

Queensland



# **CHILD CARE ACT 2002**

**Act No. 55 of 2002**



# Queensland



## CHILD CARE ACT 2002

### TABLE OF PROVISIONS

Section		Page
<b>PART 1—PRELIMINARY</b>		
<i>Division 1—Introduction</i>		
1	Short title . . . . .	12
2	Commencement . . . . .	12
<i>Division 2—Interpretation</i>		
3	Definitions . . . . .	12
4	Meaning of “child care” . . . . .	12
5	Meaning of “child care service” . . . . .	12
6	Note in text . . . . .	14
<i>Division 3—Application, object and guiding principles</i>		
7	Act binds all persons . . . . .	14
8	Object . . . . .	14
9	Guiding principles . . . . .	14
<b>PART 2—LICENSING OF CHILD CARE SERVICES</b>		
<i>Division 1—Licensing generally</i>		
10	Types of child care service . . . . .	15
11	Licence for centre based service . . . . .	15
12	Licence for home based service . . . . .	16
13	More than 1 licence or licensee . . . . .	16
14	Term of licence . . . . .	16
15	Form of licence . . . . .	16
<i>Division 2—Requirement to operate child care service under a licence</i>		
16	Conducting a child care service without a licence . . . . .	17
17	Contravening a licence condition . . . . .	17

***Division 3—Process for issue or renewal of licence***

18	Definition for div 3 . . . . .	17
19	Issue of licence . . . . .	17
20	Provisional licence . . . . .	18
21	Renewal of licence . . . . .	19
22	Lapsing of application for renewal . . . . .	20

***Division 4—Bases for making licensing decisions***

23	Application of div 4. . . . .	20
24	Definitions for div 4. . . . .	21
25	Guiding principles . . . . .	21
26	Suitability of licensee and related persons . . . . .	21
27	Suitability notices for carers and staff members . . . . .	22
28	Suitability of child care centre and facilities . . . . .	22
29	Suitability of homes and facilities . . . . .	23
30	Aboriginal or Torres Strait Islander children. . . . .	23
31	Other criteria . . . . .	23

***Division 5—Licensed capacity of centre based service***

32	Licensed capacity . . . . .	24
33	Emergency care . . . . .	25

***Division 6—Nominee for licence held by corporation***

34	Appointment of nominee. . . . .	26
35	Purposes and effect of appointment of nominee . . . . .	26

***Division 7—Licence held by parents and citizens association***

36	Definitions for div 7. . . . .	27
37	Association may hold licence . . . . .	27
38	Application of this Act to an association. . . . .	27
39	Contravention of this Act by an association . . . . .	28

***Division 8—Amendment of licence***

40	Amendment of licence on application. . . . .	28
41	Restrictions on amendment of licence on application. . . . .	29
42	Amendment of licence by chief executive. . . . .	29
43	Urgent amendment of licence by chief executive . . . . .	30

44	Amendment of licence to update details . . . . .	31
	<b><i>Division 9—Suspension or revocation of licence</i></b>	
45	Suspension or revocation of licence . . . . .	31
46	Urgent suspension of licence. . . . .	33
47	Effect of suspension . . . . .	34
48	Licensee must return suspended or revoked licence . . . . .	34
49	Licensee to give notice of revocation or suspension of licence. . . . .	34
50	Application to lift the suspension of licence . . . . .	35
	<b><i>Division 10—Other dealings with licence</i></b>	
51	Transfer of licence . . . . .	35
52	Surrender of licence. . . . .	35
53	Replacement licence . . . . .	36
	<b><i>Division 11—Death of licensee</i></b>	
54	Death of sole licensee . . . . .	36
55	Death of licensee if more than 1 licensee . . . . .	37
	<b>PART 3—CARERS, STAFF AND RELATED MATTERS</b>	
	<b><i>Division 1—Preliminary</i></b>	
56	Meaning of “carer” . . . . .	38
57	Meaning of “staff member” . . . . .	38
58	Meaning of “engage”. . . . .	38
59	Prescribed first aid competency. . . . .	39
	<b><i>Division 2—Requirements for centre based service</i></b>	
60	Application of division . . . . .	39
61	Standard requirements. . . . .	39
62	Requirements applying to a service. . . . .	40
63	Rest periods . . . . .	40
64	Director for centre based service. . . . .	41
65	Presence of at least 2 adults. . . . .	42
66	First aid training . . . . .	42
	<b><i>Division 3—Requirements for home based service</i></b>	
67	Coordinator for home based service . . . . .	43
68	Carer in home based service must be adult . . . . .	44

69	First aid training . . . . .	44
	<b><i>Division 4—Qualifications, training and study</i></b>	
70	Certain unqualified persons may fulfil requirement for qualified person . . .	44
71	Defence of relying on evidence of qualifications, training or study . . . . .	44
72	Evidence of staff qualifications and competencies . . . . .	45
73	Evidence of enrolment in a course of study . . . . .	45
	<b><i>Division 5—Suitability notices</i></b>	
74	Licensee must keep evidence of compliance with Commission for Children and Young People Act 2000 . . . . .	46
	<b>PART 4—CONDUCT OF LICENSED SERVICE</b>	
	<b><i>Division 1—General</i></b>	
75	Licensee’s overriding responsibility . . . . .	47
76	Policies . . . . .	47
77	Role statements . . . . .	48
78	Parents or guardians must be allowed access . . . . .	48
79	Agreement to exclude liability for negligence . . . . .	48
80	Licensee to inform chief executive of relevant changes . . . . .	49
81	Licensee must report harm to children . . . . .	50
82	Insurance . . . . .	50
83	Provision of child care other than at child care centre or home . . . . .	51
84	Copies of relevant legislation for carers and staff . . . . .	51
	<b><i>Division 2—Records</i></b>	
85	Licensee must keep records . . . . .	51
86	Access to records . . . . .	51
87	Confidentiality of records . . . . .	52
88	Record keeping obligations when person stops being licensee . . . . .	53
	<b><i>Division 3—Other matters applying to licensed centre based service</i></b>	
89	Programs . . . . .	53
90	Display of licence at child care centre . . . . .	54
	<b><i>Division 4—Limits on number of children at 1 place applying to licensed home based service</i></b>	
91	Meaning of “prescribed limits” . . . . .	54
92	Maximum numbers of children at a home . . . . .	54

---

93	Further restriction of maximum numbers . . . . .	55
94	Emergency care . . . . .	55
95	Care provided away from home . . . . .	56
96	Playgroups and excursions involving other carers . . . . .	56
	<i>Division 5—Other matters applying to licensed home based service</i>	
97	Suitability of other persons in a home . . . . .	57
98	Activities and experiences . . . . .	57
	<b>PART 5—CONDUCT OF STAND ALONE SERVICE</b>	
99	Person conducting service and carers must be adults . . . . .	58
100	Suitability of other persons in a home . . . . .	58
101	Maximum numbers of children . . . . .	59
102	Insurance . . . . .	60
	<b>PART 6—PROHIBITION NOTICES</b>	
	<i>Division 1—Basis for issuing notice</i>	
103	Basis for issuing prohibition notice . . . . .	60
	<i>Division 2—Procedure</i>	
104	Show cause notice . . . . .	60
105	Deciding whether to issue prohibition notice . . . . .	61
106	Person to whom notice may be given . . . . .	61
107	Content of prohibition notice . . . . .	61
108	Cancellation of prohibition notice . . . . .	62
	<i>Division 3—Offences</i>	
109	Contravening prohibition notice . . . . .	62
110	Licensee must not engage person with prohibition notice . . . . .	63
	<b>PART 7—MONITORING AND ENFORCEMENT</b>	
	<i>Division 1—Authorised officers</i>	
111	Appointment . . . . .	63
112	Appointment conditions and limit on powers . . . . .	63
113	When authorised officer stops holding office . . . . .	64
114	Resignation . . . . .	64
115	Issue of identity card . . . . .	64
116	Return of identity card . . . . .	65

---

117	Production or display of identity card . . . . .	65
	<b><i>Division 2—Powers of authorised officers</i></b>	
	<b><i>Subdivision 1—Entry of places</i></b>	
118	Power to enter places . . . . .	65
	<b><i>Subdivision 2—Procedure for entry</i></b>	
119	Entry with consent . . . . .	66
120	Application for warrant . . . . .	67
121	Issue of warrant . . . . .	67
122	Special warrants . . . . .	68
123	Warrants—procedure before entry . . . . .	69
124	Entering a home and preserving privacy . . . . .	70
	<b><i>Subdivision 3—Powers after entry</i></b>	
125	General powers after entering a place . . . . .	70
126	Failure to help authorised officer . . . . .	71
	<b><i>Subdivision 4—Power to seize evidence</i></b>	
127	Definition for sdiv 4 . . . . .	71
128	Seizing evidence after entry without consent or warrant . . . . .	71
129	Seizing evidence after entry with consent or warrant . . . . .	71
130	Receipts for seized things . . . . .	72
131	Forfeiture of seized things . . . . .	72
132	Return of seized things . . . . .	73
133	Access to seized things . . . . .	74
	<b><i>Subdivision 5—Power to obtain information</i></b>	
134	Power to require name and address . . . . .	74
135	Power to require evidence of age, name and address of person suspected of being underage carer . . . . .	75
136	Power to require information . . . . .	75
137	Power to require production of documents . . . . .	76
138	Failure to produce documents . . . . .	77
	<b><i>Subdivision 6—Monitoring suitability of relevant persons</i></b>	
139	Suitability of persons in home in which stand alone child care is provided . . . . .	77
140	Chief executive may obtain information about suitability checks . . . . .	78
141	Notification that an occupant is a disqualified person . . . . .	79



***Subdivision 7—Other compliance matters***

142	Compliance notice . . . . .	79
143	Compliance with Building Act requirements for child care centre . . . . .	80

***Division 3—Miscellaneous***

144	Selfincrimination and warning . . . . .	81
145	Compensation . . . . .	82
146	Alteration of licence . . . . .	82
147	False or misleading statements . . . . .	82
148	False or misleading documents . . . . .	82
149	Obstructing an authorised officer . . . . .	83
150	Impersonation of an authorised officer . . . . .	83

**PART 8—LEGAL PROCEEDINGS*****Division 1—Evidence***

151	Application of div 1 . . . . .	83
152	Appointments and authority . . . . .	84
153	Signatures . . . . .	84
154	Other evidentiary aids . . . . .	84

***Division 2—Offence proceedings***

155	Summary proceedings for offences . . . . .	85
156	Statement of complainant’s knowledge . . . . .	85
157	False or misleading information or statements . . . . .	85
158	Responsibility for acts or omissions of representatives . . . . .	85
159	Executive officers must ensure corporation complies with Act . . . . .	86
160	Defence of exercising reasonable diligence to ensure compliance . . . . .	87
161	Reasonable belief about person’s age . . . . .	87
162	Emergencies . . . . .	87

**PART 9—GENERAL*****Division 1—Reviewable decisions***

163	Reviewable decisions . . . . .	88
164	Chief executive must give notice after making reviewable decision . . . . .	89

***Division 2—Application of Commission for Children and Young People Act 2000***

165	Application of Act to corporations . . . . .	90
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166	Applications for suitability notices by occupants of homes . . . . .	90
	<b><i>Division 3—Confidentiality</i></b>	
167	Duty of confidentiality. . . . .	90
168	Recording, use or disclosure for authorised purpose . . . . .	91
169	Disclosure to relevant entities in other jurisdictions . . . . .	92
170	Reporting matters of concern to other departments . . . . .	92
	<b><i>Division 4—Miscellaneous</i></b>	
171	Register . . . . .	92
172	Review of regulation about certain matters. . . . .	93
173	Delegation by chief executive . . . . .	94
174	Approved forms. . . . .	94
175	Regulation-making power . . . . .	94
	<b>PART 10—REPEAL AND TRANSITIONAL PROVISIONS</b>	
	<b><i>Division 1—Repeal</i></b>	
176	Repeal of Child Care Act 1991 . . . . .	95
	<b><i>Division 2—General transitional provisions</i></b>	
177	Licences. . . . .	95
178	Applications. . . . .	96
179	Nominee of licence held by corporation . . . . .	96
180	Licensed capacity of more than 75 . . . . .	96
181	Directions . . . . .	97
182	Application for review of decision under repealed Act. . . . .	97
183	Review of decision under repealed Act. . . . .	98
184	Occupants of homes in which licensed child care is provided . . . . .	98
185	Prohibition notices. . . . .	98
186	Authorised persons . . . . .	99
187	Existing unlicensed services . . . . .	99
188	Exemptions from Building Act requirements . . . . .	99
	<b><i>Division 3—Transitional provisions about qualifications</i></b>	
189	Assistants taken to be qualified. . . . .	100
190	Certain registered nurses taken to have group leader qualifications . . . . .	100
191	Holders of, and applicants for, certificates of endorsement . . . . .	101

---

192	Unqualified person engaged as director, assistant director or group leader .	102
193	Unqualified person who was at least 45 on commencement of repealed Act .....	103
194	Unqualified person engaged as coordinator .....	104
	<i>Division 4—Regulatory impact statement for first regulation</i>	
195	Application of the Statutory Instruments Act 1992, pt 5. ....	104
	<b>PART 11—AMENDMENTS</b>	
196	Acts amended .....	105
	<b>SCHEDULE 1</b> .....	
	<b>AMENDMENT OF ACTS</b>	
	CHILDREN SERVICES TRIBUNAL ACT 2000. ....	106
	COMMISSION FOR CHILDREN AND YOUNG PEOPLE ACT 2000 . . .	107
	CRIMINAL LAW (REHABILITATION OF OFFENDERS) ACT 1986 . . .	112
	EDUCATION (ACCREDITATION OF NON-STATE SCHOOLS) ACT 2001 .....	112
	<b>SCHEDULE 2</b> .....	
	<b>DICTIONARY</b>	



Queensland



## **Child Care Act 2002**

**Act No. 55 of 2002**

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

*[Assented to 1 November 2002]*

The Parliament of Queensland enacts—

## **PART 1—PRELIMINARY**

### *Division 1—Introduction*

#### **1 Short title**

This Act may be cited as the *Child Care Act 2002*.

#### **2 Commencement**

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

### *Division 2—Interpretation*

#### **3 Definitions**

The dictionary in schedule 2 defines particular words used in this Act.

#### **4 Meaning of “child care”**

“**Child care**” is care of a child provided—

- (a) by someone other than a relative or guardian of the child; and
- (b) at a place other than the child’s home; and
- (c) for reward; and
- (d) in the course of a service for regularly providing care of children.

#### **5 Meaning of “child care service”**

(1) A “**child care service**” is a service for regularly providing child care, but does not include any of the following services—

- (a) a service, for providing preschool education, conducted by a school that also provides primary education;

- (b) a service, for providing primary, secondary or special education, conducted by a school;
- (c) a service principally conducted to provide—
  - (i) therapeutic services; or
  - (ii) residential facilities; or
  - (iii) instruction in a particular activity, for example, dance, music or a sport; or
  - (iv) tutoring, coaching or religious instruction; or
  - (v) a recreational activity, for example, a camp or party;

*Examples for paragraph (c)—*

Hospital, boarding facility for school students, dance academy, sporting club, Sunday school, scout group.

- (d) a service for which, usually, the children to whom care is provided are entirely or mostly different on each occasion the care is provided;

*Example for paragraph (d)—*

A service, conducted by a hotel or resort, to provide child care to children who are short term guests.

- (e) a service in which the only child care provided is—
  - (i) holiday care; or
  - (ii) adjunct care; or
  - (iii) care of children who are at least 12 years old;
- (f) a service that is, under the *Child Protection Act 1999*, a licensed care service, departmental care service or service provided as an approved foster carer;
- (g) another service prescribed under a regulation not to be a child care service.

**(2)** To remove any doubt, it is declared that a service may be a child care service even though it is conducted—

- (a) by an entity that also carries on a school; or
- (b) at premises at which a school is also carried on.

## 6 Note in text

A note in the text of this Act is part of this Act.

### *Division 3—Application, object and guiding principles*

## 7 Act binds all persons

(1) This Act binds all persons including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

(2) Subsection (1) does not make the State, the Commonwealth or another State liable for an offence.

## 8 Object

(1) The object of this Act is to protect, and promote the best interests of, children receiving child care.

(2) The ways in which the object is to be achieved include—

- (a) establishing a licensing system for child care services; and
- (b) regulating the way child care services are conducted; and
- (c) setting standards for persons who provide child care.

## 9 Guiding principles

This Act is to be administered, and licensed services are to be conducted, under the following principles—

- (a) the best interests of a child are the paramount concern;
- (b) child care should be provided to a child in a way that—
  - (i) protects the child from harm; and
  - (ii) respects the child's dignity and privacy; and
  - (iii) promotes the child's wellbeing; and
  - (iv) provides positive experiences to the child;



- (c) licensed child care should be provided to a child in a way that stimulates and develops the child's creative, emotional, intellectual, lingual, physical, recreational and social potential;
- (d) parents have the primary responsibility for the upbringing, protection and development of their children, and should be supported in that role;
- (e) child care should be planned and provided in a way that—
  - (i) involves parents and other members of the community; and
  - (ii) reflects the multicultural and multilingual nature of the community.

## PART 2—LICENSING OF CHILD CARE SERVICES

### *Division 1—Licensing generally*

#### **10 Types of child care service**

There are 2 types of child care service that may be licensed under this Act—

- (a) a service for regularly providing child care in premises that are not a home (a “**centre based service**”);
- (b) a service for regularly providing child care in 1 or more homes (a “**home based service**”).

#### **11 Licence for centre based service**

(1) A licence for a centre based service authorises the licensee to conduct a child care service at the premises stated in the licence, subject to the *Integrated Planning Act 1997*.

(2) A licence for a centre based service may only authorise the provision of child care in 1 child care centre.

**12 Licence for home based service**

(1) A licence for a home based service authorises the licensee to conduct a child care service in which child care is provided in 1 or more homes.

(2) A licence for a home based service may authorise the provision of child care in any number of homes.

**13 More than 1 licence or licensee**

(1) A person may hold more than 1 licence, whether or not for the same type of child care service.

(2) A licence may be held jointly by 2 or more persons.

(3) A reference in this Act to the licensee of a child care service is, for a licence held jointly, a reference to each of the persons who jointly hold the licence.

(4) Subsection (3) applies subject to a contrary intention in this Act.

**14 Term of licence**

A licence has effect for the period, not longer than 3 years, stated in it.

**15 Form of licence**

A licence must state—

- (a) the licensee's name and address; and
- (b) for a licence held by a corporation—the name and address of the nominee for the licence; and
- (c) for a licence for a centre based service—the address of the child care centre and any name by which the centre is known; and
- (d) the conditions applying to the licence; and
- (e) the day on which the term of the licence starts; and
- (f) the day on which the licence is due to expire.

***Division 2—Requirement to operate child care service under a licence*****16 Conducting a child care service without a licence**

(1) This section applies to a child care service in which child care is regularly provided to at least 7 children at the same time.

(2) A person must not conduct a service mentioned in subsection (1) without a licence.

Maximum penalty—

- (a) for a first offence—100 penalty units; or
- (b) for a second or later offence—200 penalty units.

(3) For subsection (1), it does not matter whether or not the children are at the same place.

*Note—*

Other child care services may be, but are not required to be, licensed. Part 5 (Conduct of stand alone service) applies to services that are not licensed.

**17 Contravening a licence condition**

A licensee must not contravene a condition of the licence.

Maximum penalty—100 penalty units.

***Division 3—Process for issue or renewal of licence*****18 Definition for div 3**

In this division—

“**information**” includes a document.

**19 Issue of licence**

(1) A person may apply to the chief executive for a licence.

(2) The application must—

- (a) be in the approved form; and

- (b) state whether it relates to a centre based service or a home based service; and
- (c) if the applicant is a corporation—
  - (i) include the name of the individual proposed to be the nominee for the licence; and
  - (ii) be signed by the individual; and
- (d) be signed by the applicant; and
- (e) be accompanied by the fee prescribed under a regulation.

(3) The applicant also must provide any other relevant information reasonably required by the chief executive to decide the application.

(4) The chief executive must decide the application as soon as practicable and, in any case, within 90 days after receiving the application, fee and any other required information.

(5) The chief executive must decide the application by issuing the licence or refusing to issue the licence.<sup>1</sup>

(6) The chief executive may issue the licence on conditions the chief executive considers appropriate, including, for example, conditions about—

- (a) the ages of children for whom child care may be provided; or
- (b) the times at which child care may be provided.

## **20 Provisional licence**

(1) Before finally deciding an application for a licence, the chief executive may issue a provisional licence if—

- (a) the chief executive is satisfied that—
  - (i) subject to the resolution of 1 or more minor matters, the application should be decided by issuing a licence to the applicant; and
  - (ii) the matters can be resolved within the term of the provisional licence; and

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<sup>1</sup> See section 163(1)(a) (Reviewable decisions).

(b) the applicant agrees to the issue of the provisional licence and pays the fee prescribed under a regulation.

(2) A provisional licence may be issued on the conditions the chief executive considers appropriate.

(3) A provisional licence has effect for the term, not longer than 3 months, stated in it.

## 21 Renewal of licence

(1) A licensee may apply to the chief executive for renewal of the licence.

(2) The application must be made before the day the licence is due to expire (the “**expiry day**”) but may not be made more than 3 months before the expiry day.

(3) The application must—

(a) be in the approved form; and

(b) be signed by the licensee; and

(c) for a licence held by a corporation—be signed by the nominee for the licence; and

(d) be accompanied by the fee prescribed under a regulation.

(4) The licensee also must give the chief executive any other relevant information that the chief executive reasonably requires to decide the application.

(5) The chief executive must decide the application by renewing the licence or refusing to renew the licence.<sup>2</sup>

(6) The licence may be renewed for a period ending not later than 3 years after the expiry day.

(7) If the application is still current on the expiry day, the licence does not expire before the application is decided, or is withdrawn or lapses.

(8) If the chief executive decides the application by refusing to renew the licence—

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2 See section 163(1)(b)(i) (Reviewable decisions).

- (a) the chief executive must give the licensee a notice of the decision stating the day, not before the expiry day and not earlier than 7 days after the notice is given, on which the licence expires; and
- (b) the licence continues in force until the stated day.

(9) Subsections (7) and (8) do not prevent the licence from ending in another way under this Act.

## **22 Lapsing of application for renewal**

(1) The chief executive may make a requirement under section 21(4), for information to decide an application for renewal of a licence, by giving the licensee a notice stating—

- (a) the required information; and
- (b) the time by which the information must be given to the chief executive; and
- (c) that, if the information is not given to the chief executive by the stated time, the application will lapse.

(2) The time stated must be reasonable and, in any case, at least 14 days after the requirement is made.

(3) The chief executive may withdraw the requirement, or part of the requirement, at any time.

(4) The chief executive may give the licensee a further notice extending the stated time if the chief executive is satisfied it would be reasonable in all the circumstances to give the extension.

(5) If the licensee does not comply with the requirement within the stated time, or any extension, the application lapses.

### *Division 4—Bases for making licensing decisions*

## **23 Application of div 4**

This division applies to the chief executive in deciding—

- (a) whether to issue, renew, amend, revoke or suspend a licence; or
- (b) the conditions that are to apply to a licence.

## 24 Definitions for div 4

In this division—

“**licensee**” includes an applicant for a licence.

“**nominee**” includes a proposed nominee.

## 25 Guiding principles

The chief executive must have regard to the guiding principles for administering this Act.<sup>3</sup>

## 26 Suitability of licensee and related persons

(1) The chief executive must be satisfied that each of the following persons is suitable to conduct the child care service—

- (a) the licensee;
- (b) if the licensee is a corporation—
  - (i) each of its executive officers; and
  - (ii) the nominee for the licence.

(2) An individual is not suitable to conduct a child care service unless the individual has a current positive suitability notice.

*Note—*

See also the *Commission for Children and Young People Act 2000*, schedule 1 (Regulated employment and businesses for employment screening), section 10 (Child care). For a licensee that is a corporation, see section 165 (Application of Act to corporations) of this Act.

(3) An individual is not suitable to conduct a child care service if a prohibition notice is in force for the individual.

(4) Other matters that the chief executive may consider in deciding a person’s suitability to conduct a child care service include the following—

- (a) any contravention by the person of a provision of this Act or the repealed Act, whether or not the contravention constituted an offence;

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<sup>3</sup> See section 9 (Guiding principles).

- (b) any conviction of the person for an offence, against another law of Queensland or a law of another jurisdiction, that involved a child or was otherwise relevant to a person's suitability to conduct a child care service;
- (c) any previous refusal of an application by the person for a child related authority or for renewal of a child related authority, or a suspension or revocation of a child related authority held by the person;
- (d) the person's involvement in the conduct of an entity so far as the conduct relates to a matter mentioned in paragraphs (a) to (c).

*Example for paragraph (d)—*

The person's involvement, as a director of a company, in the committing of an offence against this Act by the company.

(5) In this section—

**“child related authority”** means—

- (a) a licence under this Act or the repealed Act; or
- (b) a licence, authority or permit, under a law of Queensland or another jurisdiction, to carry out an activity involving children.

## **27 Suitability notices for carers and staff members**

The chief executive must be satisfied the licensee is complying with the *Commission for Children and Young People Act 2000* in relation to the engagement of each carer in, and staff member of, the child care service.

## **28 Suitability of child care centre and facilities**

(1) This section applies to a licence to conduct a centre based service.

(2) The chief executive must be satisfied the child care centre is safe and suitable for use as a child care centre.

(3) The chief executive must be satisfied the other facilities used, or proposed to be used, in the course of the service are safe and suitable for use in providing child care under the licence.

(4) The matters the chief executive must consider under subsection (2) include whether the centre is on, or includes, a level above ground level.



(5) If the centre is in premises that also contain a home, the chief executive must be satisfied that—

- (a) the centre and the home have separate entrances; and
- (b) there is no direct access, inside the premises, between the centre and the home; and
- (c) in all the circumstances, it is appropriate that child care be provided in the centre.

(6) For this Act, premises are suitable for use as a child care centre only if the premises comply with the Building Act requirements.

(7) In this section—

“**child care centre**” includes premises proposed to be used as child care centre.

## **29 Suitability of homes and facilities**

(1) This section applies to a licence to conduct a home based service.

(2) The chief executive must be satisfied the licensee is willing and able to ensure the homes and facilities used, or proposed to be used, in the course of the service are safe and suitable for use in providing child care under the licence.

## **30 Aboriginal or Torres Strait Islander children**

The chief executive must have regard to—

- (a) whether the child care service is conducted, or proposed to be conducted, principally within an Aboriginal or Torres Strait Islander community; and
- (b) the culturally specific needs of Aboriginal or Torres Strait Islander children.

## **31 Other criteria**

(1) The chief executive must have regard to whether the licence is for a centre based service or a home based service.

(2) The chief executive must have regard to each of the following matters relating to the care being, or proposed to be, provided to children under the licence—

- (a) the number of children to whom the care is provided at one time;
- (b) the ages of the children;
- (c) the length of time for which each child is provided with the care;
- (d) for a licence for a centre based service—the amount of space available for providing the care;
- (e) the number of carers providing the care;
- (f) any other relevant matter.

(3) The licensee must have an address in Queensland for the service of notices by the chief executive.

### *Division 5—Licensed capacity of centre based service*

## **32 Licensed capacity**

(1) The licence conditions for a centre based service must include a condition stating the maximum number of children to whom child care may be provided at one time under the licence (the service's "**licensed capacity**").

(2) A service's licensed capacity may be stated—

- (a) as a single number; or
- (b) as different numbers applying to the service at different times according to the circumstances (for example, according to the ages of the children being provided with child care).

(3) A service's licensed capacity applies to all the children to whom child care is being provided at one time in the course of the service, whether the children are being cared for at the child care centre or somewhere else (for example, while on an excursion).

(4) The licensed capacity of a school age care service may be set at any appropriate number.

(5) The licensed capacity of a service other than a school age care service may not be set at more than 75 for any time other than for stated periods totalling not more than 2 hours each day.

(6) In deciding the licensed capacity to set for a service, the chief executive may have regard to—

- (a) the space and facilities available at the child care centre for providing child care; and
- (b) the extent to which the available space and facilities are also used by children other than the children in care at the centre; and
- (c) if the service is already licensed—the number of times, and the extent to which, the current or any previous licensed capacity for the service has been exceeded, whether or not because of the provision of emergency care; and
- (d) if the licensee or proposed licensee of the service is conducting, or has conducted, another licensed service—the number of times, and the extent to which, the current or any previous licensed capacity for the other service has been exceeded, whether or not because of the provision of emergency care.

(7) Subsection (6) does not limit division 4.<sup>4</sup>

### **33 Emergency care**

(1) This section applies to a period during which the number of children being cared for in the course of a centre based service is more than the service's licensed capacity.

(2) The licensee is taken not to be contravening a licence condition about the service's licensed capacity during the period if—

- (a) emergency care is being provided during the period to 1 or more children; and
- (b) emergency care was not also provided to the child or children on the previous day in circumstances to which this section applies; and
- (c) for a service with a licensed capacity stated as different numbers applying to the service at different times—the licensed capacity applying throughout the period is the lowest of the numbers; and
- (d) the amount by which the number of children being cared for exceeds the service's licensed capacity during the period is not more than—
  - (i) if emergency care is being provided to 2 or more children in the same family—that number of children; or

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4 Division 4 (Bases for making licensing decisions)

(ii) otherwise—1.

(3) Subsection (2)(b) does not apply if the provision of emergency care during the period is in response to circumstances beyond the licensee's control.

### ***Division 6—Nominee for licence held by corporation***

#### **34 Appointment of nominee**

(1) A licence held by a corporation must have at least 1 nominee.

(2) A nominee must be an adult.

*Note—*

Section 26 provides for a decision about the suitability of an individual to be a nominee.

(3) On the issue of a licence to a corporation, an individual stated in the licence as a nominee becomes a nominee for the licence.

(4) A licence held by a corporation may be amended under this Act—

- (a) to appoint a nominee for the licence; or
- (b) to replace an existing nominee for the licence; or
- (c) subject to subsection (1), to remove an existing nominee for the licence.

(5) If, for a licence held by a corporation, the only nominee dies or all nominees die, the licensee must immediately apply under this Act to amend the licence to appoint a stated individual as a nominee.

(6) A reference in this Act to the nominee for a licence is, for a licence with more than 1 nominee, a reference to each of the nominees.

#### **35 Purposes and effect of appointment of nominee**

(1) The purposes of requiring a licence held by a corporation to have a nominee are—

- (a) to help ensure the licensed service is conducted in compliance with this Act; and
- (b) to help communication between the chief executive and the licensee.

(2) The appointment of a nominee for a licence does not affect the licensee's responsibility to ensure the licensed service is conducted in compliance with this Act.

(3) If this Act requires or permits the chief executive to give a notice to a licensee, the chief executive may, for a licence held by a corporation, give the notice to the licensee by giving it to a nominee for the licence.

### *Division 7—Licence held by parents and citizens association*

## **36 Definitions for div 7**

In this division—

“**association**” means a parents and citizens association formed under the *Education (General Provisions) Act 1989* and includes an interim parents and citizens association.

“**executive officer**”, of an association, means an officer of the association's executive committee under the *Education (General Provisions) Act 1989*, section 85(2).<sup>5</sup>

## **37 Association may hold licence**

An association may hold a licence for a school age care service.

## **38 Application of this Act to an association**

This Act applies to a licensee that is an association as if—

- (a) the association were a corporation; and
- (b) the association's executive officers were executive officers of the corporation.

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<sup>5</sup> *Education (General Provisions) Act 1989*, section 85(2)—

(2) An executive committee of an association shall comprise the president, vice-president or vice-presidents (if more than 1), secretary and treasurer of that association.

*Examples—*

1. In deciding whether to issue a licence to an association, the chief executive must be satisfied each of the association's executive officers is suitable to conduct the child care service.<sup>6</sup>
2. There must be a nominee for the association's licence.<sup>7</sup>

**39 Contravention of this Act by an association**

(1) An association may be prosecuted for an offence against this Act.

(2) Proceedings under subsection (1) may be taken against the association in its name.

(3) A person taking the proceedings against the association must serve a copy of the document starting the proceedings on the chief executive (education).

(4) Costs incurred by the association in the proceedings, and any penalty imposed on the association on conviction, are a lawful expense of the association under the *Education (General Provisions) Act 1989*, section 92.

(5) Subsection (1) does not limit the other action that may be taken for a contravention of this Act by an association, including—

- (a) suspending or revoking the association's licence under division 9; and
- (b) prosecuting an executive officer of the association for an offence against section 159.<sup>8</sup>

***Division 8—Amendment of licence*****40 Amendment of licence on application**

(1) A licensee may apply to the chief executive for an amendment of the licence.

(2) The application must be in the approved form and accompanied by any fee prescribed under a regulation.

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6 See section 26(1)(b)(i).

7 See section 34(1).

8 Section 159 (Executive officers must ensure corporation complies with Act)

- (3) The chief executive must decide the application by—
- (a) amending the licence in the way applied for; or
  - (b) with the applicant’s written agreement, amending the licence in another way; or
  - (c) refusing to amend the licence.<sup>9</sup>

#### **41 Restrictions on amendment of licence on application**

(1) A change of the child care centre for a licensed centre based service may be made only by an application for a new licence, not by an application to amend the licence.

(2) The removal of a licensee of a child care service, without the addition of a new licensee, may be made by an application to amend the licence.

(3) Otherwise, a change of the licensee, or any of the licensees, of a child care service may be made only by an application to transfer the licence for the service, not by an application to amend the licence.

#### **42 Amendment of licence by chief executive**

(1) The chief executive may amend a licence at any time without receiving an application from the licensee for the amendment.

*Example—*

The chief executive may change a condition of the licence for a centre based service, or impose a new condition, so that—

- (a) the service’s licensed capacity is reduced; or
- (b) child care may no longer be provided from a particular part of the child care centre.

(2) The chief executive must first give the licensee a notice (“**show cause notice**”) stating—

- (a) that the chief executive proposes to amend the licence; and
- (b) the proposed amendment; and
- (c) the reasons for the proposed amendment; and

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<sup>9</sup> See section 163(1)(b)(iii) (Reviewable decisions).

- (d) that the licensee may, within a stated time of at least 30 days, give the chief executive a written response to the proposed amendment.

(3) After considering any response from the licensee within the time stated in the show cause notice, the chief executive may make some or all of the proposed amendment.<sup>10</sup>

(4) If the chief executive decides not to amend the licence, the chief executive must give the licensee notice of the decision.

(5) At the licensee's written request, or with the licensee's written agreement, the chief executive may—

- (a) amend a licence without giving a show cause notice; or
- (b) amend a licence in a way that has not been stated in a show cause notice; or
- (c) amend a licence before the expiration of the time stated in a show cause notice for the licensee's response to the proposed amendment.

(6) An amendment under this section has effect when the chief executive gives notice of the amendment to the licensee or at any later time stated in the notice.

### **43 Urgent amendment of licence by chief executive**

(1) This section applies if the chief executive is reasonably satisfied, in the interests of the wellbeing and safety of children being provided with child care under a licence, it is necessary to immediately amend the licence.

(2) The chief executive may, by notice given to the licensee, immediately amend the licence without complying with section 42.<sup>11</sup>

(3) The notice must state the reasons for the amendment.

(4) The amendment has effect for the period, not more than 60 days, stated in the notice.

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<sup>10</sup> See section 163(1)(b)(ii) (Reviewable decisions).

<sup>11</sup> See section 163(1)(b)(ii) (Reviewable decisions).



#### 44 Amendment of licence to update details

If the licensee notifies the chief executive of a change in any of the information stated on the licence, the chief executive may amend the licence to show the correct information.

### *Division 9—Suspension or revocation of licence*

#### 45 Suspension or revocation of licence

(1) The chief executive may suspend or revoke a licence at any time if the chief executive is satisfied—

- (a) the licensee is contravening, or has contravened, this Act or a condition of the licence in a way, or to an extent, that justifies the suspension or revocation; or
- (b) the licensee is unable or unwilling to continue conducting the child care service under this Act; or
- (c) the licensee is unsuitable to conduct the child care service; or
- (d) for a licence held by a corporation—
  - (i) the nominee for the licence or any of the corporation's executive officers is unsuitable to conduct the child care service; or
  - (ii) there is no nominee for the licence and the licensee has not applied to amend the licence to appoint, as nominee, a stated individual who may be appointed as nominee under this Act; or
- (e) the licensee is contravening, or has contravened, the *Commission for Children and Young People Act 2000* in relation to the engagement of a carer in, or staff member of, the child care service; or
- (f) for a centre based service—
  - (i) the child care centre is unsafe or unsuitable for use as a child care centre; or

(ii) the licensee has failed to comply with a notice given under section 143(4);<sup>12</sup> or

(g) for another reason, it is necessary, in the interests of the wellbeing and safety of children being provided with child care under the licence, that the licence be suspended or revoked.

**(2)** The chief executive must first give the licensee a notice (a “**show cause notice**”) stating—

(a) that the chief executive proposes to suspend or revoke the licence; and

(b) the reasons for the proposed suspension or revocation; and

(c) that the licensee may, within a stated time of at least 30 days, give the chief executive a written response stating why the licensee considers the licence should not be suspended or revoked.

**(3)** After considering any response from the licensee within the time stated in the show cause notice, the chief executive may, by notice given to the licensee, suspend or revoke the licence.<sup>13</sup>

**(4)** The suspension or revocation takes effect on the day stated in the notice given under subsection (3), at least 14 days after that notice is given.

**(5)** If the licence is suspended, the suspension continues for the period stated in the notice, unless it is lifted earlier.

**(6)** If the chief executive decides not to suspend or revoke the licence, the chief executive must give the licensee notice of the decision.

**(7)** At the licensee’s written request, or with the licensee’s written agreement, the chief executive may suspend or revoke a licence without complying with subsections (1) to (4).

**(8)** To remove any doubt, it is declared that subsection (1)(a) applies to a contravention of this Act whether or not the contravention is an offence.

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12 Section 143 (Compliance with Building Act requirements for child care centre)

13 See section 163(1)(b)(iv) (Reviewable decisions).

*Example—*

Subsection (1)(a) applies to a contravention of section 75, 76, 77, 86, 89 or 98 or a provision of a regulation that is not an offence.<sup>14</sup>

## **46 Urgent suspension of licence**

(1) This section applies if the chief executive is reasonably satisfied it is necessary, in the interests of the wellbeing and safety of children being provided with child care under a licence, that the licence be immediately suspended.

*Example—*

The chief executive is reasonably satisfied the premises in which child care is provided under the licence have become unsafe.

(2) The chief executive may, by notice given to the licensee, immediately suspend the licence.<sup>15</sup>

(3) The notice must state the reasons for the suspension.

(4) The suspension ends 14 days after the chief executive gives the notice of suspension to the licensee unless, before that time, the chief executive—

- (a) cancels the suspension; or
- (b) gives a show cause notice to the licensee under section 45.

(5) If, within 14 days after suspending the licence under this section, the chief executive gives a show cause notice to the licensee under section 45—

- (a) the suspension may be continued by notice given under section 45(3); and
- (b) if the suspension is not continued by notice given under section 45(3), the suspension continues until the first of the following to happen—
  - (i) the chief executive lifts the suspension;
  - (ii) the licence is revoked by notice given under section 45(3);

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14 Section 75 (Licensee's overriding responsibility), 76 (Policies), 77 (Role statements), 86 (Access to records), 89 (Programs) or 98 (Activities and experiences)

15 See section 163(1)(b)(iv) (Reviewable decisions).

- (iii) the chief executive gives a notice under section 45(6) that the chief executive has decided not to continue the suspension or revoke the licence.

#### **47 Effect of suspension**

A licence is not current while it is suspended.

#### **48 Licensee must return suspended or revoked licence**

A licensee must return the licence to the chief executive immediately after the suspension or revocation of the licence takes effect.

Maximum penalty—10 penalty units.

#### **49 Licensee to give notice of revocation or suspension of licence**

(1) This section applies if the chief executive gives a notice to a licensee revoking or suspending the licence.

(2) The licensee must comply with this section, unless the licensee has a reasonable excuse.

Maximum penalty—5 penalty units.

(3) As soon as practicable after receiving the notice, the licensee must give notice of the suspension or revocation—

- (a) to a parent or guardian of each child to whom child care is regularly provided in the course of the child care service; and
- (b) for a home based service—to each carer in the service.

(4) Subsection (3) does not apply in relation to a parent, guardian or carer who the licensee can not locate after making reasonable enquiries.

(5) If the licence is for a centre based service and it is suspended, the licensee must display a notice at the child care centre, for the period of the suspension, stating that the licence has been suspended.

(6) If the licence is for a centre based service and it is revoked, the licensee must display a notice at the child care centre, until at least the day on which the revocation takes effect, stating that the licence has been revoked.

(7) A regulation may make provision about a notice given or displayed under this section including, for example—

- (a) what the notice must state; and
- (b) the size or other requirements of the writing on the notice.

## **50 Application to lift the suspension of licence**

(1) If a licence has been suspended, the licensee may apply to the chief executive for the suspension to be lifted.<sup>16</sup>

(2) The application must be in the approved form and accompanied by any fee prescribed under a regulation.

### *Division 10—Other dealings with licence*

## **51 Transfer of licence**

(1) A person may apply to the chief executive for the transfer of a licence to the person.

(2) The application must—

- (a) include the licensee's written consent to the transfer; and
- (b) be accompanied by the fee prescribed under a regulation.

(3) This part applies, with all necessary changes, to the application as if it were an application for a licence.<sup>17</sup>

## **52 Surrender of licence**

(1) A licensee may surrender the licence by giving the chief executive notice of the surrender.

(2) The surrender takes effect on the day the notice is given to the chief executive or, if a later day of effect is stated in the notice, the later day.

(3) Within 7 days after the day the surrender takes effect, the person who was licensee immediately before that day must return the licence to the chief executive, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—10 penalty units.

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16 See section 163(1)(b)(v) (Reviewable decisions).

17 See section 163(1)(d)(iii) (Reviewable decisions).

### 53 Replacement licence

(1) A licensee may apply to the chief executive for a replacement licence.

(2) The application must be in the approved form and accompanied by any fee prescribed under a regulation.

(3) The chief executive must grant the application if the chief executive is satisfied the licence has been lost, stolen or destroyed, or damaged in a way or to an extent to require its replacement.

### *Division 11—Death of licensee*

### 54 Death of sole licensee

(1) This section applies if a licence is held by 1 individual and the individual dies.

(2) The personal representative of the individual's estate is taken to be the licensee for 6 months from the date of death (the “**transitional licence period**”).

(3) Subsection (2) applies subject to—

- (a) any earlier transfer, suspension, revocation, surrender or expiry of the licence under this Act; and
- (b) any extension, or earlier ending, of the transitional licence period under this section.

(4) Also, subsection (2) does not apply if the personal representative is a disqualified person.

(5) The personal representative may apply in writing to the chief executive for an extension of the transitional licence period.

(6) On receiving the application, the chief executive may extend the transitional licence period by the further period, of not more than 6 months, that the chief executive considers appropriate in all the circumstances.<sup>18</sup>

*Example—*

The chief executive may extend the transitional licence period for the period necessary for an application to transfer the licence to be made and decided.

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<sup>18</sup> See section 163(1)(c) (Reviewable decisions).

(7) The transitional licence period ends if, at any time at least 30 days after the individual's death, the personal representative is neither the holder of a current positive suitability notice nor an applicant for a suitability notice.

(8) The personal representative does not commit an offence against the *Commission for Children and Young People Act 2000*, section 109,<sup>19</sup> by carrying on the child care service under the licence, without a current positive suitability notice—

- (a) during the first 30 days of the transitional licence period; and
- (b) if the personal representative applies for a suitability notice within the first 30 days of the transitional licence period and does not withdraw the application—until the application is decided.

(9) Without limiting section 51,<sup>20</sup> a person who is a licensee under this section in the person's capacity as personal representative may apply to transfer the licence to himself or herself, in his or her personal capacity, under this Act.

## 55 Death of licensee if more than 1 licensee

(1) This section applies to a licence held by more than 1 person.

(2) If 1 of the licensees is an individual who dies, each of the surviving licensees continues as licensee.

(3) If 2 or more of the licensees are individuals and they die at the same time—

- (a) if there are any surviving licensees, each of them continues as licensee; or
- (b) if there are no surviving licensees, section 54 applies, with all necessary changes, to the personal representatives of the estates of the licensees who have died.

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19 *Commission for Children and Young People Act 2000*, section 109 (Carrying on regulated business)

20 Section 51 (Transfer of licence)

## PART 3—CARERS, STAFF AND RELATED MATTERS

### *Division 1—Preliminary*

#### **56 Meaning of “carer”**

A person is a “**carer**” in a child care service if—

- (a) the person is engaged to provide child care in the course of the service; or
- (b) the person is conducting the service and providing child care in the course of the service.

#### **57 Meaning of “staff member”**

(1) A person is a “**staff member**” of a child care service if—

- (a) the person is engaged in a position in the service; or
- (b) the person is conducting the service and carrying out the functions of a position in the service.

(2) For a centre based service, each carer is a staff member of the service.

(3) For a home based service, a person who is engaged only as a carer in the service is not a staff member of the service.

#### **58 Meaning of “engage”**

(1) A person “**engages**” another person to provide child care in the course of a child care service if—

- (a) the person employs, or continues to employ, the other person to provide child care in the course of the service; or
- (b) the persons otherwise have an agreement under which the other person is to provide child care, or is providing child care, in the course of the service.

(2) A person “**engages**” another person in a position if—

- (a) the person employs, or continues to employ, the other person in the position; or



- (b) the persons otherwise have an agreement under which the other person is to carry out, or is carrying out, the functions of the position.

(3) It does not matter whether or not, under an agreement mentioned in this section, a person receives any reward for providing the child care or carrying out the functions.

## **59 Prescribed first aid competency**

For this part, a person has the prescribed first aid competency if—

- (a) the person has completed the first aid training prescribed under a regulation; and
- (b) the time that has passed since the person last completed the training is not more than the time prescribed under a regulation.

### *Division 2—Requirements for centre based service*

## **60 Application of division**

This division deals with requirements applying to a centre based service about—

- (a) the presence of suitably qualified staff at the child care centre; and
- (b) caring for children individually or in groups, including—
  - (i) the number of children in a group; and
  - (ii) the ages of children in a group; and
  - (iii) the involvement of qualified group leaders, qualified assistants or other persons with a group; and
- (c) related matters about adult supervision of the children in care.

## **61 Standard requirements**

(1) A regulation may prescribe standard requirements about the matters mentioned in section 60.

- (2) The standard requirements must include—

- (a) requirements applying to a centre based service during a rest period; and
- (b) requirements applying to a centre based service at all other times it is conducted on a day between 5.00 a.m. and 10.00 p.m.

(3) Without limiting the *Statutory Instruments Act 1992*, section 25,<sup>21</sup> a regulation may prescribe standard requirements that—

- (a) make different provision according to the circumstances of centre based services; or
- (b) do not include, for every type of centre based service, a requirement about caring for the children in groups.

## 62 Requirements applying to a service

(1) The licensee of a centre based service must ensure the standard requirements are complied with at all times the service is conducted on a day between 5.00 a.m. and 10.00 p.m.

Maximum penalty—100 penalty units.

(2) If a centre based service is conducted for a period between 10.00 p.m. on a day and 5.00 a.m. on the next day, the requirements applying to the service during the period are the requirements stated in its licence conditions.

(3) This section does not prevent other requirements relating to the matters mentioned in section 60, as well as the requirements mentioned in this section, applying to a centre based service under its licence conditions or a regulation.

## 63 Rest periods

(1) A licence condition for a centre based service may provide for 1 or more periods during a day, totalling not more than 2 hours during the day, to be rest periods for the service for the purposes of this division.

(2) An application under this Act for a licence or for the amendment of a licence may include a request for a licence condition under subsection (1).

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<sup>21</sup> *Statutory Instruments Act 1992*, section 25 (Statutory instrument may make different provision for different categories)

(3) In deciding whether to include a licence condition providing for a rest period and, if so, in deciding the timing and length of a rest period, the chief executive must have regard to—

- (a) the ages of the children in care and the times they will ordinarily be resting; and
- (b) the licensed capacity of the service; and
- (c) how the physical layout of the child care centre allows for the adequate supervision of the children; and
- (d) the staffing arrangements for the service; and
- (e) the information given to parents and guardians about the staffing arrangements; and
- (f) another matter prescribed under a regulation.

(4) Subsection (3) does not limit part 2, division 4.<sup>22</sup>

(5) This section does not apply to a school age care service.

#### **64 Director for centre based service**

(1) The purpose of this section is to ensure 1 or more suitably qualified persons are present at a child care centre for long enough to properly carry out the function of a director.

(2) The function of a director is to carry out, or oversee the carrying out of, the following responsibilities—

- (a) preparing and implementing programs under this Act;
- (b) preparing and maintaining policies under this Act;
- (c) helping communication between staff and parents.

(3) The licensee of a centre based service must ensure—

- (a) a qualified director is present at the child care centre for the times prescribed under a regulation; and
- (b) for the times prescribed under a regulation when a qualified director is not present at the centre, an adult, with the

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22 Part 2 (Licensing of child care services), division 4 (Bases for making licensing decisions)

qualifications, experience or other characteristics prescribed under a regulation, is present at the centre.

Maximum penalty—40 penalty units.

(4) Subsection (3) does not apply to—

- (a) a school age care service; or
- (b) a centre based service with a licensed capacity that is not more than 30 for any part of the day.

## 65 Presence of at least 2 adults

(1) This section applies to the licensee of a centre based service at all times child care is being provided at the child care centre in the course of the service.

(2) If the service is not a school age care service, the licensee must ensure at least 2 adult staff members are present at the centre.

Maximum penalty—40 penalty units.

(3) If the service is a school age care service, the licensee must ensure at least—

- (a) 2 adult staff members are present at the centre; or
- (b) 1 adult staff member and 1 other adult are present at the centre; or
- (c) 1 adult staff member is present at the centre and 1 other adult is near the centre and able to attend at the centre immediately if required.

Maximum penalty—40 penalty units.

(4) In this section—

“**adult staff member**” includes a 17 year old staff member who is a qualified assistant.

## 66 First aid training

Whenever child care is being provided at a place under a licence for a centre based service, the licensee must ensure at least 1 staff member with the prescribed first aid competency is present at the place.

Maximum penalty—40 penalty units.

### *Division 3—Requirements for home based service*

#### **67 Coordinator for home based service**

(1) The purpose of this section is to ensure that, for each licensed home based service, there are enough suitably qualified persons carrying out the functions of a coordinator for the service to ensure the proper conduct of the service.

(2) The functions of a coordinator for a service are—

- (a) giving carers the information, training and other support that they need to appropriately provide child care in the course of the service; and
- (b) monitoring the standards of child care being provided in the course of the service; and
- (c) coordinating, in an appropriate way, the placement of children with carers.

(3) The licence conditions for a home based service must state the number of coordinator hours that must be completed each week for the service.

(4) The number of coordinator hours completed in a week for a home based service is the total number of hours spent during the week, by 1 or more qualified coordinators, carrying out the functions of a coordinator for the service.

*Example—*

If 2 qualified coordinators spend 1 hour carrying out the functions of a coordinator for a service, 2 coordinator hours have been completed for the service.

(5) If the licence conditions for a home based service require more than 35 coordinator hours to be completed each week for the service, at least 1 hour each week must be completed by a qualified coordinator with an early childhood qualification.

(6) In this section—

**“early childhood qualification”** means a qualification prescribed under a regulation for this section to be an early childhood qualification.

**68 Carer in home based service must be adult**

The licensee of a home based service must not engage a child as a carer.  
Maximum penalty—40 penalty units.

**69 First aid training**

The licensee of a home based service must ensure each carer in the service has the prescribed first aid competency.  
Maximum penalty—40 penalty units.

*Division 4—Qualifications, training and study***70 Certain unqualified persons may fulfil requirement for qualified person**

(1) A reference in this Act to a person with a qualification includes a person who does not have the qualification if, in the circumstances prescribed under a regulation—

- (a) the person is an adult who is engaged in a position for which the qualification is prescribed and has not been engaged in the position for more than the prescribed time; or
- (b) the person is enrolled in a course that leads to the qualification.

(2) For subsection (1)(a), in deciding how long a person has been engaged in a position, the engagement is taken to continue during any break of less than 30 days.

(3) In this section—

“**position**” means a position in a child care service.

“**prescribed time**” means the time, not more than 6 months, prescribed under a regulation.

**71 Defence of relying on evidence of qualifications, training or study**

(1) This section applies if—

- (a) proceedings are taken against a person (the “**first person**”) for an offence against this Act; and

- (b) the act or omission that is the offence would not be an offence if another person (the “**second person**”) had a particular qualification or competency or was enrolled in a particular course of study.

(2) It is a defence for the first person to prove that, at the time of the alleged offence, the first person reasonably believed, and had sighted reasonable evidence, that the second person had the qualification or competency or was enrolled in the course of study.

(3) Subsection (2) does not limit the application of the Criminal Code, section 24.<sup>23</sup>

## **72 Evidence of staff qualifications and competencies**

(1) This section applies if—

- (a) a person who is a carer in, or staff member of, a child care service has a particular qualification or competency; and
- (b) the licensee of the service would be contravening this Act if the person did not have the qualification or competency.

(2) The licensee must keep a document that, under subsection (3), is evidence that the person has the qualification or competency.

Maximum penalty—5 penalty units.

(3) For this Act, a document is evidence that a person holds a particular qualification or competency if it is—

- (a) an original award issued to the person on obtaining the qualification or completing the training for the competency; or
- (b) a copy of an original award mentioned in paragraph (a), certified in the way prescribed under a regulation.

## **73 Evidence of enrolment in a course of study**

(1) This section applies if—

- (a) a person who is a carer in, or staff member of, a child care service is enrolled in a course of study; and

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23 Criminal Code, section 24 (Mistake of fact)

- (b) the licensee of the service would be contravening this Act if the person was not enrolled in the course.

(2) The licensee must keep a document that, under subsection (3), is evidence that the person is enrolled in the course.

Maximum penalty—5 penalty units.

(3) For this Act, a document is evidence that a person is enrolled in a course of study if it is—

- (a) a document, given to the person by the institution conducting the course, indicating that the person is enrolled in the course; or
- (b) a copy of a document mentioned in paragraph (a), certified in the way prescribed under a regulation.

### *Division 5—Suitability notices*

#### **74 Licensee must keep evidence of compliance with Commission for Children and Young People Act 2000**

(1) This section applies if—

- (a) a person is engaged as a carer in, or staff member of, a child care service; and
- (b) the engagement would contravene the *Commission for Children and Young People Act 2000* if the person did not have a current positive suitability notice or an application for a suitability notice had not been made.

(2) If the person has a current positive suitability notice, the licensee must keep—

- (a) a copy of the notice issued to the licensee by the Commissioner for Children and Young People; or
- (b) a copy of the notice, certified in the way prescribed under a regulation.

(3) If an application for a suitability notice about the person has been made but has not yet been decided, the licensee must keep a copy of the application.



## PART 4—CONDUCT OF LICENSED SERVICE

### *Division 1—General*

#### **75 Licensee’s overriding responsibility**

(1) The licensee of a child care service must conduct the service in a way that has sufficient regard to the guiding principles for this Act.<sup>24</sup>

(2) In particular, the licensee of a child care service must conduct the service in a way that ensures the safety of the children in care at all times and promotes their wellbeing.

#### **76 Policies**

(1) The licensee of a child care service must prepare, and keep up to date, written policies about the conduct of the child care service.

(2) The matters addressed in the policies must include the following—

- (a) the participation of parents, students, volunteers and others in the conduct of the service;
- (b) health issues, including—
  - (i) hygiene practices; and
  - (ii) dealing with injuries, illness and infectious diseases;
- (c) safety, emergency and evacuation procedures;
- (d) processes for dealing with any concerns of parents, guardians, staff members or carers;
- (e) another matter prescribed under a regulation.

(3) The licensee must give a copy of a policy, on request, to a parent or guardian of a child in care.

(4) The licensee must ensure the carers in the service and staff members of the service are aware of the policies in force for the time being.

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24 See section 9 (Guiding principles).

**77 Role statements**

(1) The licensee of a child care service must—

- (a) prepare, and keep up to date, a role statement for each position in the service; and
- (b) give a copy of the role statement for a position, on request, to a parent or guardian of a child in care; and
- (c) before engaging a person in a position in the service, give the person a copy of the role statement for the position; and
- (d) immediately after there is a change in the role statement for a position in the service, give each staff member engaged in the position a current role statement for the position.

(2) In this section—

“**role statement**”, for a position, means a statement of the key duties and responsibilities of the position.

**78 Parents or guardians must be allowed access**

(1) Whenever child care is being provided to a child in the course of a licensed service, the licensee must ensure the child’s parents or guardians are allowed access to observe the provision of the child care.

Maximum penalty—40 penalty units.

(2) Subsection (1) does not apply to the extent that compliance would allow access in contravention of an order of a court or tribunal.

**79 Agreement to exclude liability for negligence**

(1) A licensee must not enter into an exclusion agreement with a parent or guardian of a child in care.

Maximum penalty—5 penalty units.

(2) An exclusion agreement entered into after the commencement of this Act by a licensee and a parent or guardian of a child in care is of no effect.

(3) In this section—

“**exclusion agreement**” means an agreement, or part of an agreement, under which—

- (a) a licensee is exempted from a liability for negligence relating to a loss or injury suffered by a child in care; or
- (b) a child in care, or a parent or guardian of a child in care, indemnifies the licensee against a liability for negligence relating to a loss or injury suffered by the child.

“**licensee**” includes an employee or agent of a licensee.

### **80 Licensee to inform chief executive of relevant changes**

(1) A licensee must immediately notify the chief executive in writing if any of the following persons stops having a current positive suitability notice—

- (a) if the licensee is an individual—the licensee;
- (b) if the licensee is a corporation—
  - (i) an executive officer of the licensee; or
  - (ii) the nominee for the licence.

Maximum penalty—50 penalty units.

(2) A licensee must notify the chief executive in writing within 10 days after any of the following happens, unless the licensee has a reasonable excuse—

- (a) there is a change in a matter previously notified to the chief executive that the licensee knows, or ought reasonably to know, is relevant to the licensee continuing to hold the licence or conduct the child care service under the licence;
- (b) if the licensee is a corporation—there is a change in its executive officers;
- (c) the licensee’s address changes;
- (d) another matter prescribed under a regulation.

Maximum penalty—10 penalty units.

(3) It is a reasonable excuse for an individual to fail to comply with a requirement under subsection (2)(a) or (d) that complying with the requirement might tend to incriminate the individual.

## 81 Licensee must report harm to children

(1) This section applies to the licensee of a child care service if—

- (a) a child has died or suffered a serious injury, or the licensee becomes aware, or reasonably suspects, that harm has been caused to a child; and
- (b) the death or serious injury happened, or the harm was caused or is suspected to have been caused, while a carer in the service was—
  - (i) providing care to the child (whether or not the care provided to the child was child care<sup>25</sup>); and
  - (ii) providing child care in the course of the service.

*Example for paragraph (b)—*

While a carer in a child care service is providing child care in the course of the service, a serious injury is suffered by—

- (a) a child to whom the carer is providing child care; or
- (b) a child, related to the carer, to whom the carer is providing care.

(2) The licensee must immediately report the death, serious injury, harm or suspected harm to the chief executive, in the approved form, unless the licensee has a reasonable excuse.

Maximum penalty—20 penalty units.

(3) It is a reasonable excuse for an individual not to report a matter that reporting the matter might tend to incriminate the individual.

(4) Subsection (2) does not apply if the licensee knows, or reasonably supposes, that the chief executive is aware of the matter.

(5) In this section—

“**serious injury**” means an injury for which treatment from a doctor has been sought or ought reasonably to have been sought.

## 82 Insurance

The licensee of a child care service must ensure there is in force, for the service, the insurance cover prescribed under a regulation.

Maximum penalty—40 penalty units.

<sup>25</sup> See section 4 (Meaning of “child care”).

**83 Provision of child care other than at child care centre or home**

(1) Despite section 11 or 12, the licensee of a child care service may provide child care to children, under the licence, while they are—

- (a) away from their principal place of care on an excursion; or
- (b) being transported to or from the principal place of care.

(2) A regulation may include provision about caring for the children while they are not at the principal place of care, including provision imposing—

- (a) requirements about their supervision by carers, staff members or other persons; or
- (b) requirements for ensuring their safety while travelling in a vehicle; or
- (c) requirements for ensuring a place visited by the children is safe and suitable; or
- (d) limits on the frequency of excursions.

**84 Copies of relevant legislation for carers and staff**

The licensee of a child care service must make available, to all carers in the service and staff members of the service, copies of this Act and any regulation under this Act as in force for the time being.

Maximum penalty—10 penalty units.

***Division 2—Records*****85 Licensee must keep records**

The licensee of a child care service must keep, for at least the time prescribed under a regulation, the records prescribed under a regulation.

Maximum penalty—20 penalty units.

**86 Access to records**

(1) The licensee of a child care service must allow a parent or guardian of a child, on request, to inspect a record kept by the licensee about the child or to take a copy of the record.

(2) Subsection (1) does not apply to the extent that compliance would allow access in contravention of an order of a court or tribunal.

## 87 Confidentiality of records

(1) The licensee of a child care service must ensure that the service's records, so far as they contain personal information relating to a child in care, are kept in a way that ensures no-one has access to them other than an authorised person for the service, a parent or guardian of the child or the child.

Maximum penalty—10 penalty units.

(2) A person who, as an authorised person for a licensed service, obtains personal information about a child in care from the service's records must not disclose the information to anyone other than another authorised person for the service, a parent or guardian of the child or the child.

Maximum penalty—10 penalty units.

(3) Subsections (1) and (2) do not apply to the giving of access to a record, or the disclosure of information, relating to a child—

- (a) for a purpose of this Act; or
- (b) with the consent of a parent or guardian of the child; or
- (c) for a purpose directly related to the child's protection or welfare; or
- (d) in compliance with lawful process requiring production or documents or giving of evidence before a court or tribunal; or
- (e) under another Act.

(4) In this section—

**“authorised person”**, for a licensed service, means the licensee of the service, a staff member of the service or a carer in the service.

**“personal information”**, relating to a child in care, means—

- (a) information about the child's health; or
- (b) information about special needs of the child; or
- (c) other information, relating to the child, prescribed under a regulation.

“**records**”, of a child care service, means the records kept by the licensee that relate to the operation of the service, including the records kept under section 85.

### **88 Record keeping obligations when person stops being licensee**

(1) This section applies if a person (the “**old licensee**”) stops being the licensee of a child care service.

(2) This division continues to apply to the records (the “**old records**”) relating to the conduct of the service under the licence held by the old licensee.

(3) If the service is no longer being conducted, a reference in this division to the licensee of the service is a reference to the old licensee.

(4) If the service continues to be conducted under a licence held by someone else (the “**new licensee**”)—

- (a) a reference in this division to the licensee of the service is, for the old records, a reference to the old licensee; and
- (b) for section 87, the new licensee is an authorised person for the old records.

### *Division 3—Other matters applying to licensed centre based service*

### **89 Programs**

(1) The licensee of a centre based service must ensure all child care provided under the licence is provided under an appropriate program that is designed to stimulate and develop each child’s creative, emotional, intellectual, lingual, physical, recreational and social potential.

(2) A regulation may make provision about programs including, for example, by imposing requirements about—

- (a) the contents of a program; or
- (b) keeping records about programs; or
- (c) monitoring the operation of programs and reviewing their content; or
- (d) giving information about programs to parents and guardians.

## **90 Display of licence at child care centre**

The licensee of a centre based service must ensure the licence is prominently displayed at the child care centre whenever child care is being provided at the centre.

Maximum penalty—10 penalty units.

### ***Division 4—Limits on number of children at 1 place applying to licensed home based service***

## **91 Meaning of “prescribed limits”**

(1) For this division, the “**prescribed limits**” applying to the home of a carer in a licensed home based service are the numbers of children who may be at the home while child care is being provided there in the course of the service.

(2) The prescribed limits applying to a home are the numbers applying under section 92 or, if a licence condition applying to the home is imposed under section 93, the numbers applying under the condition.

## **92 Maximum numbers of children at a home**

(1) The licensee of a home based service must ensure that, at any time child care is being provided at a home in the course of the service—

- (a) there are not more than 7 children at the home; and
- (b) there are not more than 4 children at the home who are not yet school children.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to—

- (a) children who are being cared for by someone other than a carer in the service; or
- (b) school children who are being cared for by a carer in the service who is their parent or guardian; or



(c) children who are at least 12 years and who are not being provided with child care.<sup>26</sup>

(3) Otherwise, subsection (1) applies to all the children at the home, regardless of the number of carers at the home and whether or not the children are being provided with child care.

(4) This section applies subject to sections 94 and 96.

(5) In this section—

“**school child**” includes a child who is not yet attending school but is enrolled to attend a school in that year.

### **93 Further restriction of maximum numbers**

(1) The chief executive may, under this Act, impose a condition on a licence for a home based service that restricts, to a number that is less than a number mentioned in section 92(1)(a) or (b), the number of children who may be at a stated carer’s home while child care is being provided there in the course of the service.

(2) The chief executive may impose the condition only if satisfied it would be in the best interests of the children in care, having regard to the number of times, and the extent to which, the number of children at the home while child care was being provided there in the course of the service has been more than a prescribed limit for the home, whether or not because of the provision of emergency care.

(3) Subsection (2) does not limit part 2, division 4.<sup>27</sup>

### **94 Emergency care**

(1) This section applies if, for a period of not more than 1 hour in a day, the number of children at a home is more than a prescribed limit for the home.

(2) The licensee of the home based service is taken not to be contravening section 92(1) or a licence condition under section 93 during the period if—

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<sup>26</sup> See section 4 (Meaning of “child care”).

<sup>27</sup> Part 2 (Licensing of child care services), division 4 (Bases for making licensing decisions)

- (a) a carer in the service is providing emergency care to 1 or more children at the home during the period; and
- (b) the carer did not also provide emergency care to the child or children on the previous day in circumstances to which this section applies; and
- (c) the amount by which the number of children at the home exceeds the prescribed limit is not more than—
  - (i) if emergency care is being provided to 2 or more children in the same family—that number of children; or
  - (ii) otherwise—1.

(3) Subsection (2)(b) does not apply if the provision of emergency care during the period is in response to circumstances beyond the licensee's control.

## **95 Care provided away from home**

Sections 91 to 94 also apply to the licensee of a home based service while child care is being provided in the course of the service at a place other than a home, as if a reference in the sections to a home were a reference to the other place.

## **96 Playgroups and excursions involving other carers**

(1) The purpose of this section is to allow 2 or more carers to meet at a home or other place, or take the children in care on an excursion, in order to provide—

- (a) positive experiences for the children in care; and
- (b) opportunities for the carers to increase their knowledge and skills relating to child care by mentoring and sharing information with other carers.

(2) Section 92, or a licence condition under section 93, does not apply to a period of care provided at a home or other place—

- (a) under the supervision of the number of carers or other adults prescribed under a regulation; and
- (b) otherwise in accordance with the requirements, and subject to the limitations, prescribed under a regulation.

(3) A regulation under subsection (2) may not allow a period of care of more than 3 hours (disregarding any travelling time) to be provided under this section more than once in a week.

(4) In this section—

“**travelling time**” means time during which the children in care are transported to or from a home or other place for the purpose of a period of care under this section.

### *Division 5—Other matters applying to licensed home based service*

#### **97 Suitability of other persons in a home**

(1) A carer in a licensed home based service must not provide child care in the carer’s home, in the course of the service, unless each adult occupant of the home has a current positive suitability notice.

Maximum penalty—40 penalty units.

(2) A carer in a licensed home based service must not provide child care in the carer’s home, in the course of the service, if the carer knows, or ought reasonably to know, a prohibition notice is in force for an occupant of the home.

Maximum penalty—50 penalty units.

(3) The licensee of a home based service must ensure each carer in the service complies with subsections (1) and (2).

Maximum penalty—100 penalty units.

(4) The licensee of a home based service must keep certified copies of the suitability notices required under subsection (1) for the occupants of the homes used in the service.

Maximum penalty—20 penalty units.

(5) In this section—

“**certified copy**”, of a suitability notice, means a copy of the notice certified in the way prescribed under a regulation.

#### **98 Activities and experiences**

(1) The licensee of a home based service must ensure the child care provided under the licence includes appropriate activities and experiences

that are designed to stimulate and develop each child's creative, emotional, intellectual, lingual, physical, recreational and social potential.

(2) A regulation may make provision about the activities and experiences including, for example, by imposing requirements about—

- (a) the nature of the activities and experiences; or
- (b) keeping records about the activities and experiences; or
- (c) giving information about the activities and experiences to parents and guardians.

## **PART 5—CONDUCT OF STAND ALONE SERVICE**

### **99 Person conducting service and carers must be adults**

(1) A child must not conduct a stand alone service.

Maximum penalty—5 penalty units.

(2) A person must not engage a child as a carer in a stand alone service.

Maximum penalty—50 penalty units.

### **100 Suitability of other persons in a home**

(1) A carer in a stand alone service must not provide child care at a home if—

- (a) the carer knows, or ought reasonably to know, that an occupant of the home is a disqualified person; or
- (b) a notice under section 139,<sup>28</sup> directing the carer not to provide child care in the home, is in force.

Maximum penalty—50 penalty units.

(2) A person conducting a stand alone service must ensure each carer in the service complies with subsection (1).

Maximum penalty—100 penalty units.

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<sup>28</sup> Section 139 (Suitability of persons in home in which stand alone child care is provided)

**101 Maximum numbers of children**

(1) While a person is providing stand alone child care at a home or other place, the person must ensure that—

- (a) there are not more than 6 children at the place; and
- (b) there are not more than 4 children at the place who are not yet school children.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to—

- (a) children who are being cared for by someone other than a carer in the stand alone service; or
- (b) school children who are being cared for by a carer in the stand alone service who is their parent or guardian; or
- (c) children who are at least 12 years and who are not being provided with child care.<sup>29</sup>

(3) Otherwise, subsection (1) applies to all the children at the home or other place, regardless of the number of carers at the place and whether or not the children are being provided with child care.

(4) In this section—

**“school child”** includes a child who is not yet attending school but is enrolled to attend a school in that year.

*Examples—*

In each of the following examples, all of the children are less than 12 years.

1. At a particular time, X is caring for 7 children, all of whom are relatives. This section does not apply because X is not providing stand alone child care.
2. At a particular time, X is caring for 7 children who are relatives. At the same time, X is providing stand alone child care for 1 other child. None of the children is X’s own child. X is contravening subsection (1)(a).
3. At a particular time, X is providing stand alone child care for 6 children. At the same time, X is caring for 2 of X’s own children, both of whom are school children. X is not contravening subsection (1)(a).
4. At a particular time, X is providing stand alone child care for 6 children. At the same time, X is caring for 2 of X’s own children, one of whom is not a school child. X is contravening subsection (1)(a).

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<sup>29</sup> See section 4 (Meaning of “child care”).

5. At a particular time, X is providing stand alone child 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 (1)(a).
6. At a particular time, X and Y are providing stand alone child care for 8 children at X's home. X is mainly caring for 3 of the children and Y is mainly caring for the other 5 children. Both X and Y are contravening subsection (1)(a).
7. At a particular time, X is providing stand alone child care for 3 children at X's home. Y, who is not a carer in the stand alone service, is also at X's home caring for 4 of Y's own children. Neither X nor Y is contravening subsection (1)(a).

## **102 Insurance**

A person must not conduct a stand alone service unless there is in force, for the service, the insurance cover prescribed under a regulation.

Maximum penalty—40 penalty units.

## **PART 6—PROHIBITION NOTICES**

### *Division 1—Basis for issuing notice*

#### **103 Basis for issuing prohibition notice**

The chief executive may give a prohibition notice to a person if the chief executive is satisfied there would be an unacceptable risk of harm to children if the person were responsible for providing care for the children.

### *Division 2—Procedure*

#### **104 Show cause notice**

(1) Before giving a person a prohibition notice, the chief executive must give the person a notice (a “**show cause notice**”)—

- (a) stating that the chief executive proposes to give the person a prohibition notice; and
- (b) stating the reasons for the proposed prohibition; and

- (c) inviting the person to give a written submission to the chief executive, within a stated time of at least 14 days, about the proposed prohibition.

(2) Subsection (1) does not apply if the chief executive is satisfied it is necessary, in the interests of the wellbeing and safety of children, to immediately issue a prohibition notice to the person.

### **105 Deciding whether to issue prohibition notice**

(1) This section applies if the chief executive gives a show cause notice to a person.

(2) The chief executive must have regard to any written submission received from the person within the time stated in the show cause notice before deciding whether to give the person a prohibition notice.

(3) If the chief executive decides not to issue a prohibition notice to the person, the chief executive must give the person notice of the decision.

### **106 Person to whom notice may be given**

A prohibition notice may be given to a person under this part whether or not, at the time the notice is given, the person is responsible for providing care for children.

### **107 Content of prohibition notice**

A prohibition notice given to a person must state—

- (a) that the person is prohibited from doing any of the following—
  - (i) providing child care in the course of a child care service;
  - (ii) being engaged as a carer in, or staff member of, a child care service;
  - (iii) providing care of a child, other than a child of whom the person is a parent or guardian, for reward;<sup>30</sup> and
- (b) that the person may apply for cancellation of the notice; and
- (c) how an application for cancellation must be made.

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30 See section 163(1)(d)(i) (Reviewable decisions).

**108 Cancellation of prohibition notice**

(1) If the chief executive is satisfied there is not a sufficient reason for a prohibition notice to remain in force for a person, the chief executive must cancel the prohibition notice and give the person notice of the cancellation.

(2) A person for whom a prohibition notice is in force may apply to the chief executive to cancel the notice.

(3) The application must be—

- (a) in the approved form; and
- (b) signed by the person; and
- (c) accompanied by the fee prescribed under a regulation.

(4) Subsection (3)(c) does not apply if—

- (a) under section 104(2), the prohibition notice was issued without first giving the person a show cause notice; and
- (b) the person has not previously applied for cancellation of the notice.

(5) The person may state in the application anything the person considers relevant to the chief executive's decision about whether there would be an unacceptable risk of harm to children if the person were responsible for providing care for the children, including, in particular, any change in the person's circumstances since the prohibition notice was issued or since any previous application under this section.

(6) The chief executive must decide the application as soon as practicable.<sup>31</sup>

***Division 3—Offences*****109 Contravening prohibition notice**

While a prohibition notice is in force for a person, the person must not—

- (a) provide child care in the course of a child care service; or
- (b) be engaged as a carer in, or staff member of, a child care service;  
or

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31 See section 163(1)(d)(ii) (Reviewable decisions).



- (c) provide care of a child, other than a child of whom the person is a parent or guardian, for reward.

Maximum penalty—100 penalty units.

### **110 Licensee must not engage person with prohibition notice**

The licensee of a child care service must not engage a person as a carer in, or staff member of, the service if the licensee knows, or ought reasonably to know, a prohibition notice is in force for the person.

Maximum penalty—100 penalty units.

## **PART 7—MONITORING AND ENFORCEMENT**

### *Division 1—Authorised officers*

#### **111 Appointment**

The chief executive may appoint a person as an authorised officer if the chief executive is satisfied the person is qualified for the appointment because the person has the necessary expertise or experience.

#### **112 Appointment conditions and limit on powers**

(1) An authorised officer holds office on any conditions stated in—

- (a) the officer's instrument of appointment; or
- (b) a signed notice given to the officer; or
- (c) a regulation.

(2) The instrument of appointment, a signed notice given to the authorised officer or a regulation may limit the officer's powers under this Act.

(3) In this section—

**“signed notice”** means a notice signed by the chief executive.

### 113 When authorised officer stops holding office

(1) An authorised officer stops holding office if any of the following happens—

- (a) the term of office stated in a condition of office ends;
- (b) under another condition of office, the officer stops holding office;
- (c) the officer's resignation under section 114 takes effect.

(2) Subsection (1) does not limit the ways an authorised officer may stop holding office.

(3) In this section—

**“condition of office”** means a condition on which the authorised officer holds office.

### 114 Resignation

(1) An authorised officer may resign by signed notice given to the chief executive.

(2) However, if holding office as an authorised officer is a condition of the officer holding another office, the officer may not resign as an authorised officer without resigning from the other office.

### 115 Issue of identity card

(1) The chief executive must issue an identity card to each authorised officer.

(2) The identity card must—

- (a) contain a recent photo of the authorised officer; and
- (b) contain a copy of the officer's signature; and
- (c) identify the person as an authorised officer under this Act; and
- (d) state an expiry date for the card.

(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

**116 Return of identity card**

A person who stops being an authorised officer must return the person's identity card to the chief executive within 21 days after the person stops being an authorised officer unless the person has a reasonable excuse.

**117 Production or display of identity card**

(1) In exercising a power under this Act in relation to a person, an authorised officer must—

- (a) produce the officer's identity card for the person's inspection before exercising the power; or
- (b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the person's inspection at the first reasonable opportunity.

(3) For subsection (1), an authorised officer does not exercise a power in relation to a person only because the officer has entered a place as mentioned in section 118(1)(b) or (2).

***Division 2—Powers of authorised officers******Subdivision 1—Entry of places*****118 Power to enter places**

(1) An authorised officer may enter a place if—

- (a) its occupier consents to the entry; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) it is a child care centre, home or other place and the entry is made when child care is being provided at the place under a licence; or
- (d) it is not a home and the entry is made when the place is open for the conduct of business; or
- (e) the entry is authorised by a warrant.

(2) For the purpose of asking the occupier of a place for consent to enter, an authorised officer may, without the occupier's consent or a warrant—

- (a) enter land around a building at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

### *Subdivision 2—Procedure for entry*

## **119 Entry with consent**

(1) This section applies if an authorised officer intends to ask an occupier of a place to consent to the officer or another authorised officer entering the place under section 118(1)(a).

(2) Before asking for the consent, the authorised officer must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

- (a) that the occupier has been told—
  - (i) the purpose of the entry; and
  - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) that the occupier gives the authorised officer consent to enter the place and exercise the powers under this part; and
- (d) the time and date the consent was given.

(5) If the occupier signs the acknowledgment, the authorised officer must immediately give a copy to the occupier.

(6) If—

- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and

- (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

## 120 Application for warrant

(1) An authorised officer may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

## 121 Issue of warrant

(1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and
- (b) the evidence is at the place, or may be at the place within the next 7 days.

(2) The warrant must state the following—

- (a) that a stated authorised officer may, with necessary and reasonable help and force—
  - (i) enter the place and any other place necessary for the entry; and
  - (ii) exercise the officer’s powers under this part;
- (b) the offence for which the warrant is sought;
- (c) the evidence that may be seized under the warrant;

- (d) the hours of the day or night when the place may be entered;
- (e) the date, within 14 days after its issue, the warrant ends.

## **122 Special warrants**

(1) An authorised officer may apply for a warrant (a **“special warrant”**) by phone, fax, radio or another form of communication if the officer considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances including, for example, the officer’s remote location.

(2) Before applying for the special warrant, the authorised officer must prepare an application stating the grounds on which the warrant is sought.

(3) The authorised officer may apply for the special warrant before the application is sworn.

(4) After issuing the special warrant, the magistrate must immediately fax a copy (a **“facsimile warrant”**) to the authorised officer if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy to the authorised officer—

- (a) the magistrate must tell the officer—
  - (i) what the terms of the special warrant are; and
  - (ii) the date and time the special warrant is issued; and
- (b) the officer must complete a form of warrant (a **“warrant form”**) and write on it—
  - (i) the magistrate’s name; and
  - (ii) the date and time the magistrate issued the special warrant; and
  - (iii) the terms of the special warrant.

(6) The facsimile warrant, or the warrant form properly completed by the authorised officer, authorises the entry and the exercise of the other powers stated in the special warrant issued.

(7) The authorised officer must, at the first reasonable opportunity, send to the magistrate—

- (a) the sworn application; and
- (b) if the officer completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the special warrant.

(9) If—

- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a special warrant; and
- (b) the warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a special warrant authorised the exercise of the power.

### **123 Warrants—procedure before entry**

(1) This section applies if an authorised officer named in a warrant issued under this division for a place is intending to enter the place under the warrant.

(2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—

- (a) comply with section 117;<sup>32</sup>
- (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 122(6), a copy of the facsimile warrant or warrant form;
- (c) tell the person the officer is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the officer immediate entry to the place without using force.

(3) However, the authorised officer need not comply with subsection (2) if the officer reasonably believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

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32 Section 117 (Production or display of identity card)

**124 Entering a home and preserving privacy**

(1) Before entering a home under this part, other than under a warrant, an authorised officer must do or make a reasonable attempt to do the following things—

- (a) comply with section 117;<sup>33</sup>
- (b) tell the occupier that the officer is permitted to enter the home when child care is being provided there under a licence;
- (c) give the occupier an opportunity to allow the officer immediate entry to the place without using force.

(2) When entering a home, or exercising a power or performing a function in a home, an authorised officer must preserve, as far as practicable, the privacy of anyone living at the home.

*Subdivision 3—Powers after entry***125 General powers after entering a place**

(1) This section applies to an authorised officer who enters a place.

(2) However, if an authorised officer enters a place to get the occupier's consent to enter the place, this section applies to the officer only if the consent is given or the entry is otherwise authorised.

(3) For monitoring or enforcing compliance with this Act, the authorised officer may do any of the following—

- (a) search any part of the place;
- (b) inspect, measure, test, photograph or film any part of the place or anything at the place;
- (c) take a thing, or a sample of or from a thing, at the place for analysis or testing;
- (d) copy a document at the place;
- (e) take into or onto the place any person, equipment and materials the officer reasonably requires for the exercise of a power under this part;

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33 Section 117 (Production or display of identity card)



- (f) require the occupier of the place, or a person at the place, to give the officer—
  - (i) reasonable help to exercise the officer's powers under paragraphs (a) to (e); or
  - (ii) information to help the officer find out whether the Act is being complied with.

### **126 Failure to help authorised officer**

A person required to give reasonable help, or information, under section 125(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

#### *Subdivision 4—Power to seize evidence*

### **127 Definition for sdiv 4**

In this subdivision—

“**owner**”, of a seized thing, includes the person entitled to possession of it.

### **128 Seizing evidence after entry without consent or warrant**

An authorised officer who enters a place that may be entered under this part without the occupier's consent and without a warrant may seize a thing at the place if the officer reasonably believes the thing is evidence of an offence against this Act.

### **129 Seizing evidence after entry with consent or warrant**

(1) This section applies if an authorised officer—

- (a) is authorised to enter a place under this part only with the consent of the occupier or a warrant; and
- (b) enters the place after obtaining the necessary consent or warrant.

(2) If the authorised officer enters the place with the occupier's consent, the officer may seize a thing at the place if—

- (a) the officer reasonably believes the thing is evidence of an offence against this Act; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

(3) If the authorised officer enters the place with a warrant, the officer may seize the evidence for which the warrant was issued.

(4) The authorised officer may seize anything else at the place if the officer reasonably believes—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being hidden, lost, destroyed or used to continue or repeat the offence.

(5) Also, the authorised officer may seize a thing at the place if the officer reasonably believes it has just been used in committing an offence against this Act.

### **130 Receipts for seized things**

(1) As soon as practicable after seizing a thing, an authorised officer must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the authorised officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

(3) The receipt must describe generally each thing seized and its condition.

(4) This section does not apply to a thing if it is impracticable, or would be unreasonable, to give the receipt, having regard to the thing's nature, condition and value.

### **131 Forfeiture of seized things**

(1) A thing that has been seized under this part is forfeited to the State if the authorised officer who seized the thing—

- (a) can not find its owner, after making the inquiries (if any) that are reasonable in all the circumstances; or
- (b) can not return it to its owner, after making the efforts (if any) that are reasonable in all the circumstances.

*Example for paragraph (b)—*

It may be unreasonable for an authorised officer to make an effort to return a seized thing to its owner if the owner has migrated to another country.

(2) Regard must be had to a thing's nature, condition and value in deciding—

- (a) whether it is reasonable to make inquiries or efforts; and
- (b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.

(3) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.

(4) Without limiting subsection (3), the chief executive may destroy or dispose of the thing.

(5) Despite subsection (3), the chief executive must not deal with the thing in a way that could prejudice the outcome of—

- (a) an appeal to the Children Services Tribunal under this Act; or
- (b) another appeal, relevant to the thing, of which the chief executive is aware.

### **132 Return of seized things**

(1) If a seized thing is not forfeited, the authorised officer must return it to its owner—

- (a) at the end of 6 months; or
- (b) if a proceeding for an offence involving the thing is started within 6 months—at the end of the proceeding and any appeal from the proceeding.

(2) Despite subsection (1), unless the thing is forfeited, the authorised officer must immediately return it to its owner if the officer stops being satisfied—

- (a) its continued retention as evidence is necessary; or
- (b) its continued retention is necessary to prevent the thing being used to continue, or repeat, the offence.

**133 Access to seized things**

(1) Until a seized thing is forfeited or returned, an authorised officer must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable, or would be unreasonable, to allow the inspection or copying.

***Subdivision 5—Power to obtain information*****134 Power to require name and address**

(1) This section applies if—

- (a) an authorised officer finds a person committing an offence against this Act; or
- (b) an authorised officer finds a person in circumstances that lead, or has information that leads, the officer to reasonably suspect the person is committing, or has just committed, an offence against this Act.

(2) The authorised officer may require the person to state the person's name and residential address.

(3) The authorised officer may require the person to give evidence of the correctness of the stated name or residential address if the officer reasonably suspects the stated name or address to be false.

(4) A person of whom a requirement is made under this section must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(5) A person does not commit an offence against subsection (4) if—

- (a) the person was required, by an authorised officer who suspected the person was committing, or had committed, an offence against this Act, to state the person's name and residential address or to give evidence of the correctness of the stated name or residential address; and
- (b) the person is not proved to have committed the offence.

### **135 Power to require evidence of age, name and address of person suspected of being underage carer**

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

- (a) an offence is being committed, or has just been committed, against section 68 or 99<sup>34</sup> in relation to a child care service; and
- (b) a person—
  - (i) is a carer in the service; and
  - (ii) is not an adult.

(2) The authorised officer may require the person to state the person's correct date of birth, whether or not when requiring the person to state the person's correct name and address.

(3) Also, the authorised officer may require the person to give evidence of the correctness of the stated date of birth if, in the circumstances, it would be reasonable to expect the person to be in possession of evidence of the correctness of the stated date of birth or to otherwise be able to give the evidence.

(4) The authorised officer may require the person to state the person's name and residential address if—

- (a) the person refuses, or is unable, to comply with a requirement under subsection (2) or (3); or
- (b) according to the date of birth the person states, or the evidence of the person's age the person gives, the person is a child.

(5) A person of whom a requirement is made under this section must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—1 penalty unit.

(6) A person does not commit an offence against subsection (5) unless it is proved an offence was committed against section 68 or 99 in relation to the child care service in which it was suspected the person was a carer.

### **136 Power to require information**

(1) This section applies if an authorised officer reasonably believes—

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34 Section 68 (Carer in home based service must be adult) or 99 (Person conducting service and carers must be adults)

- (a) an offence against this Act is being committed or has been committed; and
- (b) a person may be able to give information about the offence.

(2) The authorised officer may, by notice given to the person, require the person to give information about the offence to the officer at a stated reasonable place and at a stated reasonable time.

(3) The person must comply with a requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

### **137 Power to require production of documents**

(1) An authorised officer may require a person to make available for inspection by an authorised officer, or produce to an authorised officer for inspection, at a reasonable time and place nominated by the officer, any of the following documents—

- (a) a document required to be kept by the person under this Act;
- (b) if the person is a licensee—
  - (i) the person's licence; or
  - (ii) a document evidencing that the insurance cover required under section 82<sup>35</sup> is in force;
- (c) if the officer knows, or reasonably suspects, the person is conducting a stand alone service—a document evidencing that the insurance cover required under section 102<sup>36</sup> is in force;
- (d) if the person is conducting a child care service—a current positive suitability notice held by the person.

(2) The authorised officer may keep the document to copy it.

(3) If the authorised officer copies a document mentioned in subsection (1)(a), or an entry in the document, the officer may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.

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35 Section 82 (Insurance)

36 Section 102 (Insurance)

(4) The authorised officer must return the document to the person as soon as practicable after copying it.

### **138 Failure to produce documents**

(1) A person required to make available, or produce, for inspection a document under section 137(1) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) Despite section 144,<sup>37</sup> if the requirement relates to a person's licence or a document required to be kept by the person under this Act, it is not a reasonable excuse for an individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

(3) Subsection (1) applies to a requirement under section 137(1)(c) only if the person is conducting a stand alone service when the requirement is made.

### ***Subdivision 6—Monitoring suitability of relevant persons***

### **139 Suitability of persons in home in which stand alone child care is provided**

(1) An authorised officer may ask a person to apply for a suitability notice if the officer knows, or reasonably suspects, that the person—

- (a) is an occupant of a home in which stand alone child care is provided; and
- (b) has a criminal history that may make the person unsuitable to be present in a home while child care is provided in the home.

(2) When asking the person to apply for a suitability notice, the authorised officer must warn the person that, if the person does not make the application within 14 days, the officer may give a direction that child care must not be provided in the home.

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37 Section 144 (Selfincrimination and warning)

(3) Subsection (4) applies if the person does not apply for a suitability notice within 14 days, or makes the application but withdraws it before it is decided.

(4) The authorised officer may give a notice to a person who the officer knows, or reasonably suspects, provides stand alone child care in the home, directing the person to whom the notice is given not to provide child care in the home.<sup>38</sup>

(5) If, at any time, an authorised officer learns that each occupant of a home of whom a request has been made under subsection (1) has a current positive suitability notice, the officer must cancel each notice given under subsection (4) in relation to the home.

(6) If an authorised officer cancels a notice given to a person under subsection (4), the officer must notify the person of the cancellation as soon as is practicable unless, after making reasonable inquiries, the officer can not locate the person.

(7) This section applies only to an adult.

#### **140 Chief executive may obtain information about suitability checks**

(1) This section applies to the following individuals—

- (a) the licensee of a child care service;
- (b) a carer in a child care service;
- (c) a staff member of a child care service;
- (d) an executive officer of a corporation that is a licensee;
- (e) the nominee for a licence held by a corporation;
- (f) an adult occupant of a home in which child care is provided;
- (g) an adult who has been asked under section 139 to apply for a suitability notice.

(2) On receiving a written request from the chief executive, the Commissioner for Children and Young People must give the chief executive the following information about a stated individual mentioned in subsection (1)—

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38 See section 100 (Suitability of other persons in a home).



- (a) whether an application for a suitability notice for the individual has been made and, if so—
  - (i) the date of the application; and
  - (ii) if the application has been withdrawn or the individual has withdrawn his or her consent to employment screening—the date of the withdrawal;
- (b) whether a suitability notice is in force for the individual and, if so, the date of issue of the notice and whether it is a positive notice or a negative notice;
- (c) whether a suitability notice held by the individual has been cancelled and, if so, the date of the cancellation.

(3) The Commissioner for Children and Young People may give the chief executive the information mentioned in subsection (2)(c) about an individual whether or not the chief executive has requested the information.

#### **141 Notification that an occupant is a disqualified person**

(1) This section applies if—

- (a) an occupant of a home is a disqualified person; and
- (b) an authorised officer knows, or reasonably suspects, that someone else (the “**second person**”) provides, or proposes to provide, child care in the course of a child care service at the home.

(2) The officer may notify the second person that the occupant is a disqualified person.

#### *Subdivision 7—Other compliance matters*

#### **142 Compliance notice**

(1) This section applies if an authorised officer reasonably believes a person—

- (a) is contravening a provision of this Act; or
- (b) has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated.

(2) The authorised officer may give the person a notice (a “**compliance notice**”) requiring the person to remedy the contravention.

(3) The compliance notice must state the following—

- (a) that the authorised officer reasonably believes the person—
  - (i) is contravening a provision of this Act; or
  - (ii) has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated;
- (b) the provision the officer believes is being, or has been, contravened (the “**relevant provision**”);
- (c) briefly, how it is believed the relevant provision is being, or has been, contravened;
- (d) that the person must remedy the contravention within a stated reasonable time;
- (e) that it is an offence to fail to comply with the compliance notice unless the person has a reasonable excuse.

(4) The compliance notice may also state the steps that the authorised officer reasonably believes are necessary to remedy the contravention, or avoid further contravention, of the relevant provision.

(5) The person must comply with the compliance notice unless the person has a reasonable excuse.

Maximum penalty—

- (a) if it is an offence to contravene the relevant provision—the maximum penalty for contravening that provision; or
- (b) otherwise—5 penalty units.

(6) If it is an offence to contravene the relevant provision, the person can not be prosecuted for that offence unless the person fails to comply with the compliance notice and does not have a reasonable excuse for the noncompliance.

### **143 Compliance with Building Act requirements for child care centre**

(1) This section applies if an authorised officer reasonably believes a child care centre does not comply with a Building Act requirement.

(2) The authorised officer may give the licensee of the centre based service a notice requiring the licensee to comply with the Building Act requirement within a stated time of at least 30 days.

(3) Subsection (4) applies if, after the time stated in the notice, the authorised officer reasonably believes the child care centre still does not comply with the Building Act requirement.

(4) The authorised officer may give the licensee a notice requiring the licensee to obtain, and give to the chief executive within a stated period of at least 30 days, a written certificate from a building certifier stating that the child care centre complies with the Building Act requirement.

*Note—*

Failure to comply with this notice is a ground for suspension or revocation of the licence under section 45.

### *Division 3—Miscellaneous*

#### **144 Selfincrimination and warning**

(1) This section applies if—

- (a) an authorised officer makes a requirement of an individual; and
- (b) under a provision of this part, it is an offence for the individual to fail to comply with the requirement unless the individual has a reasonable excuse.

(2) The individual does not commit an offence against the provision unless, when making the requirement, the authorised officer warns the individual it is an offence to fail to comply with the requirement unless the individual has a reasonable excuse.

(3) It is a reasonable excuse for the individual to fail to comply with the requirement that complying with the requirement might tend to incriminate the individual.

*Note—*

Section 138(2) contains an exception to subsection (3).

**145 Compensation**

(1) A person may claim compensation from the chief executive if the person incurs loss or damage because of the exercise or purported exercise of a power under this part.

(2) Without limiting subsection (1), compensation may be claimed for loss or damage incurred in complying with a requirement made of the person under this part.

(3) Compensation may be claimed and ordered to be paid in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for an offence against this Act brought against the person claiming compensation.

(4) A court may order compensation to be paid only if satisfied it is just to make the order in the circumstances of the particular case.

**146 Alteration of licence**

A person must not alter a current licence without the chief executive's written authorisation.

Maximum penalty—10 penalty units.

**147 False or misleading statements**

A person must not state anything to an authorised officer that the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

**148 False or misleading documents**

(1) A person must not give an authorised officer a document containing information that the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the authorised officer, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

### **149 Obstructing an authorised officer**

(1) A person must not obstruct an authorised officer in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) If a person has obstructed an authorised officer and the officer decides to proceed with the exercise of the power, the officer must warn the person that—

- (a) it is an offence to obstruct the officer, unless the person has a reasonable excuse; and
- (b) the officer considers the person's conduct an obstruction.

(3) In this section—

“**obstruct**” includes assault, hinder and threaten, and attempt to obstruct.

### **150 Impersonation of an authorised officer**

A person must not pretend to be an authorised officer.

Maximum penalty—80 penalty units.

## **PART 8—LEGAL PROCEEDINGS**

### *Division 1—Evidence*

#### **151 Application of div 1**

This division applies to a proceeding under this Act.

## **152 Appointments and authority**

It is not necessary to prove the appointment of the chief executive or an authorised officer, or the authority of the chief executive or an authorised officer to do anything under this Act, unless a party, by reasonable notice, requires proof of the appointment or authority.

## **153 Signatures**

A signature purporting to be the signature of the chief executive or an authorised officer is evidence of the signature it purports to be.

## **154 Other evidentiary aids**

A certificate purporting to be signed by the chief executive and stating any of the following matters is evidence of the matter—

- (a) a stated document is one of the following things made, given, issued or kept under this Act—
  - (i) an appointment, approval or decision;
  - (ii) a notice, direction or requirement;
  - (iii) a licence;
  - (iv) a record or an extract from a record;
  - (v) the register or an extract from the register;
- (b) a stated document is a copy of a document mentioned in paragraph (a);
- (c) on a stated day, or during a stated period, a stated person was or was not a licensee;
- (d) on a stated day, or during a stated period, a stated person was or was not a nominee for a licence;
- (e) on a stated day, or during a stated period, a licence—
  - (i) was or was not in force; or
  - (ii) was or was not subject to a stated condition;
- (f) on a stated day, a licence was suspended or revoked;
- (g) on a stated day, or during a stated period, an appointment as an authorised officer was, or was not, in force for a stated person;

- (h) on a stated day, a stated person was given a stated notice or direction under this Act;
- (i) on a stated day, a stated requirement was made of a stated person.

### ***Division 2—Offence proceedings***

#### **155 Summary proceedings for offences**

(1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.

(2) The proceeding must start within the later of the following periods to end—

- (a) 1 year after the commission of the offence;
- (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

#### **156 Statement of complainant's knowledge**

In a complaint starting a proceeding for an offence against this Act, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter stated.

#### **157 False or misleading information or statements**

In a proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading statement, it is enough for a charge to state that the information or statement was, without specifying which, 'false or misleading'.

#### **158 Responsibility for acts or omissions of representatives**

(1) This section applies in a proceeding for an offence against this Act.

(2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

**“representative”** means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.

**“state of mind”**, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

### **159 Executive officers must ensure corporation complies with Act**

(1) The executive officers of a corporation must ensure the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove—



- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

### **160 Defence of exercising reasonable diligence to ensure compliance**

(1) In proceedings taken against the licensee of a child care service for an offence against a provision of this Act, it is a defence for the licensee to prove the licensee exercised reasonable diligence to ensure compliance with the provision.

(2) Subsection (1) does not limit the application of the Criminal Code, section 23 or 24.<sup>39</sup>

### **161 Reasonable belief about person's age**

(1) This section applies if—

- (a) proceedings are taken against a person (the “**first person**”) for an offence against this Act; and
- (b) the act or omission that is the offence would not be an offence if another person (the “**second person**”) was of a particular age or within a particular age group.

(2) It is a defence for the first person to prove that, at the time of the alleged offence, the first person reasonably believed, and had sighted reasonable evidence, that the second person was of that age or within that age group.

(3) Subsection (2) does not limit the application of the Criminal Code, section 24.

### **162 Emergencies**

(1) In proceedings taken against a person for an offence against a provision of this Act, it is a defence for the person to prove the act or

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<sup>39</sup> Criminal Code, section 23 (Intention—motive) or 24 (Mistake of fact)

omission that is the offence was reasonably required because of an emergency.

(2) Subsection (1) does not limit the application of the Criminal Code, section 25.<sup>40</sup>

## PART 9—GENERAL

### *Division 1—Reviewable decisions*

#### **163 Reviewable decisions**

(1) A person may apply to the Children Services Tribunal to have any of the following decisions by the chief executive reviewed—

- (a) for an applicant for a licence, a decision to—
  - (i) refuse to issue the licence; or
  - (ii) issue the licence on a condition;
- (b) for a licensee, a decision to—
  - (i) refuse to renew the licence; or
  - (ii) amend the licence other than in a way the licensee has applied for or agreed to; or
  - (iii) refuse to amend the licence in a way the licensee has applied for; or
  - (iv) suspend or revoke the licence; or
  - (v) refuse to lift the suspension of the licence;
- (c) for a personal representative of the estate of a licensee who has died, a decision to—
  - (i) refuse to extend the transitional licence period; or
  - (ii) extend the transitional licence period other than for the further period the personal representative has applied for;

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40 Criminal Code, section 25 (Extraordinary emergencies)

- (d) for any person, a decision to—
  - (i) give a prohibition notice to the person; or
  - (ii) refuse to cancel a prohibition notice in force for the person; or
  - (iii) refuse an application for the transfer of a licence to the person.

(2) Also, a person may apply to the Children Services Tribunal to have a decision reviewed if—

- (a) the decision is a decision on an application made by the person under a regulation; and
- (b) the regulation states that the decision is a reviewable decision for this section.

### **164 Chief executive must give notice after making reviewable decision**

(1) Immediately after making a decision mentioned in section 163, the chief executive must give the person a notice stating—

- (a) the reasons for the decision; and
- (b) that, within 28 days after receiving the notice, the person may apply to the Children Services Tribunal to have the decision reviewed; and
- (c) how the person may apply for the review.

(2) The chief executive may give a notice for the purpose of complying with subsection (1) and for another purpose.

*Example—*

The chief executive may give a person a prohibition notice stating—

- (a) the matters required to be stated under subsection (1) about the decision to give the prohibition notice; and
- (b) the matters required to be stated in the notice under section 107.

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***Division 2—Application of Commission for Children and Young People Act 2000***

**165 Application of Act to corporations**

(1) This section applies for the application of the *Commission for Children and Young People Act 2000*.

(2) If a corporation carries on a business that includes conducting a child care service, each of the following persons is taken to be also carrying on the business—

- (a) the corporation's executive officers;
- (b) if the corporation carries on the service under a licence—the nominee for the licence.

**166 Applications for suitability notices by occupants of homes**

(1) This section applies to a person who—

- (a) is required under section 97(1)<sup>41</sup> to have a current positive suitability notice; or
- (b) has been asked under section 139<sup>42</sup> to apply for a suitability notice.

(2) The person may apply for a suitability notice, and the application must be dealt with under the *Commission for Children and Young People Act 2000*, as if the person were proposing to carry on a regulated business.

(3) However, no fee is payable under that Act for the application.

***Division 3—Confidentiality***

**167 Duty of confidentiality**

(1) This section applies to a person—

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41 Section 97 (Suitability of other persons in home)

42 Section 139 (Suitability of persons in home in which stand alone child care is provided)

- (a) who is, or has been, the chief executive, a public service employee in the department or an authorised officer; and
- (b) who, in the course of administering this Act or because of opportunity provided by involvement in administering this Act, has gained, gains or has access to, confidential information about someone else.

(2) The person must not—

- (a) record or use the information, or intentionally disclose it to anyone, other than under this division; or
- (b) recklessly disclose the information to anyone.

Maximum penalty—100 penalty units or 2 years imprisonment.

(3) A reference in this section to disclosing information includes producing to someone, or giving someone access to, a document containing the information.

(4) In this section—

**“confidential information”** means information about a person’s affairs, but does not include—

- (a) statistical or other information that could not reasonably be expected to result in the identification of the person to whom it relates; or
- (b) information that is publicly available.

### 168 Recording, use or disclosure for authorised purpose

The person may record, use or disclose the information—

- (a) for a purpose of this Act; or
- (b) if the person to whom the information relates is an adult or a corporation—with the person’s consent; or
- (c) if the person to whom the information relates is a child—with the consent of a parent or guardian of the child; or
- (d) for a purpose directly related to a child’s protection or welfare; or
- (e) in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or
- (f) as expressly permitted or required under another Act.

**169 Disclosure to relevant entities in other jurisdictions**

(1) The person may disclose the information to—

- (a) an officer of a department of another State or the Commonwealth responsible for the administration or enforcement of a law about child care; or
- (b) an entity, prescribed under a regulation, that conducts a system for accrediting child care services and receives funding from the government of another State or the Commonwealth.

(2) An entity to whom information is disclosed under subsection (1) must not disclose the information to anyone else other than another entity mentioned in subsection (1).

**170 Reporting matters of concern to other departments**

(1) This section applies if the information concerns a matter that the person reasonably believes—

- (a) involves a contravention of another Act; and
- (b) is relevant to ensuring the safe and appropriate conduct of a child care service or the safe and appropriate provision of child care.

(2) The person may disclose the information to the chief executive of the department in which the other Act is administered.

***Division 4—Miscellaneous*****171 Register**

(1) The chief executive must keep a register of licences.

(2) The register must show, for each licence—

- (a) the particulars stated on the licence; and
- (b) whether the licence is in force; and
- (c) for a licence for a centre based service mentioned in section 187(1)—whether the licensee has ever given to the chief executive a written certificate from a building certifier stating that the child care centre complies with the Building Act requirements and, if so, the day on which the certificate was given; and

(d) for a licence for a centre based service operated in a child care centre for which an exemption under section 188 is in force, the details of the exemption; and

(e) for a licence that is no longer in force, the day on which it stopped being in force.

(3) A person may inspect the register, or obtain a copy of the register or a part of it, on payment of the fee prescribed under a regulation.

(4) In this section—

“**licence**” includes a licence that was issued under the repealed Act or is no longer in force.

## 172 Review of regulation about certain matters

(1) The Minister must—

(a) within 2 years after the commencement day, start a review of the provisions of a regulation made under this Act about transporting the children in care of a child care service; and

(b) within 2 years and 6 months after the commencement day, prepare a report on the outcome of the review and table the report in the Legislative Assembly.

(2) The Minister must—

(a) within 3 years after the commencement day, start a review of the provisions of a regulation made under this Act about qualifications, including a provision made under section 70<sup>43</sup> or under schedule 2, definition “qualified assistant”, “qualified coordinator”, “qualified director” or “qualified group leader”; and

(b) within 4 years after the commencement day, prepare a report on the outcome of the review and table the report in the Legislative Assembly.

(3) In this section—

“**commencement day**” means the day of commencement of the first regulation made under this Act.

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43 Section 70 (Certain unqualified persons may fulfil requirement for qualified person)

### 173 Delegation by chief executive

(1) The chief executive may delegate the chief executive's powers under this Act to an appropriately qualified officer or employee of the department.

(2) A delegation of a power may permit the subdelegation of the power to an appropriately qualified officer or employee of the department.

(3) In this section—

**“appropriately qualified”** includes having qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

A person's classification level in the public service.

### 174 Approved forms

The chief executive may approve forms for use under this Act.

### 175 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made about any of the following matters—

- (a) measures to ensure the safety and wellbeing of children in the care of a child care service;
- (b) measures to ensure child care is provided in an appropriate way;
- (c) measures to ensure a child care centre, home or facilities are safe and suitable for use in providing child care;
- (d) fees;
- (e) qualifications and other competencies of carers in, and staff members of, a licensed service;
- (f) approving qualifications for a purpose of this Act;
- (g) caring for children at a child care centre individually or in groups;
- (h) giving information to the chief executive about child care provided under a licence;



- (i) giving information to the parents and guardians of the children in care of a child care service;
- (j) transporting the children in care of a child care service;
- (k) caring for the children in care of a licensed service while they are at a place other than their principal place of care;
- (l) licence conditions;
- (m) records, including where records relating to a child care service must be kept.

(3) A regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation.

## **PART 10—REPEAL AND TRANSITIONAL PROVISIONS**

### *Division 1—Repeal*

#### **176 Repeal of Child Care Act 1991**

The Child Care Act 1991 No. 79 is repealed.

### *Division 2—General transitional provisions*

#### **177 Licences**

(1) A licence that, immediately before the commencement day, was in force under the repealed Act continues in force as if it had been issued under this Act.

(2) If the licence was for a family day care scheme, the licence is taken to be a licence for a home based service.

(3) Otherwise, the licence is taken to be a licence for a centre based service.

(4) Without limiting subsection (1)—

- (a) from the commencement day, the licence continues to be subject to the same conditions applying immediately before the

commencement day, unless those conditions stop applying under this Act; and

- (b) the licence expires on the day that, immediately before the commencement day, was its due day for expiry, unless it is renewed, or stops having effect, before that day under this Act.

(5) If the licence was held by an unincorporated body, the licence is taken to be held by each person who was, immediately before the commencement day, a member of the body's committee of management within the meaning of the repealed Act.

### **178 Applications**

(1) This section applies to any of the following applications that was made under the repealed Act and, immediately before the commencement day, had not been decided—

- (a) application for a licence;
- (b) application to renew a licence;
- (c) application to amend a licence;
- (d) application to lift the suspension of a licence.

(2) The chief executive must continue to deal with the application as if it had been made under this Act.

### **179 Nominee of licence held by corporation**

(1) As soon as is practicable after the commencement day, the chief executive must give notice to each corporation that holds a licence continued in force under section 177 requiring the corporation to nominate an individual to be the nominee for the licence.

(2) For the period starting on the commencement day and ending 2 months after the chief executive gives the notice, section 45(1)(d)(ii)<sup>44</sup> does not apply to the licence.

### **180 Licensed capacity of more than 75**

(1) This section applies to a licensed centre based service if—

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44 Section 45 (Suspension or revocation of licence)

- (a) the licence for the service was continued in force under section 177; and
- (b) the licensed capacity applying to the service immediately before the commencement day was more than 75; and
- (c) the service is not a school age care service.

(2) Section 32(5) does not apply to the service.

(3) On any renewal or amendment of the licence under this Act, the service's licensed capacity may not be set at a number that is both more than 75 and more than the licensed capacity applying immediately before the renewal or amendment.

(4) However, the service's licensed capacity may be set, for stated periods totalling not more than 2 hours each day, at a number that does not comply with subsection (3).

### **181 Directions**

(1) This section applies if, immediately before the commencement day, a licensee had not complied with a notice given to the licensee under section 33 of the repealed Act.

(2) The notice is taken to be a compliance notice given by an authorised officer under section 142.

### **182 Application for review of decision under repealed Act**

(1) This section applies to a decision made by the chief executive under the repealed Act if, immediately before the commencement day, a person had a right to apply to the Children Services Tribunal under section 41 of the repealed Act to have the decision reviewed.

(2) The person may apply to the tribunal, and the tribunal may deal with the application, as if the repealed Act had not been repealed.

(3) In exercising its powers after reviewing the decision, the tribunal may make the orders it considers necessary having regard to the provisions of this Act.

*Example for subsection (3)—*

An application for review mentioned in subsection (2) concerns a decision to refuse an application for a licence under the repealed Act. The tribunal may order that the chief executive issue the person a licence under this Act.

**183 Review of decision under repealed Act**

(1) This section applies if, immediately before the commencement day, the Children Services Tribunal had not finished dealing with an application for review of a decision under section 41 of the repealed Act.

(2) The tribunal may continue to deal with the application as if the repealed Act had not been repealed.

(3) In exercising its powers after reviewing the decision, the tribunal may make the orders it considers necessary having regard to the provisions of this Act.

**184 Occupants of homes in which licensed child care is provided**

(1) This section applies to a licence continued in force under section 177 as a licence for a home based service.

(2) A carer in the service does not commit an offence against section 97(1)<sup>45</sup> by providing child care in a home while an adult occupant of the home does not have a current positive suitability notice—

- (a) until the day the licence is next due to expire; and
- (b) if an application is made for a suitability notice for the occupant before the licence is due to expire and the application is not withdrawn, until the application is decided.

(3) Section 97(3) and (4) apply to the licensee subject to this section.

**185 Prohibition notices**

(1) A notice in force immediately before the commencement day under section 82 of the repealed Act is taken to be a prohibition notice in force under this Act.

(2) As soon as practicable after the commencement day, the chief executive must give a notice complying with section 107<sup>46</sup> to each person for whom a notice mentioned in subsection (1) is in force.

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45 Section 97 (Suitability of other persons in a home)

46 Section 107 (Content of prohibition notice)

### **186 Authorised persons**

A person who, immediately before the commencement day, was an authorised person under the repealed Act is taken to be appointed as an authorised officer under this Act.

### **187 Existing unlicensed services**

(1) This section applies to a child care service that, immediately before the commencement day, was being lawfully conducted without a licence under the repealed Act.

(2) Section 16<sup>47</sup> does not apply to the service until 2 years after the commencement day.

(3) Also, if an application is made for a licence for the service within 2 years after the commencement day, section 16 does not apply to the service while the application is current and, if the application is not withdrawn and does not lapse before it is decided, until 14 days after the applicant is notified of the decision.

(4) If the service is a centre based service, for the period of 5 years starting on the commencement day, the following provisions do not apply to the service—

- (a) section 28(6);<sup>48</sup>
- (b) section 143;<sup>49</sup>
- (c) another provision so far as it requires a staff member of the service to be a qualified director, qualified group leader or qualified assistant.

### **188 Exemptions from Building Act requirements**

(1) The Minister may recommend that the Governor in Council exempt a child care centre from a stated Building Act requirement if—

- (a) immediately before the commencement day, an exemption was in force for the centre under section 83(3) of the repealed Act; and

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47 Section 16 (Conducting a child care service without a licence)

48 Section 28 (Suitability of child care centre and facilities)

49 Section 143 (Compliance with Building Act requirements for child care centre)

- (b) the stated Building Act requirement is similar to a requirement under a provision to which the exemption mentioned in paragraph (a) related; and
- (c) the Minister is satisfied it would be unreasonable in all the circumstances to require compliance with the stated Building Act requirement in relation to the centre.

(2) The recommended exemption may be stated to apply indefinitely or only for a limited time and may include conditions that the Minister considers appropriate.

(3) The Governor in Council may make the exemption by regulation.

(4) Sections 28(6) and 143 do not apply to a child care centre in relation to a Building Act requirement from which the centre has been exempted under this section.

### *Division 3—Transitional provisions about qualifications*

#### **189 Assistants taken to be qualified**

(1) This section applies to a person who, immediately before the commencement day, was engaged as an assistant under the repealed regulation.

(2) For a period of 6 months starting on the commencement day, while the person is engaged as a carer in a centre based service, the person is taken to be a qualified assistant.

(3) For a period of 5 years starting on the commencement day, while the person is engaged as a school age carer, the person is taken to be a qualified assistant.

(4) This section does not limit section 70.<sup>50</sup>

#### **190 Certain registered nurses taken to have group leader qualifications**

(1) This section applies to a person who—

- (a) is a registered nurse under the *Nursing Act 1992*; and

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<sup>50</sup> Section 70 (Certain unqualified persons may fulfil requirement for qualified person)

(b) immediately before the commencement day, was a person mentioned in section 28(1)(b) of the repealed regulation.

(2) If the person has successfully completed an appropriate bridging course before the commencement day, the person is taken to be a qualified group leader.

(3) If the person was enrolled in an appropriate bridging course immediately before the commencement day, the person is taken to be a qualified group leader—

- (a) for a period of 3 years starting on the commencement day, while the person is undertaking an appropriate bridging course; and
- (b) if the person successfully completes an appropriate bridging course within 3 years after the commencement day—from the day of completion.

(4) In this section—

**“appropriate bridging course”** means a bridging course mentioned in section 28(1)(b) of the repealed regulation.

### **191 Holders of, and applicants for, certificates of endorsement**

(1) This section applies to a person if, immediately before the commencement day—

- (a) the person held a certificate of endorsement; or
- (b) an application by the person for a certificate of endorsement had been made but had not been decided.

(2) If the certificate of endorsement was to act as a director of a child care centre—

- (a) for a period of 6 months starting on the commencement day, the person is taken to be a qualified director; and
- (b) for a period of 3 years starting on the commencement day—
  - (i) while the person is undertaking a course that leads to a qualification for a group leader prescribed under a regulation, the person is taken to be a qualified group leader; or
  - (ii) while the person is undertaking a course that leads to a qualification for a director prescribed under a regulation, the person is taken to be a qualified director.

(3) If the certificate of endorsement was to act as a group leader at a child care centre, the person is taken to be a qualified group leader—

- (a) for a period of 6 months starting on the commencement day; and
- (b) for a period of 3 years starting on the commencement day, while the person is undertaking a course that leads to a qualification for a group leader prescribed under a regulation.

(4) For this section, a certificate of endorsement held under section 88(5)(a) of the repealed Act is taken to be a certificate of endorsement to act as a director of a child care centre.

(5) For this section, a certificate of endorsement held under section 88(5)(b) of the repealed Act is taken to be a certificate of endorsement to act as a group leader at a child care centre.

(6) This section does not limit section 70.

(7) In this section—

**“certificate of endorsement”** means a certificate of endorsement under section 30 of the repealed Act.

**“child care centre”** means a child care centre under the repealed Act.

## **192 Unqualified person engaged as director, assistant director or group leader**

(1) This section applies to a person who, immediately before the commencement day—

- (a) was a person mentioned in section 30(1) of the repealed regulation; and
- (b) was employed as a director or group leader under the repealed Act or as an assistant director under the repealed regulation.

(2) For a period of 3 years starting on the commencement day—

- (a) while the person is undertaking a course that leads to a qualification for a group leader prescribed under a regulation, the person is taken to be a qualified group leader; or
- (b) while the person is undertaking a course that leads to a qualification for a director prescribed under a regulation, the person is taken to be a qualified director.

(3) This section does not limit section 70.



**193 Unqualified person who was at least 45 on commencement of repealed Act**

(1) This section applies to a person who, on the commencement of the repealed Act, was at least 45 years old.

(2) If—

- (a) on the day the repealed Act commenced, the person was engaged as a director or assistant director; and
- (b) immediately before the commencement day, the person was engaged as a director, assistant director, group leader or assistant;

the person is taken to have the corresponding status to the position mentioned in paragraph (b).

(3) If—

- (a) on the day the repealed Act commenced, the person was engaged as a group leader; and
- (b) immediately before the commencement day, the person was engaged as a group leader or assistant;

the person is taken to have the corresponding status to the position mentioned in paragraph (b).

(4) If—

- (a) on the day the repealed Act commenced, the person was engaged as an assistant; and
- (b) immediately before the commencement day, the person was engaged as an assistant;

the person is taken to be a qualified assistant.

(5) This section stops applying to the person if, at any time after the commencement day, the person stops being a staff member of a centre based service, even if the person later resumes being a staff member of a centre based service.

(6) In this section—

**“assistant”** means an assistant under the repealed regulation.

**“assistant director”** means an assistant director under the repealed regulation.

**“corresponding status”** means—

- (a) for a person who, immediately before the commencement day, was engaged as a director or assistant director—a qualified director; or
- (b) for a person who, immediately before the commencement day, was engaged as a group leader—a qualified group leader; or
- (c) for a person who, immediately before the commencement day, was engaged as an assistant—a qualified assistant.

**“director”** means a director under the repealed Act.

**“group leader”** means a group leader under the repealed Act.

### **194 Unqualified person engaged as coordinator**

(1) This section applies if—

- (a) on the day the repealed Act commenced, a person was engaged as a coordinator of a family day care scheme under that Act; and
- (b) on the commencement day, the person is engaged to carry out the functions of a coordinator of a home based service conducted under a licence continued in force under section 177.

(2) The person is taken to be a qualified coordinator.

(3) Subsection (2) stops applying to the person if, at any time after the commencement day, the person stops being engaged to carry out the functions of a coordinator of a home based service, even if the person later resumes being engaged to carry out the functions of a coordinator of a home based service.

### ***Division 4—Regulatory impact statement for first regulation***

### **195 Application of the *Statutory Instruments Act 1992*, pt 5**

The *Statutory Instruments Act 1992*, part 5 does not apply to the first regulation made under this Act if the Minister has, whether before or after the enactment of this Act—

- (a) advised the Legislative Assembly that consultation about the making of the regulation has been carried out that the Minister is satisfied was comparable to consultation under that part; and

- (b) tabled in the Legislative Assembly a copy of the draft regulation in relation to which the consultation was carried out.

## **PART 11—AMENDMENTS**

### **196 Acts amended**

Schedule 1 amends the Acts it mentions.

**SCHEDULE 1****AMENDMENT OF ACTS**

section 196

**CHILDREN SERVICES TRIBUNAL ACT 2000****1 Section 30(2)—***omit, insert—*

‘(2) A member is ineligible to be a constituting member for a review of a reviewable decision made under the *Child Care Act 2002* if the member has been refused a licence under that Act or the *Child Care Act 1991* or has had a licence under either of those Acts revoked.’.

**2 After section 157—***insert—***‘158 Transitional provision for Child Care Act 2002**

‘Section 30(2), as in force immediately before the commencement of the *Child Care Act 2002*, applies to a review of a reviewable decision made under the *Child Care Act 1991*.’.

## SCHEDULE 1 (continued)

**COMMISSION FOR CHILDREN AND YOUNG PEOPLE  
ACT 2000**

**1 Part 6, division 5, after section 126—***insert—***‘126A What is employment in child care**

‘(1) This section applies to the employment of a person as a carer in, or staff member of, a child care service.<sup>51</sup>

‘(2) A reference in this Act to employment is a reference to engagement within the meaning of the *Child Care Act 2002*, section 58.’.

**2 After section 174—***insert—****‘Division 4—Transitional provisions for Child Care Act 2002*****‘175 Meaning of “commencement day”**

‘In this division—

**“commencement day”** means the day this section commences.

**‘176 Carrying on licensed child care service**

‘(1) This section applies to a person who, immediately before the commencement day, was carrying on a business mentioned in schedule 1, section 10,<sup>52</sup> under a licence under the *Child Care Act 1991*.

‘(2) The person does not commit an offence against section 109<sup>53</sup> by continuing to carry on the business without a current positive notice—

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51 See schedule 1 (Regulated employment and businesses for employment screening), section 3A (Child care).

52 Schedule 1 (Regulated employment and businesses for employment screening), section 10 (Child care)

53 Section 109 (Carrying on regulated business)

## SCHEDULE 1 (continued)

- (a) until the day the licence is next due to expire; and
- (b) if the person applies for a suitability notice before the licence is next due to expire and does not withdraw the application, until the application is decided.

**‘177 Carrying on other regulated child care business**

‘(1) This section applies to a person who, immediately before the commencement day, was carrying on a business mentioned in schedule 1, section 10,<sup>54</sup> other than under a licence under the *Child Care Act 1991*.

‘(2) The person does not commit an offence against section 109<sup>55</sup> by continuing to carry on the business without a current positive notice—

- (a) until the day that is 6 months after the commencement day; and
- (b) if the person applies for a suitability notice within 6 months after the commencement day and does not withdraw the application, until the application is decided.

**‘178 Employment in child care**

‘(1) This section applies to a person who, immediately before the commencement day, was employed in employment mentioned in schedule 1, section 3A.

‘(2) Section 127<sup>56</sup> does not apply to the employment of the person.

‘(3) If the employment is in a licensed child care service, sections 105 and 106<sup>57</sup> do not apply to the employment until the day the licence is renewed or the day that is 6 months after the commencement day, whichever is later.

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54 Schedule 1 (Regulated employment and businesses for employment screening), section 10 (Child care)

55 Section 109 (Carrying on regulated business)

56 Section 127 (Initial application of this part)

57 Sections 105 (Continuing employment of certain regular employees) and 106 (Starting employment of certain regular employees)

## SCHEDULE 1 (continued)

‘(4) If the employment is not in a licensed child care service, sections 105 and 106 do not apply to the employment until the day that is 6 months after the commencement day.’.

**3 Schedule 1—**

*insert—*

**‘3A Child care**

‘(1) Employment is regulated employment if—

- (a) it is employment as a carer in, or staff member of, a child care service; and
- (b) the employee is not a volunteer who is a parent of a child to whom child care is regularly provided in the course of the service.

‘(2) Employment is regulated employment if—

- (a) any of the usual functions of the employment is carried out, or is likely to be carried out, at a child care centre while child care is being provided at the centre; and
- (b) the employee is not a volunteer who is a parent of a child to whom child care is regularly provided at the centre.

‘(3) Employment is regulated employment if—

- (a) the usual functions of the employment include, or are likely to include, providing child care in the course of a commercial service other than a child care service; and

*Examples of a service mentioned in paragraph (a)—*

- 1. Babysitting service.
  - 2. Nanny service.
  - 3. A service, conducted by a hotel or resort, to provide child care to children who are short term guests.
  - 4. A service for providing adjunct care.
- (b) the employee is not a volunteer who is a parent of a child to whom child care is regularly provided in the course of the service.’.

## SCHEDULE 1 (continued)

**4 Schedule 1, section 4, example 4, ‘(child care)’—***omit, insert—*

‘(child minding)’.

**5 Schedule 1—***insert—***‘10 Child care**

‘A business is a regulated business if the usual activities of the business include, or are likely to include—

- (a) conducting a child care service or another commercial service that includes providing child care; or
- (b) carrying out activities in premises or a vehicle in which there are children to whom child care is being provided.’.

**6 Schedule 4—***insert—*

‘**“adjunct care”** means child care provided to a child—

- (a) in conjunction with a meeting, function or other activity involving a relative or guardian of the child other than the paid employment of the relative or guardian; and
- (b) on the premises in which the meeting, function or other activity is taking place; and
- (c) for not more than 3 hours on each occasion the care is provided.

**“carer”**, in relation to a child care service, see the *Child Care Act 2002*, section 56.

**“child care”** means care of a child provided—

- (a) by someone other than a relative or guardian of the child; and
- (b) for reward; and
- (c) in the course of a service for regularly providing care of children.



## SCHEDULE 1 (continued)

“**child care centre**” means the premises in which child care is provided under a licence for a centre based service under the *Child Care Act 2002*.

“**child care service**” see the *Child Care Act 2002*, section 5.

“**commercial service**” means a service operated on a commercial basis.

“**cousin**” includes second cousin.

“**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 relating to the child that, by law, parents have relating to their children;<sup>58</sup>
- (b) a person in whose favour a parenting order is in force under the *Family Law Act 1975* (Cwlth);
- (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*.

“**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 for paragraph (d)—*

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

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58 See the *Family Law Act 1975* (Cwlth), part 7 (Children), division 2 (Parental responsibility).

## SCHEDULE 1 (continued)

**7 Schedule 4, definition “charge”, paragraph (b), ‘section 177’—***omit, insert—*‘section 214<sup>59</sup>’.**8 Schedule 4, definition “staff member”—***insert—*(c) in relation to a child care service, see the *Child Care Act 2002*, section 57.’.**CRIMINAL LAW (REHABILITATION OF OFFENDERS)  
ACT 1986****1 Section 9A(1), table, column 1, item 6, ‘the *Child Care Act 1991*  
or’—***omit.***EDUCATION (ACCREDITATION OF NON-STATE  
SCHOOLS) ACT 2001****1 Section 6(2)(e)—***omit, insert—*

‘(e) a place used only to provide child care.’.

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59 *Police Powers and Responsibilities Act 2000*, section 214 (Notice to appear may be issued for offence)

## SCHEDULE 1 (continued)

**2 Section 6(3)—***omit, insert—***(3)** In this section—

**“child care”** means child care within the meaning of the *Child Care Act 2002*, section 4, but does not include care provided in the course of providing preschool education to children in the year immediately before year 1, primary education, secondary education or special education.’.

## SCHEDULE 2

### DICTIONARY

section 3

**“adjunct care”** means child care provided to a child—

- (a) in conjunction with a meeting, function or other activity involving a relative or guardian of the child other than the paid employment of the relative or guardian; and
- (b) on the premises in which the meeting, function or other activity is taking place; and
- (c) for not more than 3 hours on each occasion the care is provided.

**“apply for a suitability notice”** means apply under the *Commission for Children and Young People Act 2000* for a suitability notice.

**“approved form”**, for a purpose, means the form approved for the purpose by the chief executive under section 174.

**“Building Act requirements”** means the requirements under the *Building Act 1975* that must be complied with in carrying out building work for a child care centre.

**“building certifier”** means a building certifier under the *Building Act 1975*.

**“carer”** see section 56.

**“centre based service”** see section 10(a).

**“chief executive (education)”** means the chief executive of the department in which the *Education (General Provisions) Act 1989* is administered.

**“child care”** see section 4.

**“child care centre”** means the premises in which child care is provided under a licence for a centre based service.

**“child care service”** see section 5.

## SCHEDULE 2 (continued)

**“child in care”**, in relation to a licensee or child care service, means a child to whom child care is provided, or proposed to be provided, under the licence or in the course of the service.

**“commencement day”**, for a provision in part 10,<sup>60</sup> means the day the provision commences.

**“cousin”** includes second cousin.

**“current”**—

An application is **“current”** if it has been made under this Act and has not been decided, has not been withdrawn and has not lapsed.

**“de facto spouse”** means either 1 of 2 persons, whether of the same or the opposite sex, who are living together on a genuine domestic basis in a relationship—

- (a) based on intimacy, trust and personal commitment to each other; and
- (b) that is normally considered by the community to indicate the persons are a couple.

**“disqualified person”** means a person for whom a negative suitability notice or a prohibition notice is in force.

**“emergency care”** means child care provided to a child in the course of a licensed service—

- (a) in response to a need that a relative or guardian of the child claims has arisen from an emergency or other circumstances unforeseen by the relative or guardian; or
- (b) in response to circumstances beyond the licensee’s control.

*Example for paragraph (b)—*

Child care provided to a child between 4.00 p.m. and 4.30 p.m., in circumstances where the licensee has agreed with the child’s parent to provide child care to the child until 4.00 p.m. but the parent does not return to collect the child until 4.30 p.m.

**“engage”** see section 58.

**“excursion”**, for a child in care of a licensed service—

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<sup>60</sup> Part 10 (Repeal and transitional provisions)

## SCHEDULE 2 (continued)

- (a) means an activity in which the child is cared for, under the licence, at a place other than the principal place of care; but
- (b) does not include the transportation of the child between the principal place of care and a place where the child is not being cared for under the licence.

*Example for paragraph (b)—*

A child in care of a licensed centre based service is not on an excursion while a carer in the service collects the child from home and drives the child to the child care centre.

**“executive officer”**, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether the person is a director or the person’s position is given the name of executive officer.

**“facility”** includes equipment.

**“for reward”**, in relation to the provision of care of a child—

- (a) means for reward of any kind or amount, whether or not the person providing the care has an enforceable right to the reward and regardless of who provides the reward; but
- (b) does not include merely in fulfilment of a reciprocal arrangement for providing care.

*Examples—*

1. A person provides care to children without charge but receives government funding to provide the care. The person provides the care “for reward”.
2. Two persons have an arrangement under which each of them regularly provides care for the other’s children. Neither of them receives anything else for providing the care. The care provided under the arrangement is not provided “for reward”.

**“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 relating to the child that, by law, parents have relating to their children;<sup>61</sup>

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61 See the *Family Law Act 1975* (Cwlth), part 7 (Children), division 2 (Parental responsibility).

## SCHEDULE 2 (continued)

(b) a person in whose favour a parenting order is in force under the *Family Law Act 1975* (Cwlth);

(c) a person who is entitled to the care and custody of the child under the *Adoption of Children Act 1964*.

“**harm**”, to a child, has the meaning given in the *Child Protection Act 1999*, section 9.<sup>62</sup>

“**holiday care**” means child care provided to school children or preschool children, during a school holiday, at a place other than a home.

“**home**” means premises used as a private residence.

“**home based service**” see section 10(b).

“**licence**” means a licence under this Act to conduct a child care service, and includes a provisional licence issued under section 20.

“**licensed capacity**”, of a centre based service, see section 32.

“**licensed service**” means a child care service for which a licence is in force.

“**negative suitability notice**” means a suitability notice declaring a person to be an unsuitable person for child related employment.

“**notice**” means a written notice.

“**occupant**”, of a home in which child care is provided, means a person who—

(a) resides in the home; or

(b) is usually present in the home when the child care is provided.

“**owner**”, of a seized thing, for part 7, division 2, subdivision 4, see section 127.

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62 *Child Protection Act 1999*, section 9—

**9 What is “harm”**

(1) “**Harm**”, to a child, is any detrimental effect of a significant nature on the child’s physical, psychological or emotional wellbeing.

(2) It is immaterial how the harm is caused.

(3) Harm can be caused by—

(a) physical, psychological or emotional abuse or neglect; or

(b) sexual abuse or exploitation.

## SCHEDULE 2 (continued)

**“parent”**, of a child, includes—

- (a) for any child—the 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; and
- (d) a carer of the child under the *Child Protection Act 1999*.

**“place”** includes premises and vacant land.

**“positive suitability notice”** means a suitability notice declaring a person to be a suitable person for child related employment.

**“premises”** includes—

- (a) a building and surrounding land; and
- (b) a vehicle.

**“preschool child”** means a child who regularly attends a school, at which the child is enrolled, to receive preschool education.

**“preschool education”** means education provided by a school to children in the year immediately before year 1.

**“prescribed limits”**, for part 4, division 4, see section 91.

**“primary education”** means education provided by a school to children in years 1 to 7.

**“principal place of care”** means—

- (a) for a child in care of a licensed centre based service—the child care centre at which the child is normally cared for in the course of the service; or
- (b) for a child in care of a licensed home based service—the home at which the child is normally cared for in the course of the service.

**“prohibition notice”** means a prohibition notice in force under part 6.

**“public place”** means a place the public is entitled to use, open to the public or used by the public, whether or not on payment of an amount.

**“qualified assistant”** means a person, who is at least 17 years old, with a qualification for an assistant prescribed under a regulation.



## SCHEDULE 2 (continued)

**“qualified coordinator”**, in relation to a home based service, means an adult staff member of the service with a qualification for a coordinator prescribed under a regulation.

**“qualified director”**, in relation to a centre based service, means an adult staff member of the service with a qualification for a director prescribed under a regulation.

**“qualified group leader”**, in relation to a centre based service, means an adult staff member of the service with a qualification for a group leader prescribed under a regulation.

**“register”** means the register of licences kept under section 171.

**“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 for paragraph (d)—*

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

**“repealed Act”** means the *Child Care Act 1991*.

**“repealed regulation”** means the *Child Care (Child Care Centres) Regulation 1991*.

**“rest period”**, for a centre based service, means a period stated to be a rest period for the service under a licence condition under section 63.

**“reward”** see definition “for reward”.

**“school”** means—

- (a) a State school within the meaning of the *Education (General Provisions) Act 1989*; or

## SCHEDULE 2 (continued)

- (b) a school that is accredited, or provisionally accredited, under the *Education (Accreditation of Non-State Schools) Act 2001*.

**“school age carer”** means a person—

- (a) engaged as a carer in a school age care service; or  
 (b) engaged as a carer in another centre based service to provide care only to school children or preschool children.

**“school age care service”** means a licensed centre based service for which, under its licence conditions, the children in care—

- (a) must always be comprised entirely or mostly of school children; and  
 (b) must never include a child who is not a school child or preschool child.

**“school child”** means a child, other than a preschool child, who regularly attends a school at which the child is enrolled.

**“school holiday”** includes a day that the staff of a school, but not the students, are required to attend the school.

**“secondary education”** means education provided by a school to children in years 8 to 12.

**“special education”** has the same meaning as in the *Education (General Provisions) Act 1989*, section 3.<sup>63</sup>

**“spouse”**, of a person, includes a de facto spouse of the person.

**“staff member”** see section 57.

**“stand alone child care”** means child care provided in the course of a stand alone service.

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63 *Education (General Provisions) Act 1989*, section 3(2) to (4)—

(2) **“Special education”** is the educational programs and services appropriate to the needs of persons with a disability.

(3) Special education for persons with a disability is additional to, or otherwise different from, educational programs generally available to persons of that age who do not have a disability.

(4) Also, special education may be provided to persons with a disability who are below the age of compulsory attendance.

## SCHEDULE 2 (continued)

**“stand alone service”** means a child care service other than a licensed service.

**“standard requirements”** means the requirements prescribed under section 61.

**“suitability notice”** means a suitability notice in force under the *Commission for Children and Young People Act 2000*.

**“transitional licence period”** see section 54.<sup>64</sup>

**“transport”**, a child, includes accompany the child while the child travels.

**“week”** means a period of 7 days beginning on a Monday.