

Queensland



# CHILD CARE ACT 1991

**Reprinted as in force on 27 July 2001  
(includes amendments up to Act No. 45 of 2001)**

**Reprint No. 2C**

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# Information about this reprint

This Act is reprinted as at 27 July 2001. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

# Queensland



## CHILD CARE ACT 1991

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# CHILD CARE ACT 1991

[as amended by all amendments that commenced on or before 27 July 2001]

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

## PART 1—PRELIMINARY

### 1 Short title

This Act may be cited as the *Child Care Act 1991*.

### 2 Commencement

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

### 3 Definitions

In this Act—

“**affairs**”, in relation to an unincorporated association, has the meaning given by the Corporations Act, section 53<sup>1</sup>.

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

“**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.

“**child**” means a minor.

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<sup>1</sup> Corporations Act, section 53 (Affairs of a body corporate)

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**“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 the Corporations Act, section 9<sup>2</sup>.

**“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.

**“independent home-based care”** see section 73A.

**“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

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2 Corporations Act, section 9 (Dictionary)



- (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 Children Services Tribunal established under the *Children Services Tribunal Act 2000*.

## **4 Objects of Act**

**(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

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- (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; and
- (i) to establish minimum safeguards for the provision of independent home-based care.

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

## **PART 2—ADMINISTRATION**

### **5 Administration of Act**

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

### **6 Functions and powers of chief executive**

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

### **7 Delegations**

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**

### **8 Licences**

(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.

## **9 Requirement for licences**

(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.

## **10 Applications for licences or renewals**

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.

## **11 Inspection before issue or renewal of licences**

(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.

## **12 Issue and term of licences**

(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.

## **13 Disqualification from holding licence**

(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) any law outside Queensland that if committed in Queensland would be an offence mentioned in paragraph (a).

(2) Sections 6, 8 and 9<sup>3</sup> 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.

#### **14 Applicant's duty to disclose charges, convictions etc.**

(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 *Child Protection Act 1999*, the *Drugs Misuse Act 1986* or the *Family Services Act 1987*; and
- (h) any orders made under section 49<sup>4</sup> of the *Children's Services Act 1965*, or an assessment order or child protection order under the

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3 *Criminal Law (Rehabilitation of Offenders) Act 1986*, sections 6 (Non-disclosure of convictions upon expiration of rehabilitation period), 8 (Lawful to deny certain convictions) and 9 (Duty to disregard certain convictions)

4 *Children's Services Act 1965*, section 49 (Admission to care and protection by court order)

*Child Protection Act 1999*, 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.

## **15 Chief executive may require further information**

(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.

**16 Retention of documents by chief executive**

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.

**17 Conditions of licences**

(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.

**18 Licensee to inform chief executive of relevant changes**

(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.

### **19 Application for renewal of licence to be determined before expiry of licence**

(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.

### **20 Written notice of refusal to issue licence to be given**

(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**

### **21 Licensee to permit access by parents**

(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.

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

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.

## **23 Licensee to provide safe and suitable child care service**

(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.

**24 Licensee not to use disqualified premises**

(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.

**25 Licensee to comply with Act and licences**

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

Maximum penalty—40 penalty units.

**26 Licensee to keep records**

(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.

### **27 Licensee to maintain insurances**

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.

### **28 Display of current licence at places of child care service**

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.

### **29 Unauthorised alteration of licence**

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

Maximum penalty—10 penalty units.

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

(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.

### **31 Only fit and proper persons to be engaged by licensee**

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.

### **32 Notification of disqualification of or charges against certain persons**

(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<sup>5</sup> of the *Children's Services Act 1965* or an assessment order or child protection order has been made under the *Child Protection Act 1999*.

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

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5 *Children's Services Act 1965*, section 49 (Admission to care and protection by court order)

- (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* or an assessment order or child protection order has been made under the *Child Protection Act 1999*;

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.

### **33 Direction by chief executive to licensee to take action**

(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.

### **34 Amendment of licence**

(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.

### **35 Suspension or revocation of licence**

(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 subsection (7)—10 penalty units.

### **36 Application for lifting of suspension of licence**

(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).

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

(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.



### **38 Inspection of child care service and place before lifting of suspension of licence**

(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.

### **39 Cancellation of licence**

(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.

### **40 Continuation of licence for limited period in case of death or liquidation**

(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**

### **41 Application for review of chief executive's decisions**

(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; or
- (i) to give a person a prohibition notice under section 73H;

the applicant or the licensee or person concerned may apply to the tribunal to have the decision reviewed.

(2) If the chief executive fails to make a decision about an application mentioned in subsection (1)(a) or (d) within the prescribed period—

- (a) the failure is taken to be a decision by the chief executive to refuse the application; and
- (b) the applicant is taken to have received notice of the refusal on the last day of the prescribed period.

(3) In this section—

“**prescribed period**” means the period prescribed under a regulation for this section.

## **PART 7—REGISTER**

### **60 Register to be maintained**

(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.

### **61 Copies from register**

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**

### **62 Authorised persons**

(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 subsection (4)—10 penalty units.

### **63 Authorised person to produce identity card**

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.

### **64 Entry and search—monitoring compliance**

(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.

### **65 Entry and search—evidence of offences**

(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.

## **66 General powers of authorised person in relation to places**

(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.

## **67 Monitoring warrants**

(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.

## **68 Offence related warrants**

(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.

## **69 Offence related warrant may be granted by telephone**

(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.

## **70 Authorised person may require name and address**

(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.

## **71 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.

## **72 False or misleading statements**

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.

## **73 Powers of authorised person where unauthorised child care is provided**

(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 8A—INDEPENDENT HOME-BASED CARE**

### *Division 1—Preliminary*

#### **73A Definitions for pt 8A**

In this part—

**“carer”** means a person providing independent home-based care.

**“disqualified person”** means a person—

- (a) with a conviction for a disqualifying offence; or
- (b) for whom a prohibition notice is in force.

**“disqualifying offence”** means—

- (a) an offence against the Criminal Code, part 4 or 5;<sup>6</sup> or

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<sup>6</sup> Criminal Code, part 4 (Acts injurious to the public in general) or 5 (Offences against the person and relating to marriage and parental rights and duties and against the reputation of individuals)

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- (b) an offence against the repealed *Children's Services Act 1965*, section 69(1) or (1A);<sup>7</sup> or
- (c) an offence against a law outside Queensland that, if committed in Queensland, would be an offence against a law mentioned in paragraph (a) or (b).

**“guardian”**, of a child, means any of the following persons—

- (a) a person who is recognised in law as having all the duties, powers, responsibilities and authority in relation to the child that, by law, parents have in relation to their children;<sup>8</sup>
- (b) a person who has custody or guardianship of the child under a court order;
- (c) a carer of the child under the *Child Protection Act 1999*;
- (d) a person who is entitled to the care and custody of the child under the *Adoption of Children Act 1964*.

**“home”** means residential premises.

**“independent home-based care”** means care provided by a person to a child in the course of an independent home-based care service, but does not include—

- (a) care of a child of whom the person is a relative or guardian; or
- (b) care of a child in the child's home.

**“independent home-based care service”** means an operation conducted for regularly providing care of 1 or more children in a home, for reward, but does not include—

- (a) an operation to provide child care under a licence; or
- (b) an operation principally conducted to provide instruction in a particular activity, for example, dance, music or a sport; or
- (c) a licensed care service under the *Child Protection Act 1999*.

**“parent”**, of a child, includes—

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<sup>7</sup> *Children's Services Act 1965*, section 69 (Offences in relation to the health of children)

<sup>8</sup> See the *Family Law Act 1975* (Cwlth), part 7 (Children), division 2 (Parental responsibility).

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- (a) for any child—the spouse or de facto spouse of a parent of the child; and
- (b) for an Aboriginal child—a person who, under Aboriginal tradition, is regarded as a parent of the child; and
- (c) for a Torres Strait Islander child—a person who, under Island custom, is regarded as a parent of the child.

**“prohibition notice”** means a notice, given under division 3, prohibiting a person from providing independent home-based care.

**“relative”**, of a child—

- (a) means the child’s parent, grandparent, great grandparent, brother, sister, uncle, aunt, niece, nephew or cousin; and
- (b) for an Aboriginal child, includes a person who, under Aboriginal tradition, is regarded as a relative mentioned in paragraph (a); and
- (c) for a Torres Strait Islander child, includes a person who, under Island custom, is regarded as a relative mentioned in paragraph (a); and
- (d) for a child with a parent who is not a natural parent, includes anyone who would be a relative mentioned in paragraph (a) if the parent were a natural parent.

*Example—*

The daughter of a child’s step-parent is a relative of the child.

### ***Division 2—Restrictions applying to independent home-based care***

#### **73B Disqualified person must not provide care**

A disqualified person must not provide independent home-based care.

Maximum penalty—

- (a) for a person with a conviction for a disqualifying offence or for whom a prohibition notice given under section 73G or 73H is in force—100 penalty units; or
- (b) otherwise—50 penalty units.

**73C Homes in which care must not be provided**

A person (the “**first person**”) must not provide independent home-based care at a home if—

- (a) another person who ordinarily resides in the home is a disqualified person; and
- (b) the first person knows, or ought reasonably to know, the other person is a disqualified person.

Maximum penalty—

- (a) if the other person is a person with a conviction for a disqualifying offence or a person for whom a prohibition notice given under section 73G or 73H is in force—100 penalty units; or
- (b) otherwise—50 penalty units.

**73D Carers must be adults**

(1) A person must not conduct an independent home-based care service for which any of the carers is a child.

Maximum penalty—50 penalty units.

(2) It is a defence to a charge of an offence against subsection (1) to prove the person sighted reasonable evidence that the relevant carer was an adult.

**73E Maximum numbers of children receiving care**

(1) This section applies to a person while the person is providing independent home-based care at a home.

- (2) The person must not care, at one time, for—
  - (a) more than 6 children of less than 12 years; or
  - (b) more than 4 children of less than 6 years.

Maximum penalty—100 penalty units.

(3) For subsection (2), the number of children for whom the person is caring at a particular time—

- (a) does not include the person’s own children who are at least 6 years; but

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(b) otherwise—

- (i) includes all of the children the person is caring for at the time, even if the care being provided to some of the children by the person is not independent home-based care; and
- (ii) includes all the children at the home being provided with independent home-based care at the time, even if some of the care is being provided by someone else.

*Examples—*

In each of the following examples, all of the children are less than 12 years and are being cared for at someone's home.

1. At a particular time, X is caring for 7 children, all of whom are relatives. X is not contravening subsection (2)(a).
2. At a particular time, X is caring for 7 children, all of whom are relatives. At the same time, X is also providing independent home-based care for 1 other child. None of the children is X's own child. X is contravening subsection (2)(a).
3. At a particular time, X is providing independent home-based care for 6 children. At the same time, X is providing care for 2 of X's own children, both of whom are more than 6 years. X is not contravening subsection (2)(a).
4. At a particular time, X is providing independent home-based care for 6 children. At the same time, X is providing care for 2 of X's own children, one of whom is less than 6 years. X is contravening subsection (2)(a).
5. At a particular time, X is providing independent home-based care for 5 children. At the same time, X is caring for 2 other children, for which X does not receive any reward. None of the children is X's own child. X is contravening subsection (2)(a).
6. At a particular time, X and Y are providing independent home-based care for 7 children at X's home. X is mainly caring for 3 of the children and Y is mainly caring for the other 4 children. Both X and Y are contravening subsection (2)(a).
7. At a particular time, X is providing independent home-based care for 3 children at X's home. Y is also at X's home caring for 4 of Y's own children. X is not caring for Y's children. Neither X nor Y is contravening subsection (2)(a).

### **73F Public liability insurance**

A person must not provide independent home-based care unless the person ensures there is a policy of public liability insurance, for at least \$5 million, in force for the care.

Maximum penalty—40 penalty units.



***Division 3—Monitoring and disqualifications*****73G Criminal history checks**

(1) An authorised person may ask someone (the “**respondent**”) who is an adult to give a written consent to a criminal history check if the authorised person knows, or reasonably suspects, that the respondent—

- (a) is providing, or from time to time provides, independent home-based care; or
- (b) ordinarily resides in a home at which independent home-based care is provided.

(2) The consent must be given by completing and signing the approved form.

(3) When asking for the consent, the authorised person must warn the respondent that, if the respondent does not give the consent, the authorised person must give the respondent a prohibition notice.

(4) If the respondent refuses to give the consent, the authorised person must give the respondent a prohibition notice.

(5) The chief executive must cancel the prohibition notice if—

- (a) the respondent later gives the consent; and
- (b) the chief executive does not learn, by conducting a criminal history check, that the respondent has a conviction for a disqualifying offence; and
- (c) the chief executive does not decide to disqualify the respondent under section 73H.

**73H Disqualification of person charged with disqualifying offences**

(1) This section applies if—

- (a) the chief executive conducts a criminal history check of a person who has given consent under this division; and
- (b) the person does not have a conviction for a disqualifying offence but has, at any time, been charged with a disqualifying offence.

(2) The chief executive may give the person a prohibition notice if the chief executive is satisfied it is an exceptional case in which it would not be in the best interests of children for independent home-based care to be

provided by the person or provided at the home in which the person ordinarily resides.

(3) In making a decision about a person under subsection (2), the chief executive must have regard to—

- (a) the number of charges in the person's criminal history; and
- (b) for each of the charges—
  - (i) the seriousness of the offence and its relevance to the provision of independent home-based care; and
  - (ii) when the offence was alleged to have been committed; and
  - (iii) whether the person was convicted, found guilty or acquitted, or whether the prosecution process ended in another way or has not ended.

(4) Before giving a person a prohibition notice under this section, the chief executive—

- (a) must give the person a written notice—
  - (i) stating the information about the person's criminal history, relating to each disqualifying offence, of which the chief executive is aware; and
  - (ii) inviting the person to give the chief executive, within a stated time, a submission about the information or about the appropriateness of independent home-based care being provided by the person or provided at the home in which the person ordinarily resides; and
- (b) must consider any submission received from the person within the stated time.

(5) The time stated for giving the submission must be reasonable and, in any case, at least 7 days after the chief executive gives the notice to the person.

### **73I Checks about insurance cover**

(1) If an authorised person knows, or reasonably suspects, someone (the “**respondent**”) is providing independent home-based care, the authorised person may ask the respondent to produce to the authorised person, within a stated time of at least 2 business days, an insurance compliance document relating to the care.

(2) When making the request, the authorised person must warn the respondent that, if the respondent fails to comply with the request, the authorised person must give the respondent a prohibition notice.

(3) If the respondent fails to comply with the request, the authorised person must give the respondent a prohibition notice.

(4) If the respondent later produces an insurance compliance document relating to the care, the chief executive must cancel the prohibition notice given because of the failure and notify the respondent of the cancellation.

(5) In this section—

**“insurance compliance document”**, relating to independent home-based care, means a document evidencing that there is a policy of public liability insurance, mentioned in section 73F,<sup>9</sup> in force for the care.

### **73J Notification about a person’s disqualification**

(1) Subsection (2) applies if—

- (a) a person (the **“first person”**) is a disqualified person; and
- (b) an authorised person knows, or reasonably suspects, that another person (the **“second person”**) ordinarily resides in, or provides independent home-based care at, the home in which the first person ordinarily resides.

(2) The authorised person may notify the second person that the first person is a disqualified person.

(3) If, after the second person is notified, the first person stops being a disqualified person, the authorised person must notify the second person as soon as practicable unless, after reasonable inquiries, the authorised person can not locate the second person.

### **73K Checks on age of carers**

(1) This section applies if an authorised person reasonably suspects—

- (a) an independent home-based care service is being conducted in contravention of section 73D;<sup>10</sup> and

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<sup>9</sup> Section 73F (Public liability insurance)

<sup>10</sup> Section 73D (Carers must be adults)

- (b) someone (the **“respondent”**)—
- (i) is a carer in the service; and
  - (ii) is not an adult.

(2) The authorised person may—

- (a) require the respondent to state the respondent’s age; and
- (b) if the respondent states an age that the authorised person reasonably suspects is false, require the respondent to give evidence of the correctness of the stated age within a stated reasonable time.

(3) When making a requirement under subsection (2), the authorised person must warn the respondent that, if the respondent fails to comply with the requirement, the authorised person must give the respondent a prohibition notice.

(4) If the respondent fails to comply with the requirement, the authorised person must give the respondent a prohibition notice.

(5) If the respondent later complies with the requirement, the chief executive must cancel the prohibition notice given because of the failure and notify the respondent of the cancellation.

## PART 9—MISCELLANEOUS

### 74 Secrecy

(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.

**75 Disclosure of criminal history**

(1) The commissioner of the police service 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); or
- (i) a person who consents to a criminal history check under section 73G.<sup>11</sup>

(2) The criminal history of a person mentioned in subsection (1)(a) to (h) 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.

(2A) The criminal history of a person mentioned in subsection (1)(i) consists of the following—

- (a) each charge made against the person for a disqualifying offence;
- (b) whether the person was convicted, found guilty or acquitted of the offence, or whether the prosecution process ended in another way or has not ended;

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<sup>11</sup> Section 73G (Criminal history checks)

- (c) the date, and a brief description of the circumstances, of each conviction or charge for a disqualifying offence.

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

(4) In this section—

“**disqualifying offence**” has the meaning given in section 73A.

## **76 Attempts to commit offences**

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

Maximum penalty—the penalty prescribed for the offence attempted.

## **77 Proceedings for offences**

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

## **78 Evidence**

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.

## **79 Powers of local government officers to monitor compliance**

(1) An officer of a local government appointed by the local government to inspect premises for the purpose of monitoring compliance with any Act or law administered by the local government 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 government 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.

### **80 Approval of care providers**

(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.

### **81 Duty to provide proper and appropriate care of children**

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



**82 Chief executive may prohibit a person from caring for children**

(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 subsection (5)—40 penalty units.

**82A Advertising that unlicensed care is registered or approved**

(1) This section applies if—

- (a) a person advertises that the person provides, or is willing to provide, care of children, or holds himself or herself out as providing, or being willing to provide, care of children; and
- (b) the care is not child care provided under a licence.

(2) In the advertisement or in the course of the holding out, the person must not make a false or misleading statement about the extent to which, or the way in which—

- (a) the person is registered or approved by a government entity to provide the care; or
- (b) the care is approved by a government entity.

Maximum penalty—40 penalty units.

(3) In this section—

**“government entity”** means the State, the Commonwealth or a department of government or agency of the State or the Commonwealth.

**83 Exemptions**

(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.

## **84 Regulation-making power**

(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

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- (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; and
- (l) health or safety requirements relating to independent home-based care.

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

## **88 Transitional and savings**

(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.

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(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)<sup>12</sup> 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).

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12 *Children's Services (Day Care Centres) Regulation 1973*, section 36 (Qualifications of Persons Involved in the Functioning of a Day Care Centre)

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 27 July 2001. Future amendments of the Child Care Act 1991 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	1 October 1992
1A	to Act No. 51 of 1996	1 April 1997
2	to Act No. 10 of 1999	6 May 1999
2A	to Act No. 10 of 1999	24 March 2000
2B	to Act No. 59 of 2000	2 February 2001

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

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## 6 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)

as amended by—

### **Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996 No. 51**

**ss 1–2, 84 sch 1**

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 20 December 1996 (1996 SL No. 392)

### **Child Protection Act 1999 No. 10 ss 1, 2(2), 205 sch 3**

date of assent 30 March 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 23 March 2000 (2000 SL No. 45)

### **Child Care Amendment Act 2000 No. 38**

date of assent 13 October 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 29 January 2001 (2000 SL No. 345)

**Children Services Tribunal Act 2000 No. 59 ss 1–2, 151 sch 1**

date of assent 24 November 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 2 February 2001 (2001 SL No. 2)

**Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3**

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

## 7 List of annotations

**Definitions**

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**PART 6—CHILD CARE REVIEW TRIBUNAL****pt 6 (ss 44–59)** om 1996 No. 51 s 84 sch 1

**Authorised persons**

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**PART 8A—INDEPENDENT HOME-BASED CARE**

pt 8A (ss 73A–73K) ins 2000 No. 38 s 7

**Disclosure of criminal history**

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**Powers of local government officers to monitor compliance**

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s 79            amd 2000 No. 38 s 3 sch

**Chief executive may prohibit a person from caring for children**

s 82            amd 2000 No. 38 s 3 sch

**Advertising that unlicensed care is registered or approved**

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**Regulation-making power**

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**Amendment of Family Services Act 1987**

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**Amendment of Children’s Services Act 1965**

s 86            om R1 (see RA s 40)

**Amendment of Criminal Law (Rehabilitation of Offenders) Act 1986**

s 87            om R1 (see RA s 40)

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om R1 (see RA s 40)

**SCHEDULE 2—AMENDMENT OF CHILDREN’S SERVICES ACT 1965**

om R1 (see RA s 40)

**SCHEDULE 3—AMENDMENT OF CRIMINAL LAW (REHABILITATION OF OFFENDERS) ACT 1986**

om R1 (see RA s 40)

**8            List of forms****Form 18—Consent to Criminal History Check, Independent Home-Based Care  
(section 73G of the Child Care Act 1991)**

pubd gaz 9 February 2001 p 506