant would be disqualified from holding a licence; and
- (c) any refusal in any jurisdiction of an application by the applicant for a licence, authority or permit in respect of child care services; and
- (d) any suspension or revocation of such a licence, authority or permit; and
- (e) any penalty imposed in the last 5 years for a breach of such a licence, authority or permit; and
- (f) any notice by the chief executive prohibiting the person from providing care of children; and
- (g) any conviction of the applicant of an offence against the *Children's Services Act 1965*, the *Drugs Misuse Act 1986* or the *Family Services Act 1987*; and
- (h) any orders made under section 49 of the *Children's Services Act 1965* in relation to a child of whom the applicant is or was a parent or guardian; and
- (i) any prescribed matters; and
- (j) any relevant matters required by the chief executive.

Maximum penalty—50 penalty units.

(2) A reference in subsection (1) to an offence or charge of an offence in relation to an applicant includes a reference to an offence or charge of an offence in relation to—

- (a) if the applicant is a body corporate—a director of the applicant; and
- (b) if the applicant is an unincorporated association each member of the committee of management of the applicant; and
- (c) if the applicant is an individual—any body of which the applicant is or was a director or member of the committee of management.

Chief executive may require further information

15.(1) At any time—

- (a) after an application for a licence or renewal of a licence has been made; or
- (b) during the term of a licence;

the chief executive may, by written notice given to the applicant or licensee, require the applicant or licensee to give to the chief executive, within a reasonable period, and in a reasonable way, specified in the notice such information relevant to the application, the licence or the child care service as the chief executive specifies.

(2) A person or body who, without reasonable excuse, fails to comply with a requirement made under subsection (1) to the extent that the person or body is capable of doing so commits an offence punishable on conviction by a fine of 10 penalty units.

(3) It is a reasonable excuse for a person to fail to comply with a requirement under subsection (1) if complying with the requirement may tend to incriminate the person.

Retention of documents by chief executive

16. A document given by a person or body to the chief executive under section 10 or 15 ceases to be the property of that person or body and vests in the department.

Conditions of licences

17.(1) A licence must specify—

- (a) the name of the licensee and the name under which the service is to be provided (if any); and
- (b) the address of the child care service; and
- (c) the type of child care service licensed; and
- (d) the day of issue of the licence; and
- (e) if the chief executive considers it appropriate, the maximum number of children at any 1 time for whom child care may be provided; and
- (f) the ages of children for whom child care may be provided; and
- (g) any prescribed conditions.

(2) A licence (including a renewed licence) may specify such other conditions as are reasonable to impose in the circumstances of the case.

Licensee to inform chief executive of relevant changes

18.(1) A licensee must, by written notice given to the chief executive, notify the chief executive, within 14 days, if—

- (a) the licensee becomes disqualified under section 13 from holding a licence; or
- (b) there is a change in circumstances previously notified to the chief executive that is relevant to the licensee continuing to hold the licence or the child care service provided under the licence; or
- (c) an event happens that is likely to—
 - (i) adversely affect the children being provided with child care under the licence; or
 - (ii) prevent the provision of adequate child care under the licence; or
- (d) a prescribed event happens.

(2) A person or body who, without reasonable excuse, fails to comply with a requirement made under subsection (1) to the extent that the person

or body is capable of doing so commits an offence punishable on conviction by a fine of 40 penalty units.

(3) It is a reasonable excuse for a person to fail to comply with a requirement under subsection (1) if complying with the requirement may tend to incriminate the person.

Application for renewal of licence to be determined before expiry of licence

19.(1) If an application for the renewal of a licence is duly received, the chief executive must, before the end of the term of the licence—

- (a) renew the licence; or
- (b) renew the licence, varied as the chief executive determines; or
- (c) refuse to renew the licence.

(2) The chief executive must give to the applicant written reasons for a variation of or refusal to renew the licence.

Written notice of refusal to issue licence to be given

20.(1) The chief executive must give written notice to an applicant of a refusal to issue a licence.

(2) The notice must state the reasons for the refusal.

PART 4—FUNCTIONS OF LICENSEES

Licensee to permit access by parents

21.(1) A licensee must allow a parent of a child access to observe activities being undertaken by, and relevant information and policies regarding, the child and the child care service at all times while a child is being provided with child care.

Maximum penalty—30 penalty units.

(2) Subsection (1) does not apply to the extent that compliance with that subsection would contravene an order of a court or tribunal.

Licensee to ensure that advertisement of child care service not false or misleading

22. A licensee of a child care service must ensure that an advertisement in relation to the child care service—

- (a) is not false or misleading in a material particular; and
- (b) does not advertise any matter or activity that is not permitted under this or any other Act or the licence.

Maximum penalty—20 penalty units.

Licensee to provide safe and suitable child care service

23.(1) A licensee of a child care service must provide the child care service in a way that is safe and suitable for the provision of child care of the type authorised under the licence.

Maximum penalty—50 penalty units.

(2) Measures a licensee must take under subsection (1) include—

- (a) ensuring adequate measures are taken for fire safety and other emergencies in relation to any place where child care is provided; and
- (b) providing adequate health and hygiene facilities and ensuring their appropriate use in relation to any place where child care is provided; and
- (c) establishing and maintaining appropriate procedures and practices concerning health and hygiene; and
- (d) engaging suitable staff, sufficient in number, to provide the child care service; and
- (e) providing and maintaining adequate facilities for the conduct of the child care service; and
- (f) providing and maintaining developmental programs suitable for children provided with child care; and

- (g) carrying out other prescribed measures.

Licensee not to use disqualified premises

24.(1) A licensee must not use disqualified premises for the provision of child care.

Maximum penalty—50 penalty units.

(2) Disqualified premises are—

- (a) premises that are prescribed under the regulations; or
- (b) particular premises that are declared by the chief executive;

to be unsuitable to be used for the provision of child care or a specified type of child care.

(3) The chief executive must give written notice to an applicant or licensee affected by a declaration under subsection (2)(b).

(4) The notice must state the reasons for the declaration.

Licensee to comply with Act and licences

25. A licensee must comply with this Act and the terms and conditions of the licence.

Maximum penalty—40 penalty units.

Licensee to keep records

26.(1) A licensee of a child care service must keep or cause to be kept in relation to the child care service records as required by the regulations.

Maximum penalty—20 penalty units.

(2) The records that may be prescribed for the purposes of subsection (1) may relate to—

- (a) relevant personal and health particulars of children; and
- (b) relevant particulars of parents of children; and
- (c) particulars of attendances of children; and
- (d) relevant particulars of persons responsible for bringing children to

- and from the child care service; and
- (e) relevant particulars of persons prohibited by court order from having access to a child attending the child care service; and
 - (f) relevant particulars of persons engaged by the child care service, including qualifications and personal health particulars; and
 - (g) activities carried on, and supervision of those activities, by the child care service; and
 - (h) medication administered to children; and
 - (i) accidents involving injuries, death and treatment of children; and
 - (j) equipment and vehicles in use by the child care service; and
 - (k) any other matter relevant to the safe and effective provision of child care.

Licensee to maintain insurances

27. A licensee of a child care service must take out and maintain the prescribed insurance cover in relation to the child care service.

Maximum penalty—40 penalty units.

Display of current licence at places of child care service

28. A licensee must cause the current licence to be displayed in a prominent position for public view at the address of the child care service.

Maximum penalty—10 penalty units.

Unauthorised alteration of licence

29. A person must not alter or deface a current licence without the authorisation of the chief executive.

Maximum penalty—10 penalty units.

Minimum qualifications or certificate of endorsement to act as director of or group leader at child care centre

30.(1) A person must not act as director of, or group leader at, a child care centre unless the person is a fit and proper person and—

- (a) holds the prescribed minimum qualifications; or
- (b) holds a certificate of endorsement under this section; or
- (c) has applied to the chief executive for a certificate of endorsement under this section and the application has not been determined by the chief executive.

Maximum penalty—40 penalty units.

(2) A licensee must not engage a person as a director of, or group leader at, a child care centre if the person is not permitted under subsection (1) to act as director of, or group leader at, that centre, as the case may be.

Maximum penalty—40 penalty units.

(3) The chief executive may issue to a person who does not hold the minimum qualifications to act as a director of, or group leader at, a child care centre a certificate of endorsement if the licensee satisfies the chief executive that—

- (a) the person is a fit and proper person to act as a director or group leader; and
- (b) special circumstances exist why the certificate should be issued.

(4) A certificate of endorsement may authorise a person to act as a director or group leader—

- (a) throughout the State; or
- (b) in a specified part of the State; or
- (c) at a specified child care centre or centres.

(5) A certificate of endorsement is valid for such term (no longer than 5 years) specified in the certificate.

(6) Subsection (5) does not prevent the issue of a subsequent certificate of endorsement.

(7) The chief executive may, by written notice to a person, at any time, revoke a certificate of endorsement issued to the person.

(8) The holder of a certificate of endorsement, on receiving written notice of the revocation of the certificate, must immediately return the certificate

for cancellation.

Only fit and proper persons to be engaged by licensee

31. A licensee must not engage an individual who—

- (a) is disqualified from holding a licence; or
- (b) is not a fit and proper person;

if the person, in performing any work at a child care service, will or is likely to come into contact with children being provided with child care.

Maximum penalty—40 penalty units.

Notification of disqualification of or charges against certain persons

32.(1) This section applies to the following persons—

- (a) an individual who is engaged, or seeking to be engaged, by the licensee or the applicant and who, in providing care of children or performing tasks ancillary to the care of children at the child care service will, or is likely to, come into contact with children;
- (b) an individual who ordinarily resides with a care provider within a family day care scheme under the licence;
- (c) a director or member of the managing body of the licensee.

(2) A licensee, or an applicant for a licence, must immediately notify the chief executive on becoming aware that a person to whom this section applies—

- (a) is or becomes disqualified from holding a licence; or
- (b) is or has been charged with an offence mentioned in section 14(1)(a), (b) or (g); or
- (c) is a parent or guardian of a child in relation to whom an order has been made under section 49 of the *Children's Services Act 1965*.

Maximum penalty—40 penalty units.

(3) A person to whom this section applies who—

- (a) is or becomes disqualified from holding a licence; or

- (b) is or has been charged with an offence mentioned in section 14(1)(a), (b) or (g); or
- (c) is a parent or guardian of a child in relation to whom an order has been made under section 49 of the *Children's Services Act 1965*;

must notify the licensee on becoming a person to whom this section applies or as soon as possible after the event happens.

Maximum penalty—40 penalty units.

Direction by chief executive to licensee to take action

33.(1) The chief executive may, at any time, by written notice to a licensee, require the licensee to take action specified in the notice—

- (a) to remedy a breach of this Act or a term or condition of the licence; or
- (b) comply with this Act or a term or condition of the licence.

(2) The notice must specify a period for compliance with the notice.

(3) Subject to subsection (4), the period specified in the notice must be at least 14 days from the giving of the notice.

(4) If the chief executive is of the opinion that urgent action needs to be taken in the interests of the wellbeing and safety of children the notice may be given by an authorised person and a shorter period may be specified.

(5) The notice must state that if the specified action is not taken—

- (a) proceedings may be commenced for an offence against this section; and
- (b) steps may be taken to vary, suspend or revoke the licence.

(6) A licensee must comply with a notice under this section.

Maximum penalty—40 penalty units.

Amendment of licence

34.(1) A licensee may, on written application and accompanied by the prescribed fee (if any), request an amendment of the terms and conditions of the licence.

(2) The chief executive, having regard to the interest of children being, or to be, provided with child care—

- (a) may grant the amendment and endorse the licence accordingly; or
- (b) may refuse to grant the amendment.

(3) If the chief executive considers that it is in the interest of children being, or to be, provided with child care, the chief executive may, without an application under subsection (1), by written notice to a licensee, amend the terms and conditions of the licence at any time during its term.

(4) A notice (other than a notice under subsection (2)) must set out the reasons for the amendment.

Suspension or revocation of licence

35.(1) The chief executive may, by written notice given to the licensee, at any time, suspend or revoke a licence if, in the opinion of the chief executive—

- (a) in relation to the licence—
 - (i) the provisions of this Act; or
 - (ii) the terms and conditions of the licence;
have not been, or are not being, complied with; or
- (b) the child care service has been, or is being, conducted in such a way as to cause concern for the wellbeing and safety of children;
or
- (c) it is not in the interest of children being, or to be, provided with child care under the licence for the licensee, a director or other member of a managing body of the licensee, or a person engaged by the licensee to be involved in the provision of child care.

(2) The notice must set out the reasons for the suspension or revocation.

(3) The chief executive must immediately give notice of the suspension or revocation in the Gazette.

(4) Further notice may be given in any other publication determined by the chief executive.

(5) A suspension of a licence continues—

- (a) for the specified period; or
- (b) until the chief executive is satisfied that specified action has been taken; or
- (c) until the suspension is lifted;

whichever first happens.

(6) For as long as a suspension of a licence continues, the licence is not current.

(7) The licensee must forward the licence to the chief executive immediately on receiving notice of suspension or revocation of a licence.

Maximum penalty for a contravention of this subsection—10 penalty units.

Application for lifting of suspension of licence

36.(1) A licensee of a suspended licence may, at any time, apply in writing for the lifting of the suspension.

(2) The application—

- (a) must be made to the chief executive in a way and form approved by the chief executive; and
- (b) must be accompanied by the prescribed fee (if any).

Application for lifting of suspension of licence to be determined within 30 days

37.(1) If an application for the lifting of the suspension of a licence is duly received, the chief executive must, by written notice to the applicant within 30 days of receiving the application—

- (a) lift the suspension; or
- (b) lift the suspension subject to conditions; or
- (c) refuse to lift the suspension.

(2) The chief executive must give to the applicant written reasons for lifting the suspension subject to conditions or refusing to lift the suspension.

(3) For the purpose of calculating the term of the licence, any period the licence was suspended is treated as part of the term.

(4) If a suspension is lifted under subsection (1)(a) or (b), the chief executive must give notice of the lifting of the suspension in the Gazette and any other publication in which notice of the suspension was published.

Inspection of child care service and place before lifting of suspension of licence

38.(1) On an application for the lifting of a suspension of a licence, the chief executive may direct an inspection of any place at which child care is provided, or proposed to be provided, under the licence.

(2) Despite section 64, an authorised person may, under this section, then enter or board the place and exercise the powers set out in section 66.

Cancellation of licence

39.(1) A licence is cancelled if—

- (a) it is not renewed before the end of its term; or
- (b) it is revoked; or
- (c) if the licensee is an individual—the licensee dies; or
- (d) if the licensee is a body corporate—the licensee goes into liquidation; or
- (e) the licensee becomes disqualified under section 13 from holding a licence.

(2) The licensee, or the personal representative of the licensee, must, within 30 days of an event mentioned in subsection (1)—

- (a) give written notice to the chief executive of the happening of the event; and
- (b) return the licence for cancellation.

Maximum penalty—10 penalty units.

(3) The chief executive may give notice of the cancellation in the Gazette and in any other publication determined by the chief executive.

Continuation of licence for limited period in case of death or liquidation

40.(1) If a licensee—

- (a) in the case of a body corporate—goes into liquidation; or
- (b) in the case of an individual—dies;

the chief executive may, for the purpose of finalising or winding-up the affairs of the licensee, vary the licence to substitute in place of the licensee another person who is not disqualified from being a licensee.

(2) The substituted licensee is taken to be the licensee under the licence for the period specified by the chief executive.

PART 5—REVIEW PROVISIONS**Application for review of chief executive's decisions**

41.(1) If the chief executive makes a decision—

- (a) refusing an application for a licence or a variation of a licence; or
- (b) issuing a licence or a variation of a licence to which the licensee objects; or
- (c) suspending or revoking a licence; or
- (d) refusing an application for renewal of a licence; or
- (e) requiring a licensee to take action under section 33; or
- (f) declaring premises to be disqualified premises under section 24; or
- (g) prohibiting under section 82 a person from providing care of children; or
- (h) revoking a certificate of endorsement issued under section 30;

the applicant or the licensee or person concerned may apply to the Tribunal for a review of the decision.

(2) If the chief executive fails to make a decision on an application

mentioned in subsection (1)(a) or (d) within the prescribed period, then, for the purposes of this section—

- (a) the chief executive is taken to have refused the application; and
- (b) the applicant is taken to have received notice of the refusal;

on the last day of the prescribed period.

(3) An application under subsection (1) must be made within 30 days after the day on which the applicant receives notice of the decision.

(4) An application under subsection (1) must be—

- (a) made to the chief executive in a way and form approved by the chief executive; and
- (b) accompanied by the prescribed fee.

(5) The grounds of an application are to be clearly set out in the application for review.

(6) On receipt of an application for review, the chief executive must immediately send a copy of the application to the chairperson of the Tribunal.

(7) An applicant may withdraw an application for review by written notice lodged with the Tribunal.

Decision on review

42.(1) A review by the Tribunal is to be by fresh decision on the merits.

(2) On reviewing a decision, the Tribunal may—

- (a) affirm the decision; or
- (b) remit the matter to the chief executive for reconsideration having regard to the matters specified by the Tribunal; or
- (c) set aside the decision; or
- (d) substitute its own decision for that reviewed; or
- (e) amend as it thinks fit the decision.

(3) A substituted decision and a decision as amended under subsection (2)(d) or (e) take effect as if it were the decision of the chief executive.

(4) A decision made by the Tribunal on an application is to be given effect by all persons concerned.

(5) For the purpose of reviewing a decision, the Tribunal may exercise all the powers and discretions that are conferred by this Act on the chief executive.

Preliminary hearing

43.(1) In relation to an application made to the Tribunal, the chairperson may, on such terms as the chairperson thinks fit, require the parties to the application to attend at a preliminary hearing.

(2) The preliminary hearing may be conducted by the Tribunal or by the Tribunal constituted by the chairperson sitting alone.

(3) On a preliminary hearing, the Tribunal may do any of the following—

- (a) order notice of the application to be given by a party to the application to any person;
- (b) make such orders relating to procedure in the conduct of the application as are necessary or desirable;
- (c) require the parties to the application to disclose evidence held by them;
- (d) strike out an application if the Tribunal considers it to be frivolous or vexatious;
- (e) remit the matter to the chief executive for further consideration.

(4) Subsection (3) is not taken to limit the power of the chairperson to regulate the proceedings of the Tribunal.

(5) Section 50(2) to (7) applies to a preliminary hearing.

PART 6—CHILD CARE REVIEW TRIBUNAL

Establishment of Child Care Review Tribunal

44. A tribunal called the Child Care Review Tribunal is established.

Constitution of Tribunal

45. The Tribunal is to consist of—

- (a) the chairperson; and
- (b) 2 members selected from the approved panel by the chairperson to hear and determine the matter concerned.

Appointment of chairperson of Tribunal and approved panel

46.(1) The Governor in Council may appoint a person to be chairperson of the Tribunal.

(2) The Governor in Council may appoint a person to be a member of the approved panel.

(3) A person who is disqualified from holding a licence is not eligible for appointment under subsection (1) or (2).

(4) An officer of the department is not eligible for appointment under subsection (1) or (2).

(5) An appointment under subsection (1) or (2) is for a term of no longer than 2 years from the date the appointment takes effect.

Vacation of office

47.(1) A person who is chairperson of the Tribunal or a member of the approved panel may resign by writing signed and delivered to the Minister.

(2) The Governor in Council may terminate the appointment of the chairperson of the Tribunal or a member of the approved panel.

Acting chairperson of Tribunal

48. The Governor in Council may appoint a member of the approved panel to act as chairperson of the Tribunal—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the chairperson is absent from duty or from the State or is, for any reason, unable to perform the duties of the office.

Remuneration of chairperson and members

49. The persons who constitute the Tribunal are to be paid such fees and allowances as are determined by the Governor in Council.

Proceedings of Tribunal

50.(1) The Tribunal is to sit at such times and at such places as the chairperson determines.

(2) The proceedings must be held in private and the chairperson must exclude from the proceedings a person who is not—

- (a) mentioned in subsection (3), (4), (5) or (6); or
- (b) a witness whilst giving evidence.

(3) An individual who is an applicant for a review of a decision may appear and be heard personally before the Tribunal.

(4) A director or other member of the management of a body that is an applicant for a review of a decision may appear and be heard on behalf of the body.

(5) The chief executive is entitled to appear and be heard, either personally or by an officer of the department, in every matter before the Tribunal.

(6) A person is not entitled to represent another person at a hearing unless the chairperson approves.

(7) A person who, under subsection (3), (4), (5) or (6), appears before the Tribunal may ask relevant questions of any witness before the Tribunal.

(8) In a proceeding before the Tribunal—

- (a) the procedure of the Tribunal is, subject to this Act, within the discretion of the Tribunal; and
- (b) the proceeding is to be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Tribunal permit; and
- (c) the Tribunal is not bound by the rules of evidence but may inform itself on any matter in any way that it considers appropriate.

(9) For the purposes of subsection (1), directions as to procedure to be followed at or in connection with the hearing of a proceeding before the Tribunal may be varied or revoked by the chairperson of the Tribunal or by a member authorised by the chairperson to give directions for the purposes of this subsection.

(10) An authorisation by the chairperson may be of general application or may relate to the hearing of a particular proceeding or class of proceedings.

Jurisdiction of Tribunal

51.(1) Jurisdiction is conferred on the Tribunal to hear and determine every application made to it under this Act.

(2) In the exercise of its jurisdiction, the Tribunal is to act independently, impartially and fairly.

(3) The Tribunal is not competent to make any order as to costs except against a person who is found by it to have made a frivolous or vexatious application.

Power to summon witnesses

52. The chairperson, or a person authorised in writing by the chairperson, may summon a person to appear at a hearing of the Tribunal at a time and place specified in the summons to give evidence and produce any records specified in the summons.

Failure of witness to attend

53. A person served with a summons to appear as a witness at a hearing

of the Tribunal must not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear from time to time in the course of the hearing as required by the chairperson.

Maximum penalty—40 penalty units.

Power to administer oath or affirmation

54.(1) The chairperson, or a person authorised by the chairperson—

- (a) may require a person appearing before the Tribunal to give evidence either to take an oath or make an affirmation; and
- (b) may administer an oath or affirmation to any person appearing as a witness before the Tribunal.

(2) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give to questions asked of the person will be true.

Refusal to be sworn or to answer questions

55.(1) A person appearing as a witness at a hearing of the Tribunal must not, without reasonable excuse—

- (a) fail to be sworn or to make an affirmation; or
- (b) fail to answer a question that the person is required to answer by the chairperson; or
- (c) fail to produce a document that the person was required to produce by a summons under section 52 served on the person as prescribed.

Maximum penalty—40 penalty units.

(2) Subsection (1) does not apply in respect of a failure to answer a question or produce records that would tend to incriminate the person.

Contempt of hearing

56.(1) A person must not obstruct or improperly influence the conduct of a hearing of the Tribunal.

Maximum penalty—40 penalty units.

(2) The chairperson may order to be removed from a hearing any person present without permission who attempts to obstruct or improperly influence the conduct of a hearing.

(3) For the purpose of subsection (2), the chairperson may authorise any person to use such force as is reasonably necessary.

Allowances to witnesses

57. A witness summoned to appear at a hearing of the Tribunal is entitled to be paid such allowances and expenses—

- (a) as are prescribed by regulation; or
- (b) as the chairperson determines in the absence of a regulation.

Publication of certain material prohibited

58.(1) A person must not publish any material before the Tribunal if the publication would contravene the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Maximum penalty—40 penalty units.

(2) The Tribunal concerned may order that any material before the Tribunal is not to be published if it is in the interest of a child.

(3) A person must not contravene an order made under subsection (2).

Maximum penalty—40 penalty units.

(4) Subsections (1) and (2) do not apply to—

- (a) publication by a person about that person; or
- (b) publication by the Tribunal; or
- (c) publication of reports within the department by authorised persons or other responsible officers.

Reports by chairperson of Tribunal to Minister

59.(1) At the request of the Minister, the chairperson of the Tribunal must give to the Minister a written report on the operations of the Tribunal for the period specified in the request.

(2) The chairperson of the Tribunal may give to the Minister written reports on any matters concerning the administration of this Act.

PART 7—REGISTER**Register to be maintained**

60.(1) A register called the Register of Child Care Services is to be maintained in the department.

(2) There must be recorded in the register under the prescribed type of child care service, in relation to each licence (including a licence that is suspended, revoked or expired) and each application for a licence, the prescribed particulars and such other relevant particulars approved from time to time by the chief executive.

Copies from register

61. A person is entitled, on payment of the prescribed fee, to obtain a copy of any part of the register during ordinary business hours.

PART 8—AUTHORISED PERSONS**Authorised persons**

62.(1) The chief executive may authorise a person, or a class of persons, to exercise—

- (a) all the powers conferred by this Act on an authorised person; or

(b) any powers conferred by this Act on an authorised person.

(2) The chief executive may cause an identity card to be issued to an authorised person.

(3) The identity card must—

(a) contain a recent photograph of the authorised person; and

(b) be in a form approved by the chief executive.

(4) A person who ceases to be an authorised person must, as soon as practicable, return his or her identity card to the chief executive.

Maximum penalty for contravention of this subsection—10 penalty units.

Authorised person to produce identity card

63. An authorised person is not entitled to exercise powers under this Part in relation to another person unless the authorised person first produces the authorised person's identity card for inspection by the person.

Entry and search—monitoring compliance

64.(1) Subject to subsection (2), an authorised person may, for the purpose of finding out whether the requirements of this Act are being complied with—

(a) enter or board any place; and

(b) exercise the powers set out in section 66.

(2) An authorised person must not enter or board a place, or exercise a power under subsection (1), unless—

(a) the place is premises, or that part of premises, to which a licence relates and the entry is made when the premises are open for conduct of business; or

(b) the place is premises or that part of premises to which an application for a licence relates and the entry is made when such premises would be open for conduct of business if a licence were in force; or

(c) the occupier of the place (if any) consents to the entry or boarding or exercise of the power; or

- (d) a warrant under section 67 authorises the entry or exercise of the power.

(3) An authorised person who is permitted by this section to enter or board a vehicle or vessel may, for the purpose of effecting the entry or boarding and for the purpose of exercising any powers that the authorised person is permitted to exercise, stop and detain the vehicle or vessel.

Entry and search—evidence of offences

65.(1) Subject to subsection (3), if an authorised person has reasonable grounds for suspecting that there is in or on a place a particular thing (“**the evidence**”) that may afford evidence of the commission of an offence against this Act, the authorised person may—

- (a) enter or board the place; and
- (b) exercise the powers set out in section 66.

(2) If an authorised person enters or boards the place and finds the evidence, the following provisions have effect—

- (a) the authorised person may seize the evidence;
- (b) the authorised person may keep the evidence for 60 days or, if a prosecution for an offence against this Act in the commission of which the evidence may have been used or otherwise involved is instituted within that period, until the completion of the proceedings for the offence and of any appeal from the decision in relation to the proceedings;
- (c) if the evidence is a document—while the authorised person has possession of the document, the authorised person may take extracts from and make copies of the document, but must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the authorised person’s possession.

(3) An authorised person must not enter or board the place or exercise a power under subsection (1) unless—

- (a) the occupier (if any) of the place consents to the entry or boarding or exercise of the power; or
- (b) a warrant under section 68 that was issued in relation to the

evidence authorises the entry or boarding or exercise of the power.

(4) If, in the course of searching the place under subsection (1) under a warrant under section 68, an authorised person—

- (a) finds a thing that the authorised person believes, on reasonable grounds to be—
 - (i) a thing (other than the evidence) that will afford evidence of the commission of the offence mentioned in subsection (1); or
 - (ii) a thing that will afford evidence of the commission of another offence against this Act; and
- (b) the authorised person believes, on reasonable grounds, that it is necessary to seize the thing to prevent—
 - (i) its concealment, loss or destruction; or
 - (ii) its use in committing, continuing or repeating the offence mentioned in subsection (1), or the other offence, as the case may be;

subsection (2) applies to the thing as if it were the evidence.

(5) An authorised person who seizes or damages anything under this section must give written notice of particulars of the thing or damage.

(6) The notice must be given to—

- (a) if anything is seized—the person from whom the thing was seized; or
- (b) if damage is caused to anything—the person who appears to the authorised person is the owner.

General powers of authorised person in relation to places

66.(1) The powers an authorised person may exercise under section 64(1)(b) or 65(1)(b) in relation to a place are as follows—

- (a) to search any part of the place;
- (b) to inspect, examine or photograph anything in or on the place;

- (c) to take extracts from, and make copies of, any documents in or on the place;
- (d) to take into or onto the place such equipment and materials as the authorised person requires for the purpose of exercising any powers in relation to the place;
- (e) to require the occupier or any person in or on the place to give to the authorised person reasonable assistance in relation to the exercise of an authorised person's powers mentioned in paragraphs (a), (b), (c) and (d).

(2) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1)(e).

Maximum penalty—10 penalty units.

(3) It is a reasonable excuse for a person to fail to answer a question or produce a document if answering the question, or producing the document, might tend to incriminate the person.

Monitoring warrants

67.(1) An authorised person may apply to a Magistrate for a warrant under this section in relation to a particular place.

(2) Subject to subsection (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that it is reasonably necessary that the authorised person should have access to the place for the purpose of finding out whether the requirements of this Act are being complied with.

(3) If the Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Magistrate must not issue the warrant unless the authorised person or some other person has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.

(4) The warrant must—

- (a) authorise the authorised person, with such assistance and by such force as is necessary and reasonable—
 - (i) to enter the place; and

- (ii) to exercise the powers set out in section 66; and
- (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

Offence related warrants

68.(1) An authorised person may apply to a Magistrate for a warrant under this section in relation to a particular place.

(2) Subject to subsection (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, in or on the place a particular thing (“**the evidence**”) that may afford evidence of the commission of an offence against this Act.

(3) If the Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Magistrate must not issue the warrant unless the authorised person or some other person has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.

(4) The warrant must—

- (a) authorise the authorised person, with such assistance and by such force as is necessary and reasonable—
 - (i) to enter the place; and
 - (ii) to exercise the powers set out in section 66; and
 - (iii) to seize the evidence; and
- (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 7 days after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purposes for which the warrant is issued.

Offence related warrant may be granted by telephone

69.(1) If, because of circumstances of urgency, an authorised person considers it necessary to do so, the authorised person may, under this section, apply by telephone for a warrant under section 68.

(2) Before applying for the warrant, the authorised person must prepare an information of the kind mentioned in section 68(2) that sets out the grounds on which the issue of the warrant is sought.

(3) If it is necessary to do so, an authorised person may apply for the warrant before the information has been sworn.

(4) If the Magistrate is satisfied—

- (a) after having considered the terms of the information; and
- (b) after having received such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the Magistrate may, under section 68, complete and sign such warrant as the Magistrate would issue under that section if the application had been made under that section.

(5) If the Magistrate completes and signs the warrant—

- (a) the Magistrate must—
 - (i) tell the authorised person what the terms of the warrant are; and
 - (ii) tell the authorised person the date on which and the time at which the warrant was signed; and
 - (iii) record on the warrant the reasons for granting the warrant; and
- (b) the authorised person must—
 - (i) complete a form of warrant in the same terms as the warrant completed and signed by the Magistrate; and
 - (ii) write on the form of warrant the name of the Magistrate and the date on which and the time at which the Magistrate signed the warrant.

(6) The authorised person must also, not later than the day after the day of expiry or execution of the warrant (whichever is the earlier), send to the Magistrate—

- (a) the form of warrant completed by the authorised person; and
- (b) the information mentioned in subsection (2), which must have been duly sworn.

(7) When the Magistrate receives the documents mentioned in subsection (6), the Magistrate must—

- (a) attach them to the warrant that the Magistrate completed and signed; and
- (b) deal with them in the way in which the Magistrate would have dealt with the information if the application for the warrant had been made under section 68.

(8) A form of warrant duly completed by the authorised person under subsection (5) is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the Magistrate authorises.

(9) If—

- (a) it is material, in a proceeding, for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised by this section; and
- (b) the warrant completed and signed by the Magistrate authorising the exercise of power is not produced in evidence;

the court must assume, unless the contrary is proved, that the exercise of power was not authorised by such a warrant.

Authorised person may require name and address

70.(1) An authorised person who—

- (a) finds a person committing, or finds a person that the authorised person reasonably suspects of having committed, an offence against this Act; or
- (b) is making inquiries or investigations with a view to establishing whether or not an offence against this Act has been committed by a person; or

- (c) is reasonably of the opinion that the name and address of a person is required for the purpose of—
 - (i) giving effect to a provision of this Act; or
 - (ii) enabling the authorised person to carry out the authorised person's functions under this Act;

may require the person to state the person's name and address and, if the authorised person has reasonable grounds to believe that the name or address given is false, may require evidence of its correctness.

(2) A person who is required under subsection (1) to state the person's name or address must not, without reasonable excuse—

- (a) fail to comply with the requirement; or
- (b) state a false name or address.

Maximum penalty—50 penalty units.

(3) A person who is required under subsection (1) to give evidence of the correctness of a name or address must not, without reasonable excuse, fail to give the evidence or give false evidence.

Maximum penalty—50 penalty units.

Obstruction etc. of authorised persons

71. A person must not, without reasonable excuse, obstruct, hinder or resist an authorised person in the exercise of a power under this Act.

Maximum penalty—50 penalty units.

False or misleading statements

72. A person must not—

- (a) make a statement to an authorised person that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to an authorised person any matter or thing without which the statement is, to the knowledge of the person, misleading in a material particular; or
- (c) give to an authorised person a document containing information

that the person knows is false, misleading or incomplete in a material particular without—

- (i) indicating to the authorised person that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
- (ii) providing correct information to the authorised person if the person has, or can reasonably obtain, the correct information.

Maximum penalty—50 penalty units.

Powers of authorised person where unauthorised child care is provided

73.(1) If, on entry of a place, an authorised person is satisfied on reasonable grounds that unauthorised child care is being provided at the place, the authorised person, with the prior approval of the chief executive, may give reasonable directions to any person present at the place in relation to the provision of care of any child at the place.

(2) For the purposes of subsection (1), the provision of child care is unauthorised if it is provided in circumstances where a licence is required under this Act and—

- (a) there is no current licence and there is no exemption under this Act; or
- (b) the licence or this Act is not being complied with.

(3) A person to whom an authorised person gives a direction under subsection (1) must not, without reasonable excuse, fail to comply with the direction.

Maximum penalty—30 penalty units.

PART 9—MISCELLANEOUS

Secrecy

74.(1) In this section—

“**court**” includes any tribunal, authority or person having power to require the production of documents or the answering of questions other than the Tribunal;

“**person to whom the section applies**” means a person who is or has been—

- (a) the chief executive; or
- (b) an officer or employee of the department;

“**produce**” includes permit access to;

“**protected document**” means a document that—

- (a) contains information of a personal, financial or business nature that concerns a person; and
- (b) is obtained or made by a person to whom this section applies in the course of, or because of, the person’s duty under or in relation to the administration of this Act;

“**protected information**” means information of a personal, financial or business nature that—

- (a) concerns a person; and
- (b) is disclosed to, or obtained by, a person to whom this section applies in the course of, or because of, the person’s duties under or in relation to the administration of this Act.

(2) A person to whom this section applies must not—

- (a) make a record of any protected information; or
- (b) whether directly or indirectly, divulge or communicate to a person any protected information concerning another person;

unless the record is made, or the information divulged or communicated—

- (c) under or for the purposes of the administration of this Act; or

- (d) in the performance of duties, as a person to whom this section applies, under or in relation to the administration of this Act; or
- (e) under express authorisation under this Act; or
- (f) otherwise required by operation of law; or
- (g) with the prior consent of the person, who is not a child, to whom it relates; or
- (h) to the person to whom it relates regarding a possible breach of this Act by the person or a licensee.

Maximum penalty—100 penalty units.

(3) A person to whom this section applies is not required—

- (a) to divulge or communicate protected information to a court; or
- (b) to produce a protected document in court;

unless it is necessary to do so for the purpose of carrying into effect this Act.

Disclosure of criminal history

75.(1) The Commissioner of Police or a person delegated by the Commissioner for the purpose, on written request by the chief executive, must declare in writing to the chief executive the criminal history (as shown in the Commissioner's records) of—

- (a) a licensee; or
- (b) a person engaged by the licensee; or
- (c) a care provider; or
- (d) a person exempted under section 83; or
- (e) an applicant to be a person mentioned in paragraph (a), (b) or (d); or
- (f) a person residing with a care provider within a family day care scheme; or
- (g) a director of a body corporate mentioned in paragraph (a), (b) or (d); or
- (h) a member of a committee of management of an unincorporated

association mentioned in paragraph (a), (b) or (d).

(2) The criminal history of a person includes—

- (a) charges made against the person in respect of an offence committed in Queensland or elsewhere that, if a licensee were convicted of the offence, the licensee would be required to disclose to the chief executive under section 14; and
- (b) the results of the charges.

(3) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the supply and use of a criminal history under this section.

Attempts to commit offences

76. A person must not attempt to commit an offence against this Act.

Maximum penalty—the penalty prescribed for the offence attempted.

Proceedings for offences

77. A prosecution for an offence against this Act is to be by way of summary proceedings under the *Justices Act 1886*.

Evidence

78. In a proceeding for an offence against this Act—

- (a) the authority of the complainant to make the complaint is to be presumed unless the contrary is proved; and
- (b) a certificate purporting to be signed by the chief executive or a person authorised by the chief executive stating that—
 - (i) it is a copy of a licence, exemption, notice, direction, approval, certificate or requirement under this Act; or
 - (ii) a person was or was not at a specified time a licensee;

is prima facie evidence of the matter stated in the certificate.

Powers of local authority officers to monitor compliance

79.(1) An officer of a local authority appointed by the local authority to inspect premises for the purpose of monitoring compliance with any Act or law administered by the local authority relating to health, hygiene and safety may—

- (a) enter or board a place or part of a place to which a licence or an application for a licence relates when—
 - (i) the place is open for the conduct of business; or
 - (ii) the place, if a licence were issued, would be open for the conduct of business; and
- (b) monitor whether the requirements of this Act and any other law administered by the local authority relating to health, hygiene and safety are being complied with; and
- (c) issue any direction or notice authorised under any Act.

(2) An officer who detects a failure that affects, or is likely to affect, the adequate provision of child care is to give written notification in a form approved by the chief executive to the chief executive.

Approval of care providers

80.(1) A licensee of a family day care scheme may approve a person to practise family day care within the scheme if the licensee is of the opinion that the person is an appropriate person to practise family day care.

(2) The licensee must issue a certificate of approval to the person or endorse the person's name on the certificate of approval issued to another person who is authorised to practise family day care at the same place.

(3) A licensee of a family day care scheme must not engage a person who is not a care provider to practise family day care within the scheme.

Maximum penalty—20 penalty units.

(4) A person who is not a care provider must not practise family day care within a scheme.

Maximum penalty—20 penalty units.

Duty to provide proper and appropriate care of children

81. While a person provides care of children for reward, the person must provide proper and appropriate care of the children.

Chief executive may prohibit a person from caring for children

82.(1) The chief executive may, by written notice given to a person prohibit that person from providing care of children on a regular basis, for reward, at the home of the person.

(2) The chief executive may only act under subsection (1) if the chief executive is of the opinion that it is in the interest of children who may be provided with care by the person.

(3) The prohibition is effective on receipt by the person of the notice.

(4) The notice must state the reasons for the prohibition.

(5) A person who is given a notice under subsection (1) must not care for children on a regular basis, for reward, at that person's home.

Maximum penalty for a contravention of this subsection—40 penalty units.

Exemptions

83.(1) A regulation may exempt for a specified period (no longer than 2 years)—

(a) a specified child care service; or

(b) all child care services of a specified type or description;

from the provisions of this Act or from specified provisions of this Act.

(2) An exemption under subsection (1) may be subject to compliance with terms and conditions specified in the regulation.

(3) If—

(a) a child care centre exists at the commencement of this section; and

(b) the chief executive is satisfied that it is impracticable to require compliance with a provision of this Act specifying structural or other physical requirements for the centre;

a regulation may exempt the centre from compliance with the provision for

a limited or unlimited period specified in the regulation.

Regulations

84.(1) The Governor in Council may make regulations, not inconsistent with this Act, with respect to any matter that—

- (a) is required or permitted to be prescribed by this Act; or
- (b) is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), regulations may be made with respect to—

- (a) measures to be taken by licensees and care providers to ensure the wellbeing and safety of children being provided with care; and
- (b) suitable developmental programs for children to be provided by licensees and child care providers; and
- (c) types and amounts of insurance cover to be taken out and maintained by licensees; and
- (d) the regulation of different types of child care; and
- (e) standards and maintenance of standards of premises at which child care is provided; and
- (f) functions of licensees; and
- (g) application for and use of licences, replacement licences, certificates of approval or of exemptions; and
- (h) the register and the supply of information from the register; and
- (i) the minimum qualifications required to act—
 - (i) as a director or group leader of; or
 - (ii) in a specified supervisory role at;
a child care centre or a specified child care service; and
- (j) fees and charges that may be charged in the administration of the Act; and
- (k) functions and powers of the chief executive necessary to achieve the objects of this Act.

(3) A regulation may impose a penalty not exceeding 20 penalty units for a breach of the regulation.

Transitional and savings

88.(1) A person who is required to be licensed under this Act and, at the commencement of this section—

- (a) is licensed under the *Children's Services (Day Care Centres) Regulation 1973* or the *Children's Services (Family Day Care) Regulation 1982* authorising that person to conduct a day care centre or family day care scheme; or
- (b) is licensed under the *Children's Services (Family Day Care) Regulation 1982* authorising that person to be a care provider; or
- (c) holds the appointment of coordinator of a family day care scheme conducted under the *Children's Services (Family Day Care) Regulation 1982*;

continues to be so licensed or to hold such an appointment under that regulation during the balance of the term of the licence or appointment.

(2) Anything done by a person mentioned in subsection (1) that is authorised by a licence or appointment under the *Children's Services (Day Care Centres) Regulation 1973* or the *Children's Services (Family Day Care) Regulation 1982* is not a contravention of section 9 or 30.

(3) The provisions of the *Children's Services Act 1965* in force prior to the commencement of this section continue to apply to a person referred to in subsection (1), but a licence or appointment cannot be renewed after that commencement unless authorised by that Act as in force at the time of renewal.

(4) If—

- (a) a person applies for a licence before 1 July 1992; and
- (b) the person, at the time of the application, is licensed under the *Children's Services Act 1965*; and
- (c) subsection (3) applies to that licence; and
- (d) the application is not determined before the expiry of the licence;

the person is taken to hold the licence applied for until the application is

determined.

(5) A person who, at the commencement of this section, holds a certificate of approval to—

- (a) be in charge of a specified day care centre; or
- (b) be in charge of a group of children within a specified day care centre;

is taken to hold a certificate of endorsement under section 30 in respect of the specified centre.

(6) It is hereby declared that a person who, under section 36(a)(i) and (ii) of the *Children's Services (Day Care Centres) Regulation 1973*, had satisfied the Director that the person possessed sufficient training or experience to enable the person to be in charge of a day care centre is and was from 24 April 1980 taken to be the holder of a certificate of approval issued by the Director under that regulation as amended on that day.

(7) The certificate of approval relates, and related, only to the day care centre at which the person was engaged immediately before that day.

(8) Section 30(4) does not apply to a person referred to in subsection (5).

ENDNOTES**1 Index to Endnotes**

	Page
2 Date to which amendments incorporated	50
3 List of legislation	50
4 List of annotations	51
5 Table of corrected minor errors	51

2 Date to which amendments incorporated

This is the day mentioned in section 5(c) of the *Reprints Act 1992*. However, no amendments have commenced operation before that day. Future amendments of the *Child Care Act 1991* may be made in accordance with this reprint because of section 49 of the *Reprints Act 1992*.

3 List of legislation**Child Care Act 1991 No. 79**

date of assent 9 December 1991

ss 1–2 commenced on date of assent

remaining provisions commenced 5 June 1992 (1992 SL No. 119)

4 List of annotations

Key to abbreviations in list of annotations

RA	=	<i>Reprints Act 1992</i>
amd	=	amended
ins	=	inserted
om	=	omitted
renum	=	renumbered
sub	=	substituted
Chap	=	Chapter
Pt hdg	=	Part heading
Div hdg	=	Division heading
Sdiv hdg	=	Subdivision heading
hdg prec	=	heading preceding
prov hdg	=	provision heading
cl	=	clause
orig	=	original
pres	=	present

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

Amendment of Family Services Act 1987

s 85 om (see s 40 RA)

Amendment of Children's Services Act 1965

s 86 om (see s 40 RA)

Amendment of Criminal Law (Rehabilitation of Offenders) Act 1986

s 87 om (see s 40 RA)

AMENDMENT OF FAMILY SERVICES ACT 1987

Sch 1 om (see s 40 RA)

AMENDMENT OF CHILDREN'S SERVICES ACT 1965

Sch 2 om (see s 40 RA)

AMENDMENT OF CRIMINAL LAW (REHABILITATION OF OFFENDERS) ACT 1986

Sch 3 om (see s 40 RA)

5 Table of corrected minor errors

TABLE OF CORRECTED MINOR ERROR under section 7(1)(j) of *Reprints Act 1992*

Section	Description
s 43(2)	ins 'the' before 'chairperson'
s 88(6)	om '36(a)(iii)' ins '36(a)(i) and (ii)'