



# **Education and Care Services Act 2013**

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Queensland

# Education and Care Services Act 2013

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# Education and Care Services Act 2013

**An Act to regulate the provision of education and care by particular services**

## **Part 1 Preliminary**

*Note—*

To ensure the greatest possible harmonisation for education and care services for children, this Act follows the Education and Care Services National Law (Queensland) for a number of its provisions. Accordingly, this Act is not entirely consistent with Queensland's current drafting style.

### **Division 1 Introduction**

#### **1 Short title**

This Act may be cited as the *Education and Care Services Act 2013*.

#### **2 Commencement**

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

#### **3 Act binds all persons**

- (1) This Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State liable to be prosecuted for an offence.

## **Division 2                      Object of Act**

### **4                      Object**

- (1) The object of this Act is to ensure the safety, health and wellbeing of children attending a Queensland education and care service.
- (2) The ways in which the object is to be achieved include—
  - (a) establishing a provider approval and service approval system for Queensland education and care services; and
  - (b) regulating the way stand-alone services are conducted; and
  - (c) setting standards for persons who provide education and care for children.

## **Division 3                      Guiding principles of Act**

### **5                      Guiding principles**

- (1) Queensland approved education and care services are to be conducted under the following principles—
  - (a) the best interests of a child are the paramount concern;
  - (b) education and 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 health and wellbeing; and
    - (iv) provides positive experiences for the child;
  - (c) education and 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 children, and should be supported in that role;
  - (e) education and 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.
- (2) Stand-alone services are to be operated in a way that protects a child from harm and promotes the child's health and wellbeing.

## **Division 4                    Interpretation**

### **6            Definitions**

The dictionary in schedule 1 defines particular words used in this Act.

### **7            Meaning of *regulated education and care***

*Regulated education and care* is education and care provided to a child—

- (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 education and care of children.

## **8 Meaning of *Queensland education and care service***

- (1) A *Queensland education and care service* or *QEC service* is a service for providing regulated education and care of children under 13 years of age but does not include any of the following services—
- (a) an approved education and care service under the Education and Care Services National Law (Queensland);
  - (b) a service, for providing primary, secondary or special education, conducted by a school;
  - (c) a service principally conducted to provide—
    - (i) regulated education and care to patients in a hospital or patients in a medical or therapeutic care service; or
    - (ii) residential facilities; or
    - (iii) instruction in a particular activity, including, for example, dance, music or a sport; or
    - (iv) tutoring, coaching or religious instruction; or
    - (v) a recreational activity, including, 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 education and care provided is—
  - (i) holiday care; or
  - (ii) adjunct care;

- 
- (f) a service that is, under the *Child Protection Act 1999*, a licensed care service, departmental care service or service provided as an approved carer;
  - (g) a mobile service;
  - (h) a service prescribed under a regulation.
- (2) To remove any doubt, it is declared that a service may be a Queensland education and care service even though it is—
- (a) an associated children’s service under the Education and Care Services National Law (Queensland); or
  - (b) conducted by an entity that also carries on a school; or
  - (c) conducted at premises at which a school is also carried on.

## 9 Meaning of *stand-alone service*

A *stand-alone service* is a QEC service that—

- (a) is not a QEC approved service; and
- (b) is not a service in which education and care is regularly provided to more than 6 children under the age of 13 at the same time.

## 10 Meaning of *mobile service*

- (1) A *mobile service* is a service that—
- (a) provides education and care to children who are not school children; and
  - (b) transports equipment and material or staff from one or more locations on each occasion that the service is provided.
- (2) However, a service is not a mobile service if it is one of a number of services, with a common Queensland approved provider, that may use common equipment at separate premises on separate occasions, where there is a separate Queensland service approval in place for each premises.

## **Part 2**                      **Queensland provider approvals**

### **Division 1**                **General**

#### **11**        **Effect of approval**

A Queensland provider approval authorises the Queensland approved provider to operate a QEC service for which the approved provider holds a Queensland service approval.

### **Division 2**                **Application for Queensland provider approval**

#### **12**        **Person may apply for Queensland provider approval**

- (1) A person may apply to the chief executive for a Queensland provider approval.
- (2) The application must be in the approved form and accompanied by any fee prescribed under a regulation.
- (3) The application may be made by more than one person.
- (4) If an application is made by more than one person—
  - (a) the information required must be provided for each person; and
  - (b) one address only must be provided for the persons; and
  - (c) the requirements of this division must be complied with by each person.
- (5) The applicant also must provide any other relevant information reasonably required by the chief executive under section 16.

### 13 Chief executive must decide application

- (1) The chief executive must decide the application by granting, or refusing to grant, the approval.

*Note—*

See section 211 (Reviewable decisions).

- (2) The chief executive may grant the approval on conditions the chief executive considers appropriate.
- (3) If the chief executive does not decide the application within the required period after receiving the application and fee, the application is taken to have been refused.
- (4) In this section—

***required period***, for deciding an application, means—

- (a) the period of 60 days—
  - (i) starting the day after the application and fee are given to the chief executive; but
  - (ii) if the chief executive asks for information under section 16—not including the period starting the day after the chief executive asks for the information until the day the applicant gives the information to the chief executive; or
- (b) any period, ending up to 30 days after the end of the period under paragraph (a), agreed to between the chief executive and the applicant.

### 14 Applicant must be suitable

The chief executive must not grant the provider approval unless the chief executive is satisfied—

- (a) the applicant is a suitable person to operate a QEC service; and
- (b) for an applicant that is a corporation—each person who will be a person with management or control of a QEC service operated by the applicant is a suitable person to be involved in the operation of a QEC service.

## 15 Matters for deciding if an individual is suitable

- (1) An individual is not a suitable person to operate, or to be involved in the operation of, a QEC service unless the individual—
  - (a) holds a working with children authority; or
  - (b) has made a working with children check (exemption) application and the application has not been decided or withdrawn.

*Note—*

See also the Working with Children Act, schedule 1, section 18.

- (2) Subsection (1) applies subject to section 238.
- (3) An individual is not a suitable person to operate a QEC service if a prohibition notice is in force for the individual.
- (4) Other matters that the chief executive must consider in deciding a person's suitability to operate a QEC service include the following—
  - (a) any contravention by the person of a provision of this Act, the repealed Act or the Education and Care Services National Law (Queensland), whether or not the contravention constituted an offence;
  - (b) 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 cancellation of a child-related authority held by the person;
  - (c) the person's involvement in the operation of an entity so far as the operation relates to a matter mentioned in paragraph (a) or (b).

*Example for paragraph (c)—*

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) an approval under this Act; or

- (b) a licence under the repealed *Child Care Act 2002* or the repealed *Child Care Act 1991*; or
- (c) a provider approval, service approval or supervisor certificate under the Education and Care Services National Law (Queensland); or
- (d) a licence, authority or permit, under a law of Queensland or another jurisdiction, to carry out an activity involving children.

*operate*, in relation to a service, includes be involved in the operation of the service.

## 16 Chief executive may seek further information

For deciding whether an applicant is a suitable person to operate a QEC service the chief executive may—

- (a) ask the person to provide other relevant information the chief executive reasonably requires to decide the application; or
- (b) undertake enquiries in relation to the person.

## 17 Duration of provider approval

A provider approval has effect until it is cancelled or surrendered under this Act.

## 18 Form of provider approval

- (1) If the chief executive grants a provider approval, the chief executive must give a copy of the approval to the approved provider.
- (2) The provider approval must state—
  - (a) the approved provider's name; and
  - (b) for an approval held by an individual—the individual's address; and

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- (c) for an approval held by more than one person—the address for service stated in the application for a provider approval; and
- (d) for an approval held by a corporation—the address of the approved provider’s registered office; and
- (e) any conditions applying to the approval; and
- (f) the day on which the approval was granted; and
- (g) the provider approval number; and
- (h) any other matters prescribed under a regulation.

## **19 Offence for approved provider not to comply with conditions of approval**

An approved provider must comply with the conditions applying to a provider approval.

Maximum penalty—100 penalty units.

*Note—*

This provision is an executive liability provision—see section 232.

## **Division 3 Reassessment of Queensland provider approval**

### **20 Reassessment of suitability**

- (1) The chief executive may at any time reassess—
  - (a) whether an approved provider continues to be a suitable person to operate a QEC service; or
  - (b) whether a person with management or control of a QEC service operated by an approved provider continues to be a suitable person to be involved in the operation of a QEC service; or
  - (c) whether a person who becomes a person with management or control of a QEC service operated by an approved provider after the grant of the provider



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approval is a suitable person to be involved in the provision of a QEC service.

- (2) Sections 15 and 16 apply to the reassessment.

## **Division 4                      Amendment of Queensland provider approval**

### **21                      Amendment of provider approval on application**

- (1) An approved provider may apply to the chief executive for an amendment of the provider's provider approval, including an amendment to remove a person from, or add a person to, the approval.
- (2) The application must be in the approved form and accompanied by any 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 by—
- (a) amending the approval in the way applied for; or
  - (b) with the applicant's written agreement, amending the approval in another way; or
  - (c) refusing to amend the approval.

*Note—*

See section 211 (Reviewable decisions).

- (5) However, if an application under this section is to add a person to a provider approval, the chief executive may grant the approval only if the chief executive is satisfied the person is a suitable person to operate a QEC service having regard to the matters stated in section 15.
- (6) Also, without limiting subsection (4), an amendment may vary a condition of the approval or impose a new condition on the approval.

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- (7) If the chief executive does not decide the application within the required period after receiving the application and fee, the application is taken to have been refused.
- (8) In this section—
- required period***, for deciding an application, means the period of 30 days—
- (a) starting the day after the application and fee are given to the chief executive; but
  - (b) if the chief executive asks for information under subsection (3)—not including the period starting the day after the chief executive asks for the information until the day the applicant gives the information to the chief executive.

## 22 Amendment of provider approval by chief executive

- (1) The chief executive may amend a provider approval at any time without receiving an application from the approved provider for the amendment.

*Example—*

The chief executive may change a condition of the approval or impose a new condition.

- (2) However, the chief executive must first give the approved provider a notice (a ***show cause notice***) stating—
- (a) that the chief executive proposes to amend the provider approval; and
  - (b) the proposed amendment; and
  - (c) the reasons for the proposed amendment; and
  - (d) that the approved provider 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 approved provider within the time stated in the show cause notice, the chief executive may make some or all of the proposed amendment.

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*Note—*

See section 211 (Reviewable decisions).

- (4) If the chief executive decides not to amend the provider approval, the chief executive must give the approved provider notice of the decision.
- (5) At the approved provider's written request, or with the approved provider's written agreement, the chief executive may—
  - (a) amend a provider approval without giving a show cause notice; or
  - (b) amend a provider approval in a way that has not been stated in a show cause notice; or
  - (c) amend a provider approval before the expiration of the time stated in a show cause notice for the approved provider's response to the proposed amendment.
- (6) An amendment under this section has effect 14 days after the chief executive gives notice of the amendment to the approved provider or at any later time stated in the notice.

## **23 Urgent amendment of provider approval by chief executive**

- (1) This section applies if the chief executive is reasonably satisfied, in the interests of the safety, health and wellbeing of children being provided with education and care under a provider approval, it is necessary to immediately amend the approval.
- (2) The chief executive may immediately amend the provider approval without complying with section 22.
- (3) As soon as practicable after amending the approval, the chief executive must give notice of the amendment to the approved provider.
- (4) The notice must state the reasons for the amendment.
- (5) The amendment has effect for the period, of not more than 60 days, stated in the notice.

## **24 Amended provider approval to be given to approved provider**

As soon as practicable after amending a provider approval under this division, the chief executive must—

- (a) give an amended copy of the approval to the approved provider; and
- (b) if any consequential amendment is required to a service approval—amend the service approval and give an amended copy to the approved provider.

## **Division 5 Suspension or cancellation of Queensland provider approval**

### **25 Grounds for suspension of provider approval**

The chief executive may suspend a provider approval if—

- (a) the approved provider has been charged with an indictable offence; or
- (b) the approved provider has failed to comply with a condition of the provider approval; or
- (c) action is being taken under a compliance notice, prohibition notice or an emergency action notice for a QEC approved service operated by the approved provider; or
- (d) the approved provider has not operated a QEC approved service for a period of more than 12 months including any period of suspension; or
- (e) the approved provider purported to transfer or receive a transfer of a QEC approved service without the chief executive's consent; or
- (f) the approved provider has not paid any outstanding fee prescribed under a regulation; or
- (g) the approved provider is contravening, or has contravened, the Working with Children Act in relation

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- to the engagement of a staff member of the QEC approved service; or
- (h) the chief executive is satisfied the approved provider's premises for providing education and care are unsafe or unsuitable; or
  - (i) the approved provider has failed to comply with a notice given under section 194; or
  - (j) the chief executive is satisfied the approved provider, or a person with management or control of a QEC approved service operated by the approved provider, may not be a suitable person to be involved in the provision of a QEC approved service.

## **26 Show cause notice before suspension of provider approval**

- (1) This section applies if the chief executive is proposing to suspend a provider approval.
- (2) The chief executive must first give the approved provider a notice (a *show cause notice*) stating the following—
  - (a) that the chief executive proposes to suspend the provider approval;
  - (b) the proposed period of suspension;
  - (c) the reasons for the proposed suspension;
  - (d) that the approved provider may, within 30 days after the notice is given, give the chief executive a written response to the proposed suspension.

## **27 Decision about suspension after show cause notice**

After considering any written response from the approved provider received within the period mentioned in section 26(2)(d), the chief executive may—

- (a) suspend the provider approval for a period of not more than 12 months; or

- (b) decide not to suspend the provider approval.

## **28 Suspension of provider approval without show cause notice**

- (1) This section applies if the chief executive is satisfied there is an immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by a QEC approved service operated by an approved provider.
- (2) The chief executive may suspend the approved provider's provider approval on a ground mentioned in section 25 without giving the approved provider a show cause notice under section 26.
- (3) The suspension may not be for a period of more than 6 months.

## **29 Notice and taking effect of suspension**

- (1) The chief executive must give the approved provider notice of the decision to suspend the provider approval.
- (2) The notice of a decision to suspend must set out the period of suspension and the date on which it takes effect.
- (3) The decision under section 27 to suspend takes effect at the end of 14 days after the date of the decision, or, if a longer period is stated by the chief executive, at the end of that period.
- (4) The decision under section 28 to suspend takes effect on the giving of the notice.

*Note—*

See section 211 (Reviewable decisions).

## **30 Effect of suspension**

- (1) Subject to this section, if a provider approval is suspended under section 27 or 28, all service approvals held by the provider are also suspended for the same period.

- (2) A person whose provider approval is suspended is taken not to be an approved provider for the period of the suspension.
- (3) The approved provider may apply in the approved form under part 3, division 5 for the transfer of a service approval that is suspended under section 27 or 28.
- (4) The suspension of the service approval ceases on the transfer taking effect, unless the conditions imposed by the chief executive on the consent to the transfer state a later date.

### **31 Grounds for cancellation of provider approval**

The chief executive may cancel a provider approval if—

- (a) the chief executive is satisfied the approved provider, or a person with management or control of a QEC approved service operated by the approved provider, is not a suitable person to be involved in the provision of a QEC approved service; or
- (b) the chief executive is satisfied the continued provision of education and care by the approved provider would constitute an unacceptable risk to the safety, health or wellbeing of any child or class of children being educated and cared for by a QEC approved service operated by the provider; or
- (c) the approved provider has been found guilty of an indictable offence; or
- (d) the approved provider has been found guilty of an offence under this Act; or
- (e) the chief executive is satisfied the approved provider's premises for providing education and care are unsafe or unsuitable; or
- (f) the approved provider has failed to comply with a notice given under section 194; or
- (g) the approved provider has breached a condition of the provider approval; or

- (h) the approved provider has not operated any QEC approved service for more than 12 months (including any period of suspension).

### **32 Show cause notice before cancellation of provider approval**

- (1) This section applies if the chief executive is proposing to cancel a provider approval under section 31.
- (2) The chief executive must first give the approved provider a notice (a *show cause notice*) stating—
  - (a) that the chief executive proposes to cancel the provider approval; and
  - (b) the reasons for the proposed cancellation; and
  - (c) that the approved provider may, within 30 days after the notice is given, give the chief executive a written response to the proposed cancellation.

### **33 Decision about cancellation**

- (1) After considering any written response from the approved provider received within the time allowed under section 32(2)(c), the chief executive—
  - (a) may—
    - (i) cancel the provider approval; or
    - (ii) suspend the provider approval for a period not more than the prescribed period; or
    - (iii) decide not to cancel the provider approval; and
  - (b) must give the approved provider notice of the decision.
- (2) The decision to cancel the provider approval takes effect at the end of 14 days after the date of the decision or, if a longer period is stated by the chief executive, at the end of that period.



- (3) The notice of a decision to cancel or suspend the provider approval must state the date on which it takes effect.
- (4) This Act applies to a suspension of a provider approval under this section as if it were a suspension under section 27.

### **34 Effect of cancellation**

- (1) Subject to this section, if a provider approval is cancelled under section 33, all service approvals held by the person who was the approved provider are also cancelled.
- (2) A provider whose provider approval is to be cancelled under section 33 may apply to the chief executive under part 3, division 5 for consent to transfer a service approval held by the provider.
- (3) The application for consent to transfer must be made within 14 days after the date of the decision to cancel the provider approval is made.
- (4) If an application for consent to transfer is made, the service approval is suspended until the chief executive decides the application.
- (5) The suspension of the service approval ceases on the transfer taking effect, unless the conditions of the transfer state a later date.
- (6) If the chief executive refuses to consent to the transfer, the service approval is cancelled on the making of the decision to refuse consent.

### **35 Approved provider to give information to chief executive**

- (1) This section applies if a show cause notice has been given to an approved provider under section 26 or 32.
- (2) The approved provider, at the request of the chief executive, must, within 7 days of the request, provide the chief executive with the contact details of the parents of all children enrolled at each QEC approved service operated by the approved provider.

- (3) The chief executive may use the information provided under subsection (2) only to notify the parents of children enrolled at a QEC approved service about the suspension or cancellation.

### **36 Approved provider to give notice to parents of suspension or cancellation of provider approval**

- (1) This section applies if the chief executive gives a notice to an approved provider suspending or cancelling the provider approval under section 27, 28 or 33.
- (2) The approved provider must comply with this section, unless the provider has a reasonable excuse.

Maximum penalty—5 penalty units.

- (3) As soon as practicable after receiving the notice, the approved provider must give notice of the suspension or cancellation to a parent of each child to whom education and care is regularly provided in the course of the QEC service.
- (4) A notice given under subsection (3) must include the reasons given in the chief executive's notice for cancelling or suspending the provider approval.
- (5) Subsection (3) does not apply in relation to a parent, guardian or carer who the provider can not locate after making reasonable enquiries.
- (6) If an approved provider's provider approval is suspended, the provider must display a notice at the QEC service, for the period of the suspension, stating that the approval has been suspended.
- (7) If an approved provider's provider approval is cancelled, the provider must display a notice at the QEC service, until at least the day on which the cancellation takes effect, stating that the approval has been cancelled.
- (8) A regulation may make provision about a notice given or displayed under this section, including, for example—
  - (a) what the notice must state; and

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- (b) the size or other requirements of the writing on the notice.

### **37 Voluntary suspension of provider approval**

- (1) An approved provider may apply to the chief executive for a suspension of the provider approval for a period of not more than 12 months.
- (2) The application must be in the approved form and be accompanied by the prescribed fee.
- (3) The approved provider must, at least 14 days before making an application under this section, notify the parents of children enrolled at the QEC service operated by the approved provider of the intention to make the application.
- (4) The chief executive must, within 30 days after the application is made, decide whether or not to grant the application.
- (5) The chief executive may grant the application only if the suspension is reasonable in all the circumstances.
- (6) The chief executive must give notice of its decision, including the period of suspension, to the approved provider.
- (7) If the chief executive decides to grant the application, the suspension takes effect on a date agreed between the chief executive and the approved provider.
- (8) A suspension under this section remains in force for the period of time stated in the notice.
- (9) The approved provider may apply to the chief executive to revoke the suspension before the end of the suspension period.
- (10) If the chief executive grants the application to revoke the suspension, the suspension ends on the date determined by agreement with the approved provider.

### **38 Approved provider may surrender approval**

- (1) An approved provider may surrender the provider approval by notice to the chief executive.

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- (2) The notice must state a date on which the surrender is intended to take effect which must be—
  - (a) after the notice is given; and
  - (b) after the end of the period of notice required under subsection (3).
- (3) The approved provider must, at least 14 days before the surrender is intended to take effect, notify the parents of children enrolled at the QEC approved services operated by the approved provider of the intention to surrender the provider approval.
- (4) If a provider approval is surrendered—
  - (a) the approval is cancelled on the date stated in the notice; and
  - (b) any service approval held by the provider is also taken to be cancelled.

*Note—*

A cancelled service approval can not be transferred—see part 3, division 5.

## **Division 6                      Personal representatives as approved providers**

### **39            Death of sole holder of provider approval**

- (1) This section applies if a service approval is held by an approved provider who is an individual and the individual dies.
- (2) However, this section does not apply if the individual who dies became an approved provider under this section because the individual was the personal representative of the estate of an approved provider.
- (3) For 6 months from the date of death (the *transitional approval period*), the personal representative of the

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individual's estate is taken to be the approved provider holding—

- (a) the provider approval (a *deemed approval*); and
  - (b) any service approval held under the provider approval (also a *deemed approval*).
- (4) To remove any doubt, it is declared that the chief executive may take action under this Act relating to a deemed approval.

*Examples—*

- 1 The chief executive may impose a condition on the deemed provider approval under part 2, division 4 or on the deemed service approval part 3, division 4.
  - 2 The chief executive may cancel the deemed provider approval under part 2, division 5 or the deemed service approval under part 3, division 6.
- (5) Subsection (3) applies subject to—
- (a) any earlier transfer, suspension, cancellation or surrender of the service approval under this Act; and
  - (b) any earlier suspension, cancellation or surrender of the deemed approval under this Act; and
  - (c) any extension, or earlier ending, of the transitional approval period under this section.
- (6) Also, subsection (3) does not apply if the personal representative is a disqualified person.
- (7) The personal representative may apply in writing to the chief executive for an extension of the transitional approval period.
- (8) On receiving the application, the chief executive may extend the transitional approval period by the further period, of not more than 6 months, that the chief executive considers appropriate in all the circumstances.

*Example—*

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

- (9) The transitional approval period ends unless, within 30 days after the individual's death, the personal representative—
  - (a) holds a working with children authority; or
  - (b) has made a working with children check (exemption) application and the application has not been decided or withdrawn.
- (10) The personal representative does not commit an offence against the Working with Children Act, section 176B by operating the QEC service under the service approval without a working with children clearance—
  - (a) during the first 30 days of the transitional approval period; and
  - (b) if the personal representative makes a working with children check application within the first 30 days of the transitional approval period and does not withdraw the application—until the application is decided.
- (11) The personal representative does not commit an offence against the Working with Children Act, section 176G by operating the QEC service under the service approval without a working with children exemption during the first 30 days of the transitional approval period.
- (12) A person who holds the service approval under this section in the person's capacity as personal representative may transfer the approval to himself or herself, in his or her personal capacity, under part 3, division 5.

#### **40 Death of joint holder of provider approval**

- (1) If an individual who jointly holds a provider approval dies, the surviving person, or if there is more than one surviving person each of the surviving persons, continues as the holder of the provider approval and any service approval held under the provider approval.
- (2) If 2 or more of the persons holding a provider approval are individuals and they die at the same time—

- (a) if there are any surviving persons holding the provider approval—each of them continues as the holder of the provider approval and any service approval held under the provider approval; or
- (b) if there are no surviving persons holding the provider approval—section 39 applies, with all necessary changes, to the personal representatives of the estates of the persons who have died.

## **Part 3                      Queensland service approvals**

### **Division 1                General**

#### **41            Effect of approval**

- (1) A Queensland service approval authorises an approved provider to operate the QEC service to which it relates.
- (2) An approved provider must have a separate service approval for each QEC service operated by the provider.

#### **42            More than one approval or approval holder**

- (1) An approved provider may hold more than one service approval.
- (2) A reference in this Act to the approved provider for a QEC approved service is, for a provider approval held jointly, a reference to each of the persons who jointly hold the approval.

## **Division 2                      Application for Queensland service approval**

### **43            Approved provider may apply for service approval**

- (1) An approved provider may apply to the chief executive for a service approval for a QEC service.
- (2) An approved provider may apply for a service approval for a QEC service only if the approved provider is, or proposes to be—
  - (a) the operator of the QEC service; and
  - (b) responsible for the management of the staff members of the QEC service.
- (3) A person may apply to the chief executive for a service approval at the same time as the person applies for a provider approval.
- (4) However, if a person applies for a provider approval and service approval at the same time, the chief executive must not grant the service approval unless the provider approval is also granted.
- (5) An approved provider may hold more than one service approval.

*Note—*

See also section 55 (Application for new service approval in exceptional circumstances).

### **44            Form of application for service approval**

- (1) The application for a service approval must be in the approved form and accompanied by any fee prescribed under a regulation.

*Note—*

Section 112 states that an application for a service approval may include a request for a condition relating to rest periods.

- (2) The application may be made by more than one person.



- (3) If an application is made by more than one person—
  - (a) the information required must be provided for each person; and
  - (b) the requirements of this division must be complied with by each person.
- (4) The applicant also must provide any other relevant information reasonably required by the chief executive under section 46.

#### **45 Chief executive must decide application for service approval**

- (1) The chief executive must decide the application by granting, or refusing to grant, the approval.

*Note—*

See section 211 (Reviewable decisions).

- (2) If the chief executive does not decide the application within the required period after receiving the application and fee, the application is taken to have been refused.

- (3) In this section—

***required period***, for deciding an application, means—

- (a) the period of 90 days—
  - (i) starting the day after the application and fee are given to the chief executive; but
  - (ii) if the chief executive asks for information under section 46—not including the period starting the day after the chief executive asks for the information until the day the applicant gives the information to the chief executive; or
- (b) any longer period agreed between the chief executive and the applicant.

#### **46 Chief executive may seek further information**

The chief executive may ask an applicant for a service approval to provide any further information that is reasonably required for the purpose of assessing the application.

#### **47 Relevant matters for deciding application**

- (1) The chief executive must consider the following matters in deciding whether to grant an application for a service approval—
  - (a) the suitability of the QEC service premises and their location for the operation of a QEC approved service;
  - (b) the adequacy of the policies and procedures of the QEC service for the operation of the service;
  - (c) any suspension (other than a voluntary suspension) of the applicant's provider approval;
  - (d) any current voluntary suspension of the applicant's provider approval;
  - (e) whether the QEC service is proposed to be operated principally within an Aboriginal or Torres Strait Islander community and, if so, the culturally specific needs of Aboriginal or Torres Strait Islander children;
  - (f) the matters mentioned in section 48 on which the chief executive must refuse an application;
  - (g) any other matters the chief executive considers appropriate.
- (2) In deciding whether to grant the application for a service approval, the chief executive must also have regard to each of the following matters relating to the proposed provision of the regulated education and care under the approval—
  - (a) the number of children to whom the regulated education and care will be provided at one time;
  - (b) the ages of the children;

- (c) the length of time for which each child will be provided with the regulated education and care.
- (3) In deciding whether to grant the application, the chief executive may also consider the applicant's history of compliance with this Act, the repealed Act or the Education and Care Services National Law (Queensland).

#### **48 Grounds on which chief executive must refuse application**

The chief executive must refuse to grant a service approval if—

- (a) the chief executive is satisfied the QEC service, if permitted to operate, would constitute an unacceptable risk to the safety, health or wellbeing of children who would be educated or cared for by the service; or
- (b) the applicant does not have a provider approval; or
- (c) the chief executive is not satisfied the applicant is capable of operating the proposed service in a way that meets the requirements of this Act; or
- (d) the applicant is not entitled to lawfully occupy or use the QEC service premises to operate the QEC service.

#### **49 Conditions of Queensland service approval**

- (1) The chief executive may grant a service approval on conditions the chief executive considers appropriate.
- (2) In addition, the following conditions apply to each service approval—
  - (a) the approved provider must operate the QEC approved service in a way that ensures the safety, health and wellbeing of children who attend the service and meets their educational and developmental needs;
  - (b) the condition mentioned in section 50;

- (c) the approved provider must ensure there is in force, for the service, the insurance cover prescribed under a regulation;
  - (d) subject to subsection (3), the approved provider must start operating the QEC approved service within 6 months after the approval is granted (the *start-up period*).
- (3) On application by the approved provider, the chief executive may extend the start-up period by the further period, of not more than 6 months, that the chief executive considers appropriate in all the circumstances.

## 50 Service capacity

- (1) The conditions of a service approval must include a condition stating the maximum number of children to whom regulated education and care may be provided at one time under the approval (the *service capacity* of the QEC service).
- (2) The service capacity may be stated—
  - (a) as a single number; or
  - (b) as different numbers applying to the QEC service at different times according to the circumstances (for example, according to the ages of the children being provided with regulated education and care).
- (3) The service capacity applies to all the children to whom regulated education and care is being provided at one time in the course of the QEC service, whether the children are being provided with the regulated education and care at the QEC service premises or somewhere else.

*Example of somewhere else—*

on an excursion

## 51 Emergency care

- (1) This section applies to a period during which the number of children being provided with regulated education and care in

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the course of a QEC approved service is more than its service capacity.

- (2) The approved provider is taken not to be contravening a condition of the service approval about the service capacity during the period if—
- (a) emergency care is being provided during the period to one or more children; and
  - (b) emergency care is not provided to the child or children for more than 2 consecutive days in circumstances to which this section applies; and
  - (c) the amount by which the number of children being provided with regulated education and care exceeds the service 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
    - (ii) otherwise—one.

*Examples of an emergency—*

- 1 A child is determined to be in need of protection under a child protection order.
  - 2 The parent of a child needs urgent health care that prevents them caring for the child.
- (3) An approved provider of a QEC approved service must not permit the service to educate and care for an additional child or children in an emergency unless the approved provider is satisfied this will not affect the safety, health and wellbeing of the children attending the service.
- (4) The approved provider must, within 24 hours of the attendance of the additional child or children, notify the chief executive of the attendance, including—
- (a) a description of the emergency; and
  - (b) a statement by the approved provider that the approved provider was satisfied under subsection (3).

## **52 Form of Queensland service approval**

- (1) If the chief executive grants a service approval, the chief executive must give a copy of the approval to the approved provider.
- (2) The service approval must state the following—
  - (a) the name of the approved provider;
  - (b) the name of the QEC service;
  - (c) the address of the QEC service premises;
  - (d) the conditions applying to the service approval;
  - (e) the details of any service waiver applying to the service approval;
  - (f) the date the service approval was granted;
  - (g) the number of the service approval (the *service approval number*);
  - (h) the maximum number of children who can be cared for by the service at any time.

## **53 Offence for approved provider not to comply with conditions of Queensland service approval**

- (1) An approved provider must comply with the condition of a service approval mentioned in section 49(2)(a).

Maximum penalty—100 penalty units.

*Note—*

This provision is an executive liability provision—see section 232.

- (2) An approved provider must comply with all other conditions of a service approval.

Maximum penalty—40 penalty units.

*Note—*

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 233, to have also committed the offence.

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**54 Annual fee**

An approved provider must pay the annual fee prescribed under a regulation for each service approval the provider holds.

**Division 3 Application for Queensland service approval in exceptional circumstances**

**55 Application for new service approval in exceptional circumstances**

- (1) This section applies if—
- (a) an approved provider holds a service approval for premises; and
  - (b) exceptional circumstances have caused the premises (the *affected premises*) to be unsuitable for the provision of the regulated education and care for which the premises are approved.

*Example—*

The premises for a QEC approved service have been flooded.

- (2) The approved provider may apply to the chief executive—
- (a) to temporarily suspend the service approval for the affected premises; and
  - (b) for a new service approval (an *exceptional circumstances service approval*) to provide the regulated education and care from other premises (the *replacement premises*).

**56 Form of application for exceptional circumstances service approval**

- (1) The application—
- (a) must be in the approved form; or

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- (b) if the nature of the exceptional circumstances means that it is not practicable to submit the approved form—may be made orally and followed by the approved form as soon as practicable.

*Note—*

Section 112 states that an application for an exceptional circumstances service approval may include a request for a condition relating to rest periods.

- (2) The application may be made by more than one person.
- (3) If an application is made by more than one person—
  - (a) the information required must be provided for each person; and
  - (b) the requirements of this division must be complied with by each person.
- (4) The applicant also must provide any other relevant information reasonably required by the chief executive under section 58.

## **57 Chief executive must decide application**

The chief executive must within 7 days grant, or refuse to grant, the application and notify the applicant in writing of the chief executive's decision.

## **58 Chief executive may seek further information**

The chief executive may ask an applicant for an exceptional circumstances service approval to provide any further information that is reasonably required for the purpose of assessing the application.

## **59 Relevant matters for deciding application**

The chief executive must not grant an application for an exceptional circumstances service approval unless the chief executive is satisfied—



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- (a) the approved provider holds a service approval for the affected premises; and
  - (b) exceptional circumstances have caused the affected premises to be unsuitable for the provision of the regulated education and care for which the premises are approved; and
  - (c) the replacement premises are suitable for providing regulated education and care; and
  - (d) the operation of the service at the replacement premises will not constitute an unacceptable risk to the safety, health or wellbeing of children to be educated or cared for at the replacement premises.

## **60 Conditions of exceptional circumstances service approval**

The chief executive may grant an exceptional circumstances service approval on the conditions the chief executive considers appropriate.

## **61 When exceptional circumstances service approval ends**

- (1) The chief executive may revoke an exceptional circumstances service approval for an approved provider by giving at least 14 days notice in writing to the provider.
- (2) In deciding whether to revoke the approval the chief executive may have regard to any of the following matters—
  - (a) whether the exceptional circumstances that caused the affected premises to be unsuitable still apply;
  - (b) the efforts the approved provider has made—
    - (i) to again make the affected premises suitable for providing regulated education and care; or
    - (ii) to find new premises suitable for providing the regulated education and care;

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- (c) whether the continued provision of regulated education and care to children at the replacement premises constitutes an unacceptable risk to the safety, health or wellbeing of the children;
- (d) other circumstances the chief executive considers relevant.

**62 Approved provider to provide information to chief executive**

- (1) This section applies if a notice has been given to an approved provider under section 61.
- (2) The approved provider, at the request of the chief executive, must, within 7 days of the request, provide the chief executive with the contact details of the parents of all children enrolled at the QEC approved service operated by the provider.
- (3) The chief executive may use the information provided under subsection (2) only to notify the parents of children enrolled at the QEC approved service of the ending of the exceptional circumstances service approval for the service.

**63 Duration of temporary suspension of service approval of affected premises**

- (1) The chief executive may cancel or suspend a service approval for affected premises during, or after the end of, the term of the exceptional circumstances service approval for replacement premises.
- (2) Otherwise, a suspension of the service approval for affected premises remains in force for as long as the exceptional circumstances service approval for the replacement premises is in force.

**64 Application of other provisions of this Act to this division**

- (1) Division 2 also applies to an application under this division except for—

- (a) sections 43 to 46; and
  - (b) section 49(2)(d) and (3).
- (2) Also, section 89 does not apply to an exceptional circumstances service approval under this division.

## **Division 4                      Amendment of Queensland service approval**

### **65                      Amendment of service approval on application**

- (1) An approved provider holding a service approval may apply to the chief executive for an amendment of the approval.
- (2) The application must be in the approved form and accompanied by any fee prescribed under a regulation.

*Note—*

Section 112 states that an application for an amendment of a service approval may include a request for a condition relating to rest periods.

- (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 by—
  - (a) amending the approval in the way applied for; or
  - (b) with the applicant's written agreement, amending the approval in another way; or
  - (c) refusing to amend the approval.

*Note—*

See section 211 (Reviewable decisions).

- (5) Without limiting subsection (4), an amendment may vary a condition of the approval or impose a new condition on the approval.
- (6) If the chief executive does not decide the application within the required period after receiving the application and fee, the application is taken to have been refused.

(7) In this section—

*required period*, for deciding an application, means—

- (a) the period of 60 days—
  - (i) starting the day after the application and fee are given to the chief executive; but
  - (ii) if the chief executive asks for information under subsection (3)—not including the period starting the day after the chief executive asks for the information until the day the applicant gives the information to the chief executive; or
- (b) any longer period agreed between the chief executive and the applicant.

## **66 Restrictions on amendment of service approval**

- (1) A change of the location of QEC service premises to which a service approval applies may be made only by an application for a new approval, not by an application to amend the approval.
- (2) A change of the approved provider holding a service approval may be made only by transferring the approval under division 5, not by an application to amend the approval.

## **67 Amendment of service approval by chief executive**

- (1) The chief executive may amend a service approval at any time without receiving an application for the amendment from the approved provider holding the approval.

*Example—*

The chief executive may change a condition of the approval or impose a new condition.

- (2) The chief executive must first give the approved provider a notice (*show cause notice*) stating—
  - (a) that the chief executive proposes to amend the approval; and

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- (b) the proposed amendment; and
  - (c) the reasons for the proposed amendment; and
  - (d) that the approved provider 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 approved provider within the time stated in the show cause notice, the chief executive may make some or all of the proposed amendment.
- (4) If the chief executive decides not to amend the approval, the chief executive must give the approved provider notice of the decision.
- (5) At the approved provider's written request, or with the approved provider's written agreement, the chief executive may—
- (a) amend an approval without giving a show cause notice; or
  - (b) amend an approval in a way that has not been stated in a show cause notice; or
  - (c) amend an approval before the expiration of the time stated in a show cause notice for the approved provider's response to the proposed amendment.
- (6) An amendment under this section has effect 14 days after the chief executive gives notice of the amendment to the approved provider or at any later time stated in the notice.

*Note—*

See section 211 (Reviewable decisions).

## **68 Urgent amendment of service approval by chief executive**

- (1) This section applies if the chief executive is reasonably satisfied, in the interests of the safety, health and wellbeing of children being provided with education and care under a provider approval, it is necessary to immediately amend the provider's service approval.

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- (2) The chief executive may immediately amend the service approval without complying with section 67.
- (3) As soon as practicable after amending the approval, the chief executive must give notice of the amendment to the approved provider.
- (4) The notice must state the reasons for the amendment.
- (5) The amendment has effect for the period, not more than 60 days, stated in the notice.

*Note—*

See section 211 (Reviewable decisions).

## **69 Amended service approval to be given to approved provider**

As soon as practicable after amending a service approval under this division, the chief executive must give an amended copy of the approval to the approved provider.

## **Division 5 Transfer of Queensland service approval**

### **70 Transfer of approval**

- (1) An approved provider holding a service approval (the *transferor*) may apply to the chief executive to transfer the approval to another approved provider (the *transferee*).
- (2) The application must be in the approved form and accompanied by any fee prescribed under a regulation.
- (3) The reference in subsection (1) to an approved provider who is the transferor includes a person whose provider approval or service approval is suspended but does not include a person whose provider approval has been cancelled.

*Note—*

Section 71 deals with the transfer of an approved provider's service approval while the service approval is suspended.

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Section 85 deals with the transfer of an approved provider's service approval that is about to be cancelled.

## **71 Transfer of suspended service approval**

- (1) This section applies if, while an approved provider's service approval is suspended, the chief executive consents to the transfer of the service approval under this division.
- (2) A condition of the consent may provide for the suspension to continue.
- (3) Otherwise, the suspension ends on the day the transfer takes effect.

## **72 Application for transfer to be dealt with as an application for a service approval**

The chief executive may require information, and conduct investigations, as if the transferee were an applicant for a service approval under part 3, division 2.

## **73 Chief executive must decide application**

- (1) The chief executive must decide the application by granting, or refusing to grant, the transfer and must give notice of the decision to both the transferor and transferee.

*Note—*

See section 211 (Reviewable decisions).

- (2) The chief executive may grant the transfer on conditions the chief executive considers appropriate and must give notice of any conditions to both the transferor and transferee.
- (3) Without limiting subsection (2), a condition under subsection (2) may—
  - (a) include a condition the chief executive could have imposed if the application were an application for a service approval under part 3, division 2; or

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- (b) include a condition stating the date on which the transfer takes effect; or
  - (c) apply to the provider approval or the service approval of the transferee.
- (4) If the chief executive does not decide the application within the required period after receiving the application and fee, the application is taken to have been refused.
- (5) In this section—
- required period***, for deciding an application, means—
- (a) the period of 30 days—
    - (i) starting the day after the application and fee are given to the chief executive; but
    - (ii) if the chief executive asks for information from the transferor or transferee—not including the period starting the day after the chief executive asks for the information until the day the transferor or transferee gives the information to the chief executive; or
  - (b) any longer period agreed between the chief executive and the transferor or transferee.

## **74 Confirmation of transfer**

- (1) The transferor and the transferee must each give notice to the chief executive within 2 days after the transfer takes effect stating the date of the transfer.

Maximum penalty—5 penalty units.

- (2) On receipt of a notice under this section, the chief executive must amend the service approval and provide an amended copy of the service approval to the transferee.
- (3) The amendment of the service approval takes effect on the date of the transfer.



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- (4) A transferor or transferee who gives notice under this section is not guilty of an offence for a failure of the other party to the transfer to give the notice.

## **75 Notice to parents**

- (1) A transferee must give notice under this section of the transfer of a service approval to a parent of each child to whom education and care is regularly provided in the course of the QEC approved service.

Maximum penalty—5 penalty units.

- (2) The notice must be given at least 2 days before the transfer of the service approval takes effect unless the transferee has a reasonable excuse.
- (3) This section does not apply for a parent or carer who the transferee can not locate after making reasonable enquiries.

## **Division 6 Suspension or cancellation of Queensland service approval**

### **76 Grounds for suspension of service approval**

The chief executive may suspend a service approval if—

- (a) the chief executive reasonably believes it would not be in the best interests of children being educated and cared for by the QEC service for the service to continue; or
- (b) a condition of the service approval has not been complied with; or
- (c) the service is not being managed in accordance with this Act; or
- (d) the approved provider has failed to comply with a compliance notice and the noncompliance is substantial; or
- (e) the approved provider—

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- (i) has ceased operating a QEC service at the QEC service premises for which the service approval was granted; and
  - (ii) within 6 months of ceasing operating the service, has not transferred the service to another approved provider; or
- (f) the approved provider has not, within 6 months after being granted a service approval, started ongoing operation of the service; or
- (g) the approved provider has not paid the prescribed annual fee for the service approval.

#### **77 Show cause notice before suspension of service approval**

- (1) This section applies if the chief executive is considering the suspension of a service approval under section 76.
- (2) The chief executive must give the approved provider a notice (a *show cause notice*) stating the following—
- (a) that the chief executive intends to suspend the service approval;
  - (b) the proposed period of suspension;
  - (c) the reasons for the proposed suspension;
  - (d) that the approved provider may, within 30 days after the notice is given, give the chief executive a written response to the proposed suspension.

#### **78 Decision about suspension after show cause notice**

After considering any written response from the approved provider received within the period mentioned in section 77(2)(d), the chief executive may—

- (a) suspend the service approval for a period of not more than 12 months; or
- (b) decide not to suspend the service approval.

*Note—*

See section 211 (Reviewable decisions).

## **79 Suspension of service approval without show cause notice**

- (1) This section applies if the chief executive is satisfied there is an immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by a QEC approved service operated by an approved provider.
- (2) The chief executive may suspend the approved provider's service approval on a ground mentioned in section 76 without giving the approved provider a show cause notice under section 77.
- (3) The suspension may not be for a period of more than 6 months.

*Note—*

See section 211 (Reviewable decisions).

## **80 Notice and taking effect of suspension**

- (1) The chief executive must give the approved provider notice of the decision to suspend the provider's service approval.
- (2) The notice of a decision to suspend must set out the period of suspension and the date on which it takes effect.
- (3) The decision under section 78 to suspend takes effect at the end of 14 days after the date of the decision, or, if a longer period is stated by the chief executive, at the end of that period.
- (4) The decision under section 79 to suspend takes effect when the notice is given to the approved provider.

## **81 Lifting of suspension**

- (1) The chief executive may, on application by an approved provider, lift the suspension of the provider's service approval before the suspension would otherwise end.
- (2) The application must be in the approved form and be accompanied by any fee prescribed under a regulation.

## **82 Grounds for cancellation of service approval**

The chief executive may cancel a service approval if—

- (a) the chief executive reasonably believes the continued operation of the QEC service would constitute an unacceptable risk to the safety, health or wellbeing of any child or class of children being educated and cared for by the QEC service; or
- (b) the approval has been suspended under this division and the reason for the suspension has not been rectified by the end of the period of suspension; or
- (c) the service approval was obtained improperly; or
- (d) the approved provider has failed to comply with a compliance notice and the noncompliance is substantial; or
- (e) a condition of the service approval has not been complied with.

## **83 Show cause notice before cancellation of service approval**

- (1) This section applies if the chief executive is considering the cancellation of a service approval under section 82.
- (2) The chief executive must first give the approved provider a notice (a *show cause notice*) stating the following—
  - (a) that the chief executive intends to cancel the service approval;
  - (b) the reasons for the proposed cancellation;

- (c) that the approved provider may, within 30 days after the notice is given, give the chief executive a written response to the proposed cancellation.

#### **84 Decision about cancellation of service approval**

- (1) After considering any written response from the approved provider received within the time allowed under section 83(2)(c), the chief executive—
  - (a) may—
    - (i) cancel the service approval; or
    - (ii) suspend the service approval for a period of not more than 12 months; or
    - (iii) decide not to cancel the service approval; and
  - (b) must give the approved provider notice of the decision.
- (2) The decision to cancel the service approval takes effect at the end of 14 days after the date of the decision or, if a longer period is stated by the chief executive, at the end of that period.
- (3) The notice of a decision to cancel or suspend the service approval must state the date on which it takes effect.
- (4) This Act applies to a suspension of a service approval under this section as if it were a suspension under section 78.

#### **85 Application for transfer of cancelled service approval**

- (1) An approved provider may apply to the chief executive for consent to transfer a service approval that is to be cancelled under this division.
- (2) The application for consent to transfer must be made within 14 days after the decision to cancel the service approval is made.
- (3) If an application for consent to transfer is made, the cancellation of the service approval does not take effect, and

the service approval is suspended, until the chief executive decides the application.

## **86 Decision on application to transfer cancelled service**

- (1) If the chief executive consents to the transfer—
  - (a) the decision to cancel the service approval is revoked; and
  - (b) the suspension of the service approval ceases on the transfer taking effect, unless the conditions imposed by the chief executive on the consent to the transfer state a later date for the suspension to cease.
- (2) If the chief executive refuses to consent to the transfer, the service approval is cancelled on the making of the decision to refuse to consent.

## **87 Approved provider to provide information to chief executive**

- (1) This section applies if a show cause notice has been given to an approved provider under section 77 or 83.
- (2) The approved provider, at the request of the chief executive, must, within 7 days of the request, provide the chief executive with the contact details of the parents of all children enrolled at the QEC approved service operated by the approved provider.
- (3) The chief executive may use the information provided under subsection (2) only to notify the parents of children enrolled at the QEC approved service of a suspension or cancellation of the service approval for the service.

## **88 Approved provider to give notice to parents of suspension or cancellation of service approval**

- (1) This section applies if the chief executive gives a notice to an approved provider suspending or cancelling the provider's service approval under section 78, 79 or 84.

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

Maximum penalty—5 penalty units.

- (3) As soon as practicable after receiving the notice, the approved provider must give notice of the suspension or cancellation to a parent of each child to whom education and care is regularly provided in the course of the QEC approved service.
- (4) A notice given under subsection (3) must include the reasons given in the chief executive's notice for suspending or cancelling the approved provider's service approval.
- (5) Subsection (3) does not apply for a parent or carer who the provider can not locate after making reasonable enquiries.
- (6) If an approved provider's service approval is suspended, the provider must display a notice at the QEC service, for the period of the suspension, stating the approval has been suspended.
- (7) If an approved provider's service approval is cancelled, the provider must display a notice at the QEC service, until at least the day on which the cancellation takes effect, stating the approval has been cancelled.
- (8) 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.

## **89 Voluntary suspension of service approval**

- (1) An approved provider may apply to the chief executive for a suspension of the provider's service approval for a period of not more than 12 months.
- (2) The application must be in the approved form and be accompanied by the prescribed fee.

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- (3) The approved provider must, at least 14 days before making an application under this section, notify the parents of children enrolled at the relevant QEC service of the intention to make the application.
- (4) The chief executive must, within 30 days after the application is made, decide whether or not to grant the application.
- (5) The chief executive may grant the application only if the suspension is reasonable in all the circumstances.
- (6) The chief executive must give notice of its decision, including the period of suspension, to the approved provider.
- (7) If the chief executive decides to grant the application, the suspension takes effect on a date agreed between the chief executive and the approved provider.
- (8) A suspension under this section remains in force for the period of time stated in the notice.
- (9) The approved provider may apply to the chief executive to revoke the suspension before the end of the suspension period.
- (10) If the chief executive grants the application to revoke the suspension, the suspension ends on the date determined by agreement with the approved provider.

## **90 Approved provider may surrender service approval**

- (1) An approved provider may surrender a service approval held by the provider by notice to the chief executive.
- (2) The notice must state a date on which the surrender is intended to take effect which must be—
  - (a) after the notice is given; and
  - (b) after the end of the period of notice required under subsection (3).
- (3) The approved provider must notify the parents of children enrolled at the relevant QEC service of the intention to surrender the provider approval at least 14 days before the surrender is intended to take effect.



- (4) If a service approval is surrendered, the approval is cancelled on the date stated in the notice.

*Note—*

A cancelled service approval can not be transferred—see part 3, division 5.

## **Division 7                      Chief executive to give information about disciplinary action to chief executive (employment screening)**

### **91                      Chief executive to give information to chief executive (employment screening)**

- (1) This section applies if the chief executive—
- (a) amends, suspends or cancels a provider approval or service approval under this Act (a *disciplinary action*); and
  - (b) reasonably believes the disciplinary action may be relevant to the functions or powers of the chief executive (employment screening) under the Working with Children Act.
- (2) The chief executive must give notice of the disciplinary action to the chief executive (employment screening).
- (3) A notice under subsection (2) must state the following—
- (a) the approved provider's name and address;
  - (b) the approved provider's date and place of birth, if known;
  - (c) that disciplinary action has been taken against the approved provider, without stating anything further about the disciplinary action.
- (4) Subsection (5) applies if the chief executive (employment screening)—
- (a) requests further information about the disciplinary action; and

- (b) notifies the chief executive that the approved provider—
  - (i) holds a working with children authority or negative notice; or
  - (ii) has made a working with children check application.
- (5) The chief executive must give the chief executive (employment screening) a notice stating the following—
  - (a) the form of the disciplinary action taken;
  - (b) when the conduct happened that constituted a ground for the disciplinary action;
  - (c) the nature of the conduct that constituted a ground for the disciplinary action;
  - (d) any other information about the disciplinary action the chief executive considers may be relevant to employment screening under the Working with Children Act, chapter 8, including, for example, details about the nature of the disciplinary action.
- (6) However, if the notice given under subsection (2) did not contain the approved provider's date and place of birth, subsection (5) applies only if—
  - (a) the request from the chief executive (employment screening) for the notice under subsection (5) includes the approved provider's date and place of birth; and
  - (b) the chief executive confirms the approved provider's date and place of birth with the approved provider.
- (7) A notice given under subsection (2) or (5) must not contain information that identifies, or is likely to identify, a particular child.
- (8) If the chief executive gives the chief executive (employment screening) information under subsection (5) about disciplinary action and the disciplinary action is set aside on review or appeal, the chief executive must notify the chief executive (employment screening) of the following—
  - (a) the disciplinary action has been set aside;

- (b) the reasons given by the entity that set the disciplinary action aside for setting it aside.
- (9) A reference in this section to an approved provider includes a person who was an approved provider before the suspension or cancellation of the person's provider approval.

## **Division 8                      Application for service waiver**

### **92            Application for service waiver for QEC approved service**

- (1) The approved provider for a QEC approved service may apply to the chief executive for a waiver of a requirement applying to the service under this Act if the requirement is prescribed under a regulation for this section.
- (2) A person who applies for a service approval may apply for a service waiver under this section together with the application for the service approval.
- (3) The chief executive must not grant a service waiver to a person who applies under subsection (2) unless the service approval is granted to that person.

### **93            Form of application for service waiver**

An application for a service waiver must be in the approved form and accompanied by any fee prescribed under a regulation.

### **94            Chief executive may request information and inspect premises**

For deciding an application for a service waiver, the chief executive may—

- (a) ask the applicant to provide further information; and
- (b) inspect the QEC service premises.

## **95 Matters chief executive may consider for service waiver**

In considering whether to grant a service waiver, the chief executive may have regard to whether the QEC service is able to meet the requirements prescribed under this Act by alternative means that satisfy the objectives of the requirements.

## **96 Decision on application**

- (1) The chief executive must decide the application by granting, or refusing to grant, the service waiver.
- (2) Subject to subsection (3), the chief executive must notify the applicant of the chief executive's decision within 60 days after the application is made.
- (3) If an application for a service waiver has been made together with an application for service approval, the chief executive may notify the applicant of the chief executive's decision on the application at the same time as the notice of the decision on the application for the service approval.
- (4) If a service waiver is granted, the chief executive must issue or reissue the service approval stating the requirements prescribed under this Act to which the service waiver applies.

## **97 Revocation of service waiver**

- (1) The chief executive may revoke a service waiver if the chief executive considers the approved provider is not meeting the requirements prescribed under this Act by alternative means that satisfy the objectives of the requirements.
- (2) A revocation under subsection (1) takes effect—
  - (a) 60 days after the chief executive gives the approved provider notice of the decision to revoke; or
  - (b) at the end of the period agreed between the chief executive and the approved provider.

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- (3) An approved provider may apply to the chief executive in the approved form for the revocation of a service waiver applying to a QEC approved service the provider operates.
  - (4) A revocation under subsection (3) takes effect—
    - (a) 14 days after the chief executive gives the approved provider notice that the provider's application to revoke is approved; or
    - (b) at the end of the period agreed between the chief executive and the approved provider.

## **98 Effect of service waiver**

While a service waiver is in force, the QEC approved service is taken to comply with the requirements prescribed under this Act that are stated in the service waiver.

## **Division 9 Temporary waiver**

### **99 Application for temporary waiver for QEC approved service**

- (1) The approved provider for a QEC approved service may apply to the chief executive for a temporary waiver of a requirement applying to the service under this Act if the requirement is prescribed under a regulation for this section.
- (2) A person who applies for a service approval may apply for a temporary waiver under this section together with the application for the service approval.
- (3) The chief executive must not grant a temporary waiver to a person who applies under subsection (2) unless the service approval is granted to that person.

### **100 Form of application for temporary waiver**

An application for a temporary waiver must be in the approved form and accompanied by any fee prescribed under a regulation.

### **101 Chief executive may request information and inspect premises**

For deciding an application for a temporary waiver, the chief executive may—

- (a) ask the applicant to provide further information; and
- (b) inspect the QEC service premises.

### **102 Matters chief executive must consider for temporary waiver**

In considering whether to grant a temporary waiver, the chief executive must have regard to whether the QEC service is able to meet the requirements prescribed under this Act by alternative means that satisfy the objectives of the requirements.

### **103 Decisions on application for temporary waiver**

- (1) The chief executive must decide the application by granting, or refusing to grant, the temporary waiver.
- (2) The chief executive must notify the applicant within 60 days after the application is made of the chief executive's decision.
- (3) A temporary waiver must specify the period of the waiver which can not be for more than 12 months.
- (4) If the chief executive grants a temporary waiver, the chief executive must issue or reissue the service approval stating—
  - (a) the requirements of this Act to which the temporary waiver applies; and
  - (b) the period of the waiver.

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**104 Chief executive may extend temporary waiver on application**

The chief executive, on the application by the approved provider in approved form, may extend and further extend the period of a temporary waiver by periods of not more than 12 months.

**105 Revocation of temporary waiver**

The chief executive may revoke a temporary waiver if the chief executive considers the approved provider is not meeting the requirements prescribed under this Act by alternative means that satisfy the objectives of the requirements.

**106 Effect of temporary waiver**

While a temporary waiver is in force, the QEC approved service is taken to comply with the requirements prescribed under this Act that are stated in the temporary waiver.

**Division 10 Offences**

**107 Person must not provide an education and care service without service approval**

- (1) A person must not provide regulated education and care to 7 or more children at the same time unless—
- (a) the person is an approved provider for the service at which the regulated education and care is provided; and
  - (b) the service is a QEC approved service.

Maximum penalty—

- (a) for a first offence—100 penalty units; or
  - (b) for a second or later offence—200 penalty units.
- (2) For subsection (1), it does not matter whether or not the children are at the same place.

**108 Person must not advertise QEC service without service approval**

- (1) A person must not knowingly publish or cause to be published an advertisement for a QEC service unless it is a QEC approved service.

Maximum penalty—50 penalty units.

- (2) Subsection (1) does not apply if an application for a service approval for the service has been made under this Act but has not been decided.
- (3) Also, subsection (1) does not apply to a stand-alone service.

**Part 4 Conduct of QEC approved services**

**Division 1 General**

**109 Approved provider's overriding responsibility**

An approved provider must conduct a QEC approved service in a way that—

- (a) has sufficient regard to the guiding principles for this Act; and
- (b) ensures the safety, health and wellbeing, at all times, of the children being educated and cared for by the service.



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## **Division 2            Staff members**

### **Subdivision 1        Staffing requirements**

#### **110    Standard requirements**

- (1) A regulation must prescribe standard requirements about each of the following matters—
  - (a) the presence of suitably qualified staff members at QEC service premises;
  - (b) related matters about adult supervision of the children attending the service.
- (2) The standard requirements must include—
  - (a) requirements applying to a QEC approved service during a rest period; and
  - (b) requirements applying to a QEC approved service at all other times it is conducted on a day between 5.00a.m. and 10.00p.m.

#### **111    Requirements applying to a service**

- (1) An approved provider of a QEC approved service must ensure the standard requirements are complied with at all times the service is conducted on a day between 5.00a.m. and 10.00p.m.  
Maximum penalty—100 penalty units.
- (2) If a QEC approved service is conducted for a period between 10.00p.m. on a day and 5.00a.m. on the next day, the requirements applying to the service during the period are the requirements stated in its service approval conditions.
- (3) This section does not prevent other requirements relating to the matters mentioned in section 110, as well as the requirements mentioned in this section, from applying to a QEC approved service under its service approval conditions or a regulation.

## **112 Rest periods**

- (1) A service approval for a QEC approved service may include a condition providing for one or more periods during a day, totalling not more than 2 hours during the day, to be rest periods for the service.
- (2) An application under this Act for a service approval, an amendment of a service approval or an exceptional circumstances service approval may include a request for a condition under subsection (1).
- (3) The chief executive must have regard to the matters under subsection (4) in deciding—
  - (a) whether to include a condition under subsection (1) in a service approval; or
  - (b) if the chief executive decides to include the condition—the timing and length of a rest period.
- (4) The matters are—
  - (a) the ages of the children being provided with education and care and the times they will usually be resting; and
  - (b) the service capacity of the QEC service; and
  - (c) how the physical layout of the QEC service premises 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) any other matters prescribed under a regulation.
- (5) Subsections (3) and (4) do not limit part 3, division 2.

## **113 Supervisor for QEC approved service**

- (1) The purpose of this section is to ensure one or more suitably qualified persons are present at a QEC approved service for long enough to properly carry out the function of a supervisor.

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- (2) The function of a supervisor is to carry out, or oversee the carrying out of, the following responsibilities for the service—
- (a) preparing and maintaining policies under this Act;
  - (b) helping communication between staff and parents;
  - (c) ensuring children are adequately supervised at all times;
  - (d) taking every reasonable precaution to ensure children being educated and cared for are protected from harm and from any hazard likely to cause injury;
  - (e) ensuring the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose;
  - (f) ensuring each educator educating and caring for the children meets the qualification requirements.

*Note—*

The matters mentioned in paragraphs (e) and (f) are requirements that may be waived under a service waiver or temporary waiver.

- (3) The approved provider for a QEC approved service must appoint a supervisor for the service.
- (4) The approved provider must ensure—
- (a) a supervisor is present at the service for the times prescribed under a regulation; and
  - (b) for the times prescribed under a regulation when a supervisor is not present at the service—an adult, with the qualifications, experience or other characteristics prescribed under a regulation, is present at the service.

Maximum penalty—40 penalty units.

- (5) Subsection (4) does not apply to—
- (a) a school age care service; or
  - (b) a QEC approved service with a capacity that is not more than 30 for any part of the day.

## **114 Appointment of nominee**

- (1) An approved provider must—
  - (a) appoint, and continue to have, a nominee for each QEC approved service for which the provider holds a service approval; and
  - (b) notify the chief executive in writing of the appointment of nominee.

Maximum penalty—10 penalty units.

- (2) An approved provider may notify the chief executive of the nominee's appointment in the provider's application for a service approval.
- (3) A nominee must be an adult.
- (4) An approved provider may appoint a supervisor at the approved service to be nominee.

## **115 Purpose and effect of appointment of nominee**

- (1) The purpose of requiring an approved service to have a nominee is to help communication between the chief executive and the service.
- (2) The appointment of a nominee for an approved service does not affect the approved provider's responsibility to ensure the approved service is conducted in compliance with this Act.
- (3) If this Act requires or permits the chief executive to give a notice to an approved provider, the chief executive may give the notice to the approved provider by giving it to a nominee for the provider's approved service.

## **116 Presence of at least 2 adult staff members**

- (1) This section applies to an approved provider of a QEC approved service at all times that education and care is being provided at the QEC service premises in the course of delivering the service.

- (2) If the service is not a school age care service, the approved provider must ensure that at least 2 adult staff members are present at the premises.

Maximum penalty—40 penalty units.

- (3) If the service is a school age care service, the approved provider must ensure that, at all times, at least—
- (a) 2 adult staff members are present at the premises; or
  - (b) one adult staff member is present at the premises and one other adult staff member is near the premises and able to attend at the premises immediately if required.

Maximum penalty—40 penalty units.

- (4) An approved provider is taken to comply with subsections (2) and (3)(a) if—
- (a) 1 of the staff members is at least 18 years of age; and
  - (b) the other staff member is a staff member who is at least 17 years of age and is an educator; and
  - (c) the staff member mentioned in paragraph (a) supervises the staff member mentioned in paragraph (b).
- (5) An approved provider is taken to comply with subsection (3)(b) if—
- (a) 1 of the staff members is at least 18 years of age; and
  - (b) the other staff member is a staff member who is at least 17 years of age and is an educator; and
  - (c) the staff member mentioned in paragraph (a) is present at the premises at all times; and
  - (d) the staff member mentioned in paragraph (a) supervises the staff member mentioned in paragraph (b).

## Subdivision 2      **Qualifications, training and study**

### **117      Certain unqualified person 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 a 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 QEC approved service.

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

### **118      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

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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.

## **119 Evidence of staff qualifications or enrolment**

- (1) This section applies if—
- (a) a person who is a staff member of a QEC approved service—
    - (i) has a particular qualification or competency; or
    - (ii) is enrolled in a particular course of study; and
  - (b) the approved provider would contravene this Act if—
    - (i) for a person mentioned in paragraph (a)(i)—the person did not have the qualification or competency; or
    - (ii) for a person mentioned in paragraph (a)(ii)—the person was not enrolled in the course.
- (2) The approved provider must keep a document that is, under subsection (3), evidence that—
- (a) for a person mentioned in subsection (1)(a)(i)—the person has the qualification of competency; or
  - (b) for a person mentioned in subsection (1)(a)(ii)—the person is enrolled in the course.

Maximum penalty—5 penalty units.

- (3) For this Act—
- (a) a document is evidence that a person has a particular qualification or competency if it is an original award, or a certified copy of an original award, issued to the person on obtaining the qualification or completing the training for the competency; and
  - (b) a document is evidence that a person is enrolled in a particular course of study if it is a document, or a

certified copy of a document, issued to the person by the institution conducting the course, indicating that the person is enrolled in the course.

(4) In this section—

*certified copy*, of an original award or a document, is copy certified to be a true copy by a justice, commissioner for declarations, notary public or lawyer.

## **Division 3                    Other requirements**

### **120    Required programs for children**

- (1) The approved provider of a QEC approved service must ensure a program is delivered to all children being educated and cared for by the service that is—
  - (a) based on an approved learning framework; and
  - (b) delivered in a manner that accords with the approved learning framework; and
  - (c) based on the developmental needs, interests and experiences of each child; and
  - (d) designed to take into account the individual differences of each child.
- (2) A regulation may make provision about programs, including, for example, by imposing requirements about the following—
  - (a) an approved learning framework;
  - (b) the contents of a program;
  - (c) keeping records about programs;
  - (d) monitoring the operation of programs and reviewing their content;
  - (e) giving information about programs to parents.



## **121 Children must be adequately supervised**

The approved provider of a QEC approved service must ensure all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of the service.

Maximum penalty—100 penalty units.

*Note—*

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 233, to have also committed the offence.

## **122 Children must be protected from harm and hazards**

The approved provider of a QEC approved service must ensure every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury.

Maximum penalty—100 penalty units.

*Note—*

If a corporation commits an offence against this provision, each executive officer of the corporation may be taken, under section 233, to have also committed the offence.

## **123 Display of prescribed information**

An approved provider must ensure the following information is displayed at the QEC service premises, so that it is clearly visible from the main entrance to the premises—

- (a) information about a provider approval prescribed under a regulation for this section;
- (b) information about a service approval prescribed under a regulation for this section;
- (c) the name of the supervisor at any given time education and care is being provided at the service;
- (d) information about a service waiver or temporary waiver prescribed under a regulation for this section;

- (e) other information prescribed under a regulation for this section.

Maximum penalty—10 penalty units.

## **124 Failure to notify chief executive of certain changes**

- (1) An approved provider must give the chief executive notice under subsection (2) if—
  - (a) there is a change to the approved provider's name; or
  - (b) a person with management or control of a QEC approved service operated by the approved provider is appointed or removed; or
  - (c) the provider does not start operating a QEC approved service within either—
    - (i) 6 months of the grant of the service approval for the service; or
    - (ii) any other period agreed between the provider and the chief executive.

Maximum penalty—10 penalty units.

*Note—*

Section 114 states that an approved provider must notify the chief executive about the appointment of a nominee.

- (2) The approved provider must give the notice within 7 days after the later of the following—
  - (a) the day on which an event mentioned in subsection (1) happens;
  - (b) the day on which the provider became aware that the event had happened.

## **125 Failure to notify chief executive of intention to transfer service approval**

If an approved provider intends to transfer a service approval under part 3, division 5, the provider must give the chief

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executive notice of the intention at least 42 days before the day on which the transfer is intended to take effect.

Maximum penalty—50 penalty units.

## **126 Failure to notify chief executive of change in suitability to operate QEC service**

- (1) An approved provider must give the chief executive notice, within 7 days of the required day—
  - (a) of any change relevant to whether the provider is a suitable person to operate a QEC approved service having regard to the matters stated in section 15; or
  - (b) if a person with management or control of a QEC approved service operated by the provider stops holding a working with children authority; or
  - (c) of a proposed change to any aspect of the QEC service premises of a QEC approved service; or
  - (d) if the provider stops operating a QEC approved service.

Maximum penalty—50 penalty units.

- (2) In this section—

*required day* means the later of the following days—

- (a) the day on which the event happens;
- (b) the day on which the approved provider becomes aware that the event has happened.

## **127 Failure to report serious incident, temporary closure incident, complaint or other prescribed matter**

- (1) This section applies if an approved provider becomes aware of any of the following in relation to a QEC approved service operated by the provider—
  - (a) a serious incident at the service;
  - (b) a temporary closure incident at the service;

- (c) a complaint alleging that—
    - (i) a child’s safety, health or wellbeing has been or is being compromised while the child was or is being provided with education and care at the service; or
    - (ii) a provision of this Act has been, or is being, contravened;
  - (d) any other matter prescribed by regulation.
- (2) The approved provider must give the chief executive notice of the incident, complaint or other matter—
- (a) for an incident or complaint—within 24 hours after becoming aware of the incident or complaint; or
  - (b) for another matter—within 7 days after becoming aware of the matter.

Maximum penalty—20 penalty units.

- (3) In this section—

***serious incident*** means an incident that is—

- (a) prescribed by regulation; or
- (b) a type of incident that is prescribed by regulation.

***temporary closure incident***, at a QEC approved service, means an incident that requires the approved provider operating the service to do either of the following for a period—

- (a) close the service;
- (b) reduce the number of children attending the service.

*Example—*

A flood or fire that requires the provider to close all or part of a QEC service premises at which the service operates while repairs are undertaken.

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## **Division 4                      Records**

### **128      Failure to retain records**

An approved provider must keep all records prescribed under a regulation for at least the period prescribed under a regulation.

Maximum penalty—20 penalty units.

### **129      Access to records**

- (1) An approved provider must allow a parent of a child, on request, to inspect a record kept by the approved provider 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.

### **130      Confidentiality of records**

- (1) An approved provider must keep a record of a QEC service operated by the provider that contains personal information about a child to whom the service is providing education and care in a way that ensures the only persons with access to the record are—
  - (a) an authorised person for the service; or
  - (b) a parent of the child; or
  - (c) the child.

Maximum penalty—10 penalty units.

- (2) An authorised person for a QEC approved service must not disclose personal information about a child obtained from a records of the service to anyone other than—
  - (a) another authorised person for the service; or
  - (b) a parent of the child; or

(c) the child.

Maximum penalty—10 penalty units.

- (3) However, subsections (1) and (2) do not apply if an approved provider allows access or an authorised person for the QEC approved service discloses information—
- (a) for a purpose under this Act; or
  - (b) with the consent of a parent of the child; or
  - (c) for a purpose directly related to the child’s protection or welfare; or
  - (d) for the purpose of complying with a lawful process requiring the production of documents or giving evidence before a court or tribunal; or
  - (e) under part 8, division 3, subdivision 2; or
  - (f) under another Act.

(4) In this section—

***authorised person***, for a QEC approved service, means—

- (a) the approved provider of the service; or
- (b) a staff member of the service.

***personal information relating to a child*** means information about the child’s health or special needs, or other information about a child, prescribed under a regulation.

***record of a QEC approved service*** means a record kept by the approved provider of the service that relates to the operation and the service, and includes a record mentioned in section 128.

### **131 Record keeping obligations when person stops being approved provider**

- (1) This section applies if a person (the ***old approved provider***) stops being the approved provider of a QEC approved service.

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- (2) This division continues to apply to the records (the *old records*) relating to the conduct of the QEC approved service under the service approval held by the old approved provider.
  - (3) If the service is no longer being conducted, a reference in this division to the approved provider of the service is a reference to the old approved provider.
  - (4) If the service continues to be conducted under a service approval held by someone else (the *new approved provider*)—
    - (a) a reference in this division to the approved provider of the service is, for the old records, a reference to the old approved provider; and
    - (b) for section 130, the new approved provider is an authorised person for the old records.

## Part 5 Stand-alone services

### 132 Person involved in conduct of, or provision of care for, stand-alone service must be an adult

- (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.

### 133 Suitability of other persons in home where stand-alone service operates

- (1) A carer in a stand-alone service must not provide a child with education and care in a home if—
  - (a) the carer knows, or ought reasonably to know, that a prohibition notice is in force for an occupant of the home; or

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- (b) there is a notice in force under section 190 directing the carer not to provide education and care for a child in the home.

Maximum penalty—50 penalty units.

- (2) A person conducting a stand-alone service must take all reasonable steps to ensure that each carer in the service complies with subsection (1).

Maximum penalty—100 penalty units.

### **134 Maximum number of children receiving care**

- (1) A person conducting a stand-alone service at a home or other place must ensure that—

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

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to—

- (a) a child who is being cared for at the home or other place by a person who is not a carer in the stand-alone service; or
- (b) school children who are being provided with care by a carer in the stand-alone service who is their parent; or
- (c) children who are at least 12 years and are not being provided with care.

### **135 Person must not conduct stand-alone service without insurance**

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

Maximum penalty—40 penalty units.



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## Part 6 Monitoring and enforcement

### Division 1 Interpretation

#### 136 Definitions for pt 6

In this part—

*authorised officer* means a person who holds office under this part as an authorised officer.

*court* means a Magistrates Court.

*electronic document* means a document of a type under the *Acts Interpretation Act 1954*, section 36, definition *document*, paragraph (c).

*former owner* see section 172(1).

*general power* see section 157(1).

*help requirement* see section 158(1).

*identity card*, for a provision about authorised officers, means an identity card taken to be an identity card for this Act under section 140.

*information notice*, about a decision, means a notice stating the following—

- (a) the decision;
- (b) the reasons for it;
- (c) that the person to whom the notice is given may apply to the chief executive for a review of the decision within 20 business days after the person receives the notice;
- (d) how to apply for a review.

*information requirement* see section 181(3).

*occupier*, of a place, includes the following—

- (a) if there is more than one person who apparently occupies the place—any one of the persons;

- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

*of*, a place, includes at or on the place.

*offence warning*, for a direction or requirement by an authorised officer, means a warning that, without a reasonable excuse, it is an offence for the person to whom the direction is given or of whom the requirement is made not to comply with it.

*owner*, for a thing that has been seized under this Act, includes a person who would be entitled to possession of the thing had it not been seized.

*personal details requirement* see section 175(5).

*person in control*, of a thing, includes anyone who reasonably appears to be, claims to be, or acts as if he or she is, the person in possession or control of the thing.

*place* includes the following—

- (a) premises;
- (b) vacant land;
- (c) a place in Queensland waters;
- (d) a place held under more than one title or by more than one owner;
- (e) the land or water where a building or structure, or a group of buildings or structures, is situated.

*premises* includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) a caravan or vehicle; and
- (d) a cave or tent; and

- (e) premises held under more than one title or by more than one owner.

**public place** means—

- (a) a place, or part of the place—
- (i) the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or

*Examples of a place that may be a public place under subparagraph (i)—*

a beach, a park, a road

- (ii) the occupier of which allows, whether or not on payment of money, members of the public to enter; or

*Examples of a place that may be a public place under subparagraph (ii)—*

a saleyard, a show ground

- (b) a place that is a public place under another Act.

**reasonably believes** means believes on grounds that are reasonable in the circumstances.

**reasonably suspects** means suspects on grounds that are reasonable in the circumstances.

**vehicle**—

- (a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and
- (b) includes a vessel under that Act.

## **Division 2                    General provisions about authorised officers**

### **Subdivision 1            Functions and appointment**

#### **137    Functions of authorised officers**

An authorised officer has the following functions—

- (a) to investigate, monitor and enforce compliance with this Act;
- (b) to investigate or monitor whether an occasion has arisen for the exercise of powers under this Act;
- (c) to facilitate the exercise of powers under this Act.

#### **138    Appointment of authorised officer**

An authorised officer authorised under the Education and Care Services National Law (Queensland), section 195—

- (a) is taken to be an authorised officer for this Act; and
- (b) holds office on the terms and conditions stated in the authorisation under that section.

#### **139    When office ends**

The office of a person as an authorised officer ends if the person stops being an authorised officer under the Education and Care Services National Law (Queensland).

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## **Subdivision 2      Identity cards**

### **140      Issue of identity card**

An identity card issued to an authorised officer under the Education and Care Services National Law (Queensland), section 196 is taken to be an identity card for this Act.

### **141      Production or display of identity card**

- (1) In exercising a power in relation to a person in the person's presence, an authorised officer must—
  - (a) produce the authorised 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 authorised officer has entered a place as mentioned in section 144(1)(b) or (d).

## **Subdivision 3      Miscellaneous provisions**

### **142      References to exercise of powers**

If—

- (a) a provision of this part refers to the exercise of a power by an authorised officer; and
- (b) there is no reference to a specific power;

the reference is to the exercise of all or any authorised officers' powers under this part or a warrant, to the extent the powers are relevant.

### **143 Reference to document includes reference to reproductions from electronic document**

A reference in this part to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or
- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

## **Division 3 Entry of places by authorised officers**

### **Subdivision 1 Power to enter**

#### **144 General power to enter places**

- (1) An authorised officer may enter a place if—
  - (a) an occupier at the place consents under subdivision 2 to the entry and section 147 has been complied with for the occupier; or
  - (b) it is a public place and the entry is made when the place is open to the public; or
  - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 154 has been complied with for the occupier; or
  - (d) it is a QEC service and entry is made when education and care is being provided at the place under a service approval; or
  - (e) it is not a home and the entry is made when the place is open for the conduct of business.
- (2) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any

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conditions of the consent and ceases if the consent is withdrawn.

- (3) If the power to enter is under a warrant, the power is subject to the terms of the warrant.

## **Subdivision 2      Entry by consent**

### **145      Application of sdiv 2**

This subdivision applies if an authorised officer intends to ask an occupier of a place to consent to the authorised officer or another authorised officer entering the place under section 144(1)(a).

### **146      Incidental entry to ask for access**

For the purpose of asking the occupier for the consent, an authorised officer may, without the occupier's consent or a warrant—

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

### **147      Matters authorised officer must tell occupier**

Before asking for the consent, the authorised officer must give a reasonable explanation to the occupier—

- (a) about the purpose of the entry, including the powers intended to be exercised; and
- (b) that the occupier is not required to consent; and
- (c) that the consent may be given subject to conditions and may be withdrawn at any time.

## **148 Consent acknowledgement**

- (1) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
  - (a) the purpose of the entry, including the powers to be exercised; and
  - (b) the following has been explained to the occupier—
    - (i) the purpose of the entry, including the powers intended to be exercised;
    - (ii) that the occupier is not required to consent;
    - (iii) that the consent may be given subject to conditions and may be withdrawn at any time; and
  - (c) the occupier gives the authorised officer or another authorised officer consent to enter the place and exercise the powers; and
  - (d) the time and day the consent was given; and
  - (e) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the authorised officer must immediately give a copy to the occupier.
- (4) If—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgement complying with subsection (2) 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.



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## **Subdivision 3      Entry under warrant**

### **149      Application for warrant**

- (1) An authorised officer may apply to a magistrate for a warrant for a place.
- (2) The authorised officer must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) 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 written application to be given by statutory declaration.

### **150      Issue of warrant**

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting that there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against this Act.
- (2) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) that a stated authorised officer or any authorised officer may with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry to the place; and
    - (ii) exercise the authorised officer's powers; and
  - (c) particulars of the offence that the magistrate considers appropriate; and

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- (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
- (e) the evidence that may be seized under the warrant; and
- (f) the hours of the day or night when the place may be entered; and
- (g) the magistrate's name; and
- (h) the day and time of the warrant's issue; and
- (i) the day, within 14 days after the warrant's issue, the warrant ends.

### **151 Electronic application**

- (1) An application under section 149 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised officer reasonably considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the authorised officer's remote location.
- (2) The application—
  - (a) may not be made before the authorised officer prepares the written application under section 149(2); but
  - (b) may be made before the written application is sworn.

### **152 Additional procedure if electronic application**

- (1) For an application made under section 151, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under section 151; and

- (b) the way the application was made under section 151 was appropriate.
- (2) After the magistrate issues the original warrant—
- (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised officer, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised officer; or
  - (b) otherwise—
    - (i) the magistrate must tell the authorised officer the information mentioned in section 150(2); and
    - (ii) the authorised officer must complete a form of warrant, including by writing on it the information mentioned in section 150(2) provided by the magistrate.
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (4) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
- (a) the written application complying with section 149(2) and (3); and
  - (b) if the authorised officer completed a form of warrant under subsection (2)(b)—the completed form of warrant.
- (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—
- (a) attach the documents to the original warrant; and
  - (b) give the original warrant and documents to the clerk of the court of the relevant Magistrates Court.
- (6) Despite subsection (3), if—

[s 153]

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- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
  - (b) the original 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 warrant authorised the exercise of the power.
- (7) This section does not limit section 149.
  - (8) In this section—  
*relevant Magistrates Court*, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

### **153 Defect in relation to a warrant**

- (1) A warrant is not invalidated by a defect in—
  - (a) the warrant; or
  - (b) compliance with this subdivision;unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—  
*warrant* includes a duplicate warrant mentioned in section 152(3).

### **154 Entry procedure**

- (1) This section applies if an authorised officer is intending to enter a place under a warrant issued under this subdivision.
- (2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person who is an occupier of the place and is present by producing the authorised officer's identity card or another document evidencing the authorised officer's appointment;

- (b) give the person a copy of the warrant;
  - (c) tell the person the authorised officer is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.
- (3) However, the authorised officer need not comply with subsection (2) if the authorised officer believes on reasonable grounds that entry to the place is required to ensure the execution of the warrant is not frustrated.
- (4) In this section—  
*warrant* includes a duplicate warrant mentioned in section 152(3).

## **155 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 comply with section 141.
- (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 4 General powers of authorised officers after entering places**

### **156 Application of sdiv 4**

- (1) The power under this subdivision may be exercised if an authorised officer enters a place under section 144(1)(a), (c), (d) or (e).
- (2) However, if the authorised officer enters under section 144(1)(a) or (c), the powers under this subdivision are subject to any conditions of the consent or terms of the warrant.

## **157 General powers**

- (1) The authorised officer may do any of the following (each a *general power*)—
  - (a) search any part of the place;
  - (b) inspect, examine or film any part of the place or anything at the place;
  - (c) take for examination a thing, or a sample of or from a thing, at the place;
  - (d) place an identifying mark in or on anything at the place;
  - (e) take an extract from, or copy, a document at the place, or take the document to another place to copy;
  - (f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;
  - (g) take to, into or onto the place and use any person, equipment and materials the authorised officer reasonably requires for exercising the authorised officer's powers under this subdivision;
  - (h) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The authorised officer may take a necessary step to allow the exercise of a general power.
- (3) If the authorised officer takes a document from the place to copy it, the authorised officer must copy and return the document to the place as soon as practicable.
- (4) If the authorised officer takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the authorised officer must produce the document and return the article or device to the place as soon as practicable.
- (5) In this section—

*examine* includes analyse, test, account, measure, weigh, grade, gauge and identify.

*film* includes photograph, videotape and record an image in another way.

*inspect*, a thing, includes open the thing and examine its contents.

### **158 Power to require reasonable help**

- (1) The authorised officer may make a requirement (a *help requirement*) of an occupier of the place or a person at the place to give the authorised officer reasonable help to exercise a general power, including, for example, to produce a document or to give information.
- (2) When making the help requirement, the authorised officer must give the person an offence warning for the requirement.

### **159 Offence to contravene help requirement**

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.
- (3) However, subsection (2) does not apply if a document or information the subject of the help requirement is required to be held or kept by the defendant under this Act.

## **Division 4                    Seizure by authorised officers and forfeiture**

### **Subdivision 1            Power to seize**

#### **160    Seizing evidence at a place that may be entered without consent or warrant**

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

#### **161    Seizing evidence at a place that may be entered only with consent or warrant**

- (1) This section applies if—
  - (a) an authorised officer is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
  - (b) the authorised officer enters the place after obtaining the consent or under a warrant.
- (2) If the authorised officer enters the place with the occupier's consent, the authorised officer may seize a thing at the place only if—
  - (a) the authorised 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 explained to the occupier when asking for the occupier's consent.
- (3) If the authorised officer enters the place under a warrant, the authorised officer may seize the evidence for which the warrant was issued.



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- (4) The authorised officer may also seize anything else at the place if the authorised 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—
      - (i) hidden, lost or destroyed; or
      - (ii) used to continue, or repeat, the offence.
  - (5) The authorised officer may also seize a thing at the place if the authorised officer reasonably believes it has just been used in committing an offence against this Act.

## **162 Seizure of property subject to security**

- (1) An authorised officer may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.
- (2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the authorised officer or a person acting for the authorised officer.

## **Subdivision 2 Powers to support seizure**

### **163 Requirement of person in control of thing to be seized**

- (1) To enable a thing to be seized, an authorised officer may require the person in control of it—
  - (a) to take it to a stated reasonable place by a stated reasonable time; and
  - (b) if necessary, to remain in control of it at the stated place for a stated reasonable period.
- (2) The requirement—
  - (a) must be made by notice; or

- (b) if for any reason it is not practicable to give a notice, may be made orally and confirmed by notice as soon as practicable.

## **164 Offence to contravene seizure requirement**

A person of whom a requirement is made under section 163 must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

## **165 Power to secure seized thing**

- (1) Having seized a thing under this division, an authorised officer may—
  - (a) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
  - (b) move it from the place of seizure.
- (2) For subsection (1)(a), the authorised officer may, for example—
  - (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
  - (b) for equipment—make it inoperable; or  
*Example—*
    - make it inoperable by dismantling it or removing a component without which the equipment can not be used
  - (c) require a person the authorised officer reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an authorised officer could do under subsection (1)(a).

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**166 Offence to contravene other seizure requirement**

A person must comply with a requirement made of the person under section 165(2)(c) unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

**167 Offence to interfere**

(1) If access to a seized thing is restricted under section 165, a person must not tamper with the thing or with anything used to restrict access to the thing without—

- (a) an authorised officer's approval; or
- (b) a reasonable excuse.

Maximum penalty—50 penalty units.

(2) If access to a place is restricted under section 165, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—

- (a) an authorised officer's approval; or
- (b) a reasonable excuse.

Maximum penalty—50 penalty units.

**Subdivision 3 Safeguards for seized things**

**168 Receipt and information notice for seized thing**

(1) This section applies if an authorised officer seizes anything under this division unless—

- (a) the authorised officer reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or

- (b) because of the condition, nature and value of the thing it would be unreasonable to require the authorised officer to comply with this section.
- (2) The authorised officer must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—
  - (a) a receipt for the thing that generally describes the thing and its condition; and
  - (b) an information notice about the decision to seize it.
- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.
- (4) The receipt and information notice may—
  - (a) be given in the same document; and
  - (b) relate to more than one seized thing.
- (5) The authorised officer may delay giving the receipt and information notice if the authorised officer reasonably suspects giving them may frustrate or otherwise hinder an investigation by the authorised officer under this Act.
- (6) However, the delay may be only for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

## **169 Access to seized thing**

- (1) Until a seized thing is forfeited or returned, the authorised officer who seized the thing must allow an owner of the thing—
  - (a) to inspect it at any reasonable time and from time to time; and
  - (b) 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.
- (3) The inspection or copying must be allowed free of charge.

## **170 Return of seized thing**

- (1) This section applies if a seized thing has some intrinsic value and is not forfeited or transferred under subdivision 4 or 5.
- (2) The authorised officer must return the seized thing to an owner—
  - (a) generally—at the end of 6 months after the seizure; or
  - (b) if a proceeding for an offence involving the thing is started within the 6 months—at the end of the proceeding and any appeal from the proceeding.
- (3) Despite subsection (2), if the thing was seized as evidence, the authorised officer must return the thing seized to an owner as soon as practicable after the authorised officer is satisfied—
  - (a) its continued retention as evidence is no longer necessary; and
  - (b) its continued retention is not necessary to prevent it being used to continue, or repeat, an offence against this Act; and
  - (c) it is lawful for the owner to possess it.
- (4) Nothing in this section affects a lien or other security over the seized thing.

## **Subdivision 4 Forfeiture**

### **171 Forfeiture by chief executive decision**

- (1) The chief executive may decide a seized thing is forfeited to the State if an authorised officer—
  - (a) after making reasonable enquiries, can not find an owner; or

- (b) after making reasonable efforts, can not return it to an owner.
  - (2) However, the authorised officer is not required to—
    - (a) make enquiries if it would be unreasonable to make enquiries to find an owner; or
    - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.
- Example for paragraph (b)—*
- the owner of the thing has migrated to another country
- (3) Regard must be had to the thing's condition, nature and value in deciding—
    - (a) whether it is reasonable to make enquiries or efforts; and
    - (b) if enquiries or efforts are made—what enquiries or efforts, including the period over which they are made, are reasonable.

## **172 Information notice about forfeiture decision**

- (1) If the chief executive decides under section 171(1) to forfeit a thing, the chief executive must as soon as practicable give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice about the decision.
- (2) The information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.
- (3) The information notice must state that the former owner may apply for a stay of the decision if he or she appeals against the decision.
- (4) However, subsections (1) to (3) do not apply if the place where the thing was seized is—
  - (a) a public place; or
  - (b) a place where the notice is unlikely to be read by the former owner.

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## **Subdivision 5      Dealing with property forfeited or transferred to State**

### **173      When thing becomes property of the State**

A thing becomes the property of the State if—

- (a) the thing is forfeited to the State under section 171(1);  
or
- (b) the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.

### **174      How property may be dealt with**

- (1) This section applies if, under section 173, a thing becomes the property of the State.
- (2) The chief executive may deal with the thing as the chief executive considers appropriate, including, for example, by destroying it or giving it away.
- (3) The chief executive must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under this part.
- (4) If the chief executive sells the thing, the chief executive may, after deducting the costs of the sale, return the proceeds of the sale to the former owner of the thing.

## **Division 5              Other information-obtaining powers**

### **175      Power to require name and address**

- (1) This section applies if an authorised officer—
  - (a) finds a person committing an offence against this Act; or
  - (b) finds a person in circumstances that lead the authorised officer to reasonably suspect the person has just committed an offence against this Act; or

- (c) has information that leads the authorised officer to reasonably suspect a person 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 also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—
  - (a) be in possession of evidence of the correctness of the stated name or address; or
  - (b) otherwise be able to give the evidence.
- (4) When making a personal details requirement, the authorised officer must give the person an offence warning for the requirement.
- (5) A requirement under this section is a *personal details requirement*.

### **176 Offence to contravene personal details requirement**

- (1) A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) A person may not be convicted of an offence under subsection (1) unless the person is found guilty of the offence in relation to which the personal details requirement was made.

### **177 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—



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- (a) an offence is being committed, or has just been committed, against section 132(1) or (2) in relation to a stand-alone 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 132(1) or (2) in relation to the stand-alone service in which it was suspected the person was a carer.

## **178 Power to require production of document**

- (1) An authorised officer may require a person to make available for inspection by an authorised officer, or to produce to the

authorised officer for inspection, at a reasonable time and place nominated by the authorised officer—

- (a) if the person is an approved provider for a QEC approved service—
    - (i) the service approval for the service; or
    - (ii) a document evidencing that the insurance cover required under section 49(2)(c) is in force; or
  - (b) 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 135 is in force; or
  - (c) if the person is conducting a QEC service—a working with children authority held by the person; or
  - (d) any other document issued to the person under this Act; or
  - (e) any other document required to be kept by the person under this Act; or
  - (f) if a document or information required to be kept by the person under this Act is stored or recorded by means of a device—a document that is a clear written reproduction of the stored or recorded document or information.
- (2) A requirement under subsection (1) is a ***document production requirement***.
  - (3) For an electronic document, compliance with the document production requirement requires the making available or production of a clear written reproduction of the electronic document.
  - (4) The authorised officer may keep the document to copy it.
  - (5) If the authorised officer copies the document, or an entry in the document, the authorised 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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- (6) A requirement under subsection (5) is a ***document certification requirement***.
  - (7) The authorised officer must return the document to the person as soon as practicable after copying it.
  - (8) However, if a document certification requirement is made of a person, the authorised officer may keep the document until the person complies with the requirement.

### **179 Offence to contravene document production requirement**

- (1) A person of whom a document production requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) Subject to subsection (3), it is a reasonable excuse for a person to fail to comply with a document production requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.
- (3) It is not a reasonable excuse for a person to fail to comply with a document production requirement for the following documents on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty—
  - (a) a document issued to the person under this Act;
  - (b) a document required to be kept by the person under this Act.

*Note*—

See, however, section 189.

- (4) The authorised officer must inform the person, in a way that is reasonable in the circumstances—
  - (a) that the person must comply with the document production requirement even though complying might tend to incriminate the person or expose the person to a penalty; and

- (b) that, under section 189, there is a limited immunity against the future use of the information or document given in compliance with the requirement.
- (5) If the person fails to comply with the document production requirement when the authorised officer has failed to comply with subsection (4), the person can not be convicted of the offence against subsection (1).
- (6) If a court convicts a person of an offence against subsection (1), the court may, as well as imposing a penalty for the offence, order the person to comply with the document production requirement.

## **180 Offence to contravene document certification requirement**

- (1) A person of whom a document certification requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is not a reasonable excuse for a person to fail to comply with a document certification requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

*Note—*

See, however, section 189.

- (3) The authorised officer must inform the person, in a way that is reasonable in the circumstances—
  - (a) that the person must comply with the document certification requirement even though complying might tend to incriminate the person or expose the person to a penalty; and
  - (b) that, under section 189, there is a limited immunity against the future use of the information or document given in compliance with the requirement.

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- (4) If the person fails to comply with the document certification requirement when the authorised officer has failed to comply with subsection (3), the person can not be convicted of the offence against subsection (1).

## **181 Power to require information**

- (1) This section applies if an authorised officer reasonably believes—
- (a) an offence against this Act 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 the authorised officer information related to the offence at a stated reasonable time and place.
- (3) A requirement under subsection (2) is an *information requirement*.
- (4) For information that is an electronic document, compliance with the information requirement requires the giving of a clear image or written version of the electronic document.
- (5) In this section—  
*information* includes a document.

## **182 Offence to contravene information requirement**

- (1) A person of whom an information requirement is made must comply with the requirement unless the person has a reasonable excuse.
- Maximum penalty—50 penalty units.
- (2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.

## **Division 6**                      **Miscellaneous provisions relating to authorised officers**

### **Subdivision 1**            **Damage**

#### **183**    **Duty to avoid inconvenience and minimise damage**

In exercising a power, an authorised officer must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

*Note—*

See also section 185 (Compensation).

#### **184**    **Notice of damage**

- (1) This section applies if—
  - (a) an authorised officer damages something when exercising, or purporting to exercise, a power; or
  - (b) a person (the *assistant*) acting under the direction or authority of an authorised officer damages something.
- (2) However, this section does not apply to damage the authorised officer reasonably considers is trivial or if the authorised officer reasonably believes—
  - (a) there is no-one apparently in possession of the thing; or
  - (b) the thing has been abandoned.
- (3) The authorised officer must give notice of the damage to the person who appears to the authorised officer to be an owner, or person in control, of the thing.
- (4) However, if for any reason it is not practicable to comply with subsection (3), the authorised officer must—
  - (a) leave the notice at the place where the damage happened; and

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- (b) ensure it is left in a conspicuous position and in a reasonably secure way.
  - (5) The authorised officer may delay complying with subsection (3) or (4) if the authorised officer reasonably suspects complying with the subsection may frustrate or otherwise hinder the performance of an authorised officer's functions.
  - (6) The delay may be only for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place.
  - (7) If the authorised officer believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the authorised officer or the assistant, the authorised officer may state the belief in the notice.
  - (8) The notice must state—
    - (a) particulars of the damage; and
    - (b) that the person who suffered the damage may claim compensation under section 185.

## **Subdivision 2 Compensation**

### **185 Compensation**

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an authorised officer including a loss arising from compliance with a requirement made of the person under this part.
- (2) However, subsection (1) does not include loss arising from a lawful seizure or lawful forfeiture.
- (3) The compensation may be claimed and ordered in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or

- (b) for an alleged offence against this Act the investigation of which gave rise to the claim for compensation.
- (4) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (5) In considering whether it is just to order compensation, the court must have regard to any relevant offence committed by the claimant.
- (6) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.
- (7) Section 183 does not provide for a statutory right of compensation other than is provided by this section.
- (8) In this section—  
*loss* includes costs and damage.

### **Subdivision 3      Other offences relating to authorised officers**

#### **186      Giving authorised officer false or misleading information**

- (1) A person must not, in relation to the administration of this Act, give an authorised officer information, or a document containing information, that the person knows is false or misleading in a material particular.  
Maximum penalty—50 penalty units.
- (2) Subsection (1) applies to information or a document given in relation to the administration of this Act whether or not the information or document was given in response to a specific power under this Act.



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**187 Obstructing authorised officer**

- (1) A person must not obstruct an authorised officer, or someone helping an authorised officer, exercising a power unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an authorised officer, or someone helping an authorised officer, and the authorised officer decides to proceed with the exercise of the power, the authorised officer must warn the person that—
- (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
- (b) the authorised officer considers the person’s conduct an obstruction.
- (3) In this section—

*obstruct* includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

**188 Impersonating authorised officer**

A person must not impersonate an authorised officer.

Maximum penalty—50 penalty units.

**Subdivision 4 Other provisions**

**189 Evidential immunity for individuals complying with particular requirements**

- (1) Subsection (2) applies if an individual gives or produces information or a document to an authorised officer under section 158 or 178.
- (2) Evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any

proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.

- (3) Subsection (2) does not apply to a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence.

## **Division 7                      Monitoring suitability of relevant persons**

### **190      Suitability of persons in home in which stand-alone education and care is provided**

- (1) An authorised officer may ask a carer who provides stand-alone education and care in a home to ensure a person makes a working with children check application if the officer knows, or reasonably suspects, the person is an occupant of the home.

*Note—*

See also the Working with Children Act, schedule 1, section 4(2).

- (2) When asking the carer to ensure the person makes the application, the authorised officer must warn the carer that, if the person does not make the working with children check application within 14 days, the officer may give a direction that education and care must not be provided in the home.
- (3) Subsection (4) applies if—
  - (a) the person does not make the working with children check application within 14 days; or
  - (b) the person makes the working with children check application within 14 days but it is withdrawn before it is decided.
- (4) The authorised officer may give a notice to the carer directing the carer not to provide education and care in the home.

*Note—*

Under section 133, it is an offence for a carer in a stand-alone service to provide education and care at a home if a notice under this section is in force.

- (5) If, at any time, an authorised officer learns that each occupant of a home in relation to whom a request has been made under subsection (1) holds a working with children authority, 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 enquiries, the officer can not locate the person.
- (7) This section applies only in relation to an occupant of a home who is an adult.

**191 Chief executive may obtain information about suitability checks**

- (1) This section applies to the following individuals—
  - (a) the approved provider of a QEC approved service;
  - (b) a carer in a stand-alone service;
  - (c) a supervisor, educator or staff member of a QEC service;
  - (d) a person with management or control of a QEC service;
  - (e) an adult occupant of a home in which stand-alone education and care is provided;
  - (f) an adult if a carer who provides stand-alone education and care in a home has been asked under section 190 to ensure the adult makes a working with children check application.
- (2) On receiving a written request from the chief executive, the chief executive (employment screening) must give the chief executive the following information about a stated individual mentioned in subsection (1)—

- (a) whether the individual has made a working with children check application and, if so—
    - (i) the date of the application; and
    - (ii) if the application has been withdrawn—the date of the withdrawal;
  - (b) whether the individual holds a working with children authority and, if so, the date of issue of the authority;
  - (c) whether a negative notice is in force for the individual and, if so, the date of issue of the notice;
  - (d) whether a working with children authority held by the individual has been cancelled and, if so, the date of the cancellation.
- (3) The chief executive (employment screening) 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.

## **192 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, education and care in the course of a stand-alone service at the home.
- (2) The officer may notify the second person that the occupant is a disqualified person.

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## Division 8 Compliance

### Subdivision 1 Compliance notices

#### 193 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.

#### **194 Compliance with Building Act requirements for QEC approved service**

- (1) This section applies if an authorised officer reasonably believes a QEC approved service does not comply with a Building Act requirement.
- (2) The authorised officer may give the approved provider of the service a notice requiring the approved provider 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 QEC approved service still does not comply with the Building Act requirement.
- (4) The authorised officer may give the approved provider a notice requiring the provider 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 service complies with the Building Act requirement.

*Note—*

Failure to comply with this notice is a ground for suspension or cancellation of the provider approval under section 25.

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## Subdivision 2      **Emergency action notices**

### 195      **Emergency action notices**

- (1) This section applies if the chief executive is satisfied a QEC approved service is operating in a manner that poses, or is likely to pose, an immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by the service.
- (2) The chief executive may, by notice, direct the approved provider of the service to take the steps specified in the notice to remove or reduce the risk within the time (not more than 14 days) specified in the notice.
- (3) An approved provider must comply with a direction given under subsection (2).

Maximum penalty—100 penalty units.

## Subdivision 3      **Prohibition notices**

### 196      **Basis for giving a prohibition notice**

The chief executive may give a prohibition notice to a person if the chief executive is reasonably satisfied—

- (a) the person is involved in the provision of education and care at a QEC service; and
- (b) there would be an unacceptable risk of harm to a child or children if the person were allowed to provide education and care for children.

### 197      **Show cause notice to be given before prohibition 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 make 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 safety, health or wellbeing of a child or children, to immediately issue a prohibition notice to the person.

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

- (1) If the chief executive gives a show cause notice to a person, 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.
- (2) 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.

### **199 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 education and care to children for a QEC service or an education and care service under the Education and Care Services National Law (Queensland);
  - (ii) being engaged as a supervisor, educator, contractor or other staff member of, or being a volunteer for, a QEC service or an education and care service under the Education and Care Services National Law (Queensland);



- (iii) carrying out any other activity relating to an a QEC service or an education and care service under the Education and Care Services National Law (Queensland);
- (iv) providing care for a child, other than a child of whom the person is a parent, for reward; and
- (b) that the person may apply for cancellation of the notice; and
- (c) how an application for cancellation must be made.

## **200 Chief executive must give notice to chief executive (employment screening)**

- (1) If the chief executive gives a prohibition notice to a person, the chief executive must give the chief executive (employment screening) a notice (an *initial notice*) stating only—
  - (a) the person’s name and address; and
  - (b) the person’s date and place of birth, if that information is within the chief executive’s knowledge; and
  - (c) that the chief executive has given the person a prohibition notice.
- (2) If the initial notice includes the person’s date and place of birth, the chief executive must give the chief executive (employment screening) a further notice under subsection (4) (a *further notice*) if the chief executive (employment screening)—
  - (a) requests additional relevant information about the prohibition notice; and
  - (b) notifies the chief executive the person holds a working with children authority or negative notice or has made a working with children check application.
- (3) However, if the initial notice does not include the person’s date and place of birth, the chief executive may give the chief executive (employment screening) a further notice only if—
  - (a) the chief executive (employment screening)—

- (i) requests additional relevant information about the prohibition notice; and
    - (ii) notifies the chief executive the person holds a working with children authority or negative notice or has made a working with children check application; and
    - (iii) includes the person's date and place of birth in the request; and
  - (b) the chief executive confirms with the person that the date and place of birth stated in the request are the person's date and place of birth.
- (4) A further notice must state—
- (a) when the conduct that caused the chief executive to give the prohibition notice to the person happened; and
  - (b) the nature of the conduct; and
  - (c) any other information the chief executive reasonably considers relevant for employment screening under the Working with Children Act, chapter 8.
- Example for paragraph (c)—*
- details about the nature of the prohibition notice
- (5) If the chief executive gives the chief executive (employment screening) a further notice and the prohibition notice is later set aside on review or appeal, the chief executive must give the chief executive (employment screening) a notice stating—
- (a) that the prohibition notice has been set aside; and
  - (b) the reason for setting the prohibition notice aside given by the decision-maker who set it aside.
- (6) If the chief executive gave a prohibition notice to a person because of the person's conduct in relation to a particular child, an initial notice or a further notice must not contain information that identifies, or is likely to identify, the child.

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## **201 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 in the approved form and accompanied by any fee prescribed under a regulation.
- (4) 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—
  - (a) to be involved in the provision of education and care at a QEC service; or
  - (b) to provide education and care for children.
- (5) The application may include a statement setting out any change in the person's circumstances since the prohibition notice was given or since any previous application under this section that would warrant the cancellation of the notice.
- (6) The chief executive must decide the application as soon as practicable after its receipt.

## **202 Person must not contravene prohibition notice under this Act**

- (1) Subsection (2) applies while a prohibition notice is in force for a person under this Act or the Education and Care Services National Law (Queensland).
- (2) The person must not—
  - (a) provide regulated education and care for a QEC service; or
  - (b) be engaged as a supervisor, employee, contractor or staff member of, or perform volunteer services for, a QEC service; or

- (c) carry out any other activity relating to a QEC service; or
- (d) provide care of a child, other than a child of whom the person is a parent, for reward.

Maximum penalty—100 penalty units.

- (3) Subsection (4) applies while a prohibition notice is in force for a person under this Act.
- (4) The person must not—
  - (a) provide education and care to children for an education and care service under the Education and Care Services National Law (Queensland); or
  - (b) be engaged as a supervisor, educator, contractor or other staff member of, or be a volunteer for, an education and care service under the Education and Care Services National Law (Queensland); or
  - (c) carry out any other activity relating to an education and care service under the Education and Care Services National Law (Queensland).

Maximum penalty—100 penalty units.

### **203 Approved provider must not engage person to whom prohibition notice applies**

- (1) This section applies if an approved provider knows, or ought reasonably to know, a prohibition notice is in force under this Act or the Education and Care Services National Law (Queensland).
- (2) The approved provider must not engage the person as a supervisor, educator, employee, contractor or staff member of, or allow a person to perform volunteer services for, a QEC service.

Maximum penalty—100 penalty units.

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## **Division 9                      Publication about enforcement action**

### **204      Compliance and enforcement information**

- (1) For section 215, the chief executive may publish on the department's website the information stated in subsection (3) for any enforcement action stated in subsection (2).
- (2) The enforcement actions are—
  - (a) a prosecution for an offence against this Act leading to a conviction; or
  - (b) the giving of a compliance notice; or
  - (c) the suspension or cancellation (other than a voluntary suspension or surrender) of a provider approval or service approval; or
  - (d) an amendment made to a provider approval or service approval for the purposes of enforcement; or
  - (e) a prohibition notice.
- (3) The following information may be published on the department's website—
  - (a) the nature of the enforcement action;
  - (b) the details of the person in relation to whom the enforcement action was taken, including—
    - (i) for an approved provider—the provider's name, the address of the provider's QEC service premises and the name under which the service is conducted; or
    - (ii) for a stand-alone service—the name under which the service is conducted and its address, if the service is not conducted from a home; or
    - (iii) for an individual—the name of the individual;
  - (c) the reason for taking the enforcement action, including details of the breach or alleged breach by the person of

this Act and the provision that was breached or alleged to be breached;

- (d) details of the enforcement action taken, including—
  - (i) for a prosecution leading to a conviction—
    - (A) the provision of this Act that the person was convicted of breaching; and
    - (B) the date of the conviction; and
    - (C) any penalty imposed for the offence; and
    - (D) information about any steps taken to remedy the subject of the prosecution and the date the steps were taken; or
  - (ii) for a compliance notice—
    - (A) the steps specified in the compliance notice that the person must take to comply with this Act; and
    - (B) the date specified in the notice by which the steps must be taken; and
    - (C) information about any steps taken to remedy the subject of the compliance notice and the date the steps were taken; or
  - (iii) for the amendment of a provider approval or service approval—
    - (A) the details of the amendment; and
    - (B) the date the amendment took effect; or
  - (iv) for a suspension of a provider approval or service approval—
    - (A) the date the suspension took effect; and
    - (B) the date the suspension ends; or
  - (v) for a cancellation of a provider approval or service approval—the date the cancellation took effect.

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- (4) In this section, a reference to information does not include information that could identify or lead to the identification of a child.

*Note—*

Section 215(4) further restricts the publication of identifying information.

## **205 When information about enforcement action may be published**

- (1) The chief executive must not publish information about an enforcement action under section 204 until—
- (a) for a prosecution for an offence against this Act leading to a conviction—the end of the period within which the person convicted may appeal against the conviction; or
  - (b) for the giving of a compliance notice—the end of the period within which the person given the notice may apply for a review of the decision to give the notice; or
  - (c) for the suspension or cancellation of a provider approval or service approval—the end of the period within which the approved provider may apply for a review of the decision to suspend or cancel the approval; or
  - (d) for an amendment made to a provider approval or service approval for the purposes of enforcement—the end of the period within which the approved provider may apply for a review of the decision to amend the approval; or
  - (e) for a prohibition notice—the end of the period within which the person given the notice may apply for a review of the decision to give the notice.
- (2) If the person appeals, or applies for a review—
- (a) the chief executive must not publish the information until the appeal or application for review is finally dealt with or otherwise ends; and
  - (b) if the appeal or application for review is finally dealt with, the chief executive may publish the information

only to the extent the information is consistent with the decision on appeal or review.

## **206 Period of publication of information**

- (1) The chief executive must ensure information published under this division remains on the department's website until the day that is one year after the day it is published.
- (2) However, if the information relates to a QEC service and the service approval is transferred to another approved provider before the day mentioned in subsection (1), the chief executive must remove the information from the website as soon as practicable after the transfer takes effect.
- (3) Subsection (2) does not apply in any of the following circumstances—
  - (a) if—
    - (i) before the transfer, the service approval was held by an approved provider that was a corporation; and
    - (ii) after the transfer, a person who is or was an executive officer of the corporation is—
      - (A) the person, or one of the persons, to whom the service approval was transferred; or
      - (B) the person, or one of the persons, comprising the approved provider to whom the service approval was transferred; or
      - (C) an executive officer of a corporation to whom the service approval was transferred;
  - (b) if—
    - (i) before the transfer, the service approval was held by an approved provider that is an individual; and
    - (ii) after the transfer, the individual is—
      - (A) one of the persons to whom the service approval was transferred; or



- (B) one of the persons comprising the approved provider to which the service approval was transferred; or
  - (C) an executive officer of a corporation to whom the service approval was transferred;
- (c) if—
- (i) before the transfer, the service approval was held by an approved provider that is group of persons; and
  - (ii) after the transfer, one of the persons is—
    - (A) the person, or one of the persons, comprising the approved provider to whom the service approval was transferred; or
    - (B) an executive officer of a corporation to whom the service approval was transferred.

## Division 10                      Periodic review of QEC approved services

### 207      Chief executive must undertake 3-yearly inspection of QEC approved service

- (1) The chief executive must ensure that each QEC approved service is inspected by an authorised officer at least once every 3 years to assess whether the service is complying with this Act (the *triennial inspection*).
- (2) For subsection (1), a QEC approved service is inspected at least once every 3 years if it is inspected within 3 years of—
  - (a) the last inspection day; or
  - (b) if there has not been a last inspection day—the day the service became a QEC approved service under this Act.
- (3) In this section—

*last inspection day* means—

- (a) the day the last triennial inspection was conducted under this Act; or
- (b) for a centre based service taken to be QEC approved service under part 11 and for which a triennial inspection has not been conducted under this Act—the last day the service had its licence granted or renewed under the repealed Act.

## **208 Procedure for 3-yearly inspection**

- (1) This section applies if an authorised officer enters a QEC approved service to conduct a triennial inspection.
- (2) The authorised officer must inform the supervisor, or if the supervisor is not present, another adult staff member, of the purpose of the entry.
- (3) After completing the inspection, the authorised officer must make a written record of the results of the triennial inspection.

# **Part 7 Review**

## **Division 1 Review of certain decisions by chief executive**

### **209 Approved provider may apply for review of decision to give a compliance notice**

- (1) This section applies if an approved provider is given a compliance notice by an authorised officer.
- (2) The approved provider may apply in writing to have the decision reviewed by the chief executive within 14 days of receiving the notice.
- (3) The application must include enough information to enable the chief executive to decide the application.

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- (4) However, if the chief executive considers he or she needs further information to decide the application, the chief executive may ask for the information.
  - (5) The chief executive must review the decision within 30 days after receiving the application and confirm the decision or revoke the compliance notice.
  - (6) The chief executive may extend the period mentioned in subsection (5) by up to 30 days—
    - (a) if a request for further information is made under subsection (4); or
    - (b) by agreement between the chief executive and the applicant.
  - (7) The chief executive must notify the approved provider in writing of the chief executive's decision on the review as soon as practicable after making the decision.
  - (8) If the chief executive decides to confirm the decision, the notice under subsection (7) must state the reasonable time within which the approved provider must remedy the contravention stated in the compliance notice.
  - (9) The chief executive must ensure that the application for review of the decision to give the compliance notice is not dealt with by—
    - (a) the authorised officer who gave the notice; or
    - (b) a person in a less senior position than the authorised officer.

## **210 Approved provider may apply for review of decision to revoke service waiver**

- (1) This section applies if an approved provider is given notice by the chief executive of a decision to revoke a service waiver.
- (2) The approved provider may apply in writing to have the decision reviewed by the chief executive within 14 days after receiving the notice.

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- (3) The application must include enough information to enable the chief executive to decide the application.
- (4) However, if the chief executive considers he or she needs further information to decide the application, the chief executive may ask for the information.
- (5) The chief executive must review the decision within 30 days after receiving the application and either confirm the decision or make any other decision the chief executive considers appropriate.
- (6) The chief executive may extend the period mentioned in subsection (5) by up to 30 days—
  - (a) if a request for further information is made under subsection (4); or
  - (b) by agreement between the chief executive and the applicant.
- (7) The chief executive must notify the approved provider in writing of the chief executive's decision on the review as soon as practicable after making the decision.

## **Division 2                      Review by QCAT**

### **211      Reviewable decisions**

- (1) A person may apply, as provided under the QCAT Act, to QCAT to have any of the following decisions by the chief executive reviewed—
  - (a) for an applicant for a provider approval or service approval, a decision to—
    - (i) refuse to grant the approval; or
    - (ii) grant the approval on a condition;
  - (b) for the holder of a provider approval or service approval, a decision to—

- (i) amend the approval other than in a way the approved provider has applied for or agreed to; or
  - (ii) refuse to amend the approval in a way the approved provider has applied for; or
  - (iii) suspend the approval other than on application by the approval holder; or
  - (iv) cancel the approval; or
  - (v) refuse to lift the suspension of the approval;
- (c) a decision by the chief executive under section 210 to confirm the original decision to revoke a service waiver;
- (d) a decision by the chief executive under section 209 to confirm the original decision to give a compliance notice;
- (e) for a personal representative of the estate of an approved provider who has died and who held a service approval, a decision to—
- (i) refuse to extend the transitional approval period; or
  - (ii) extend the transitional approval period other than for the further period the personal representative has applied for;
- (f) 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 service approval to the person.
- (2) Subsection (3) applies if a person makes application under a regulation that states that the decision on the application is a reviewable decision for this section.
- (3) The person may apply, as provided under the QCAT Act, to QCAT to have the decision reviewed.

## **212 Chief executive or authorised officer must give notice after making reviewable decision**

- (1) Immediately after making a decision mentioned in section 211, the chief executive or authorised officer must give the person a notice for the decision complying with the QCAT Act, section 157(2).
- (2) The chief executive or authorised officer may give a notice for the purpose of complying with subsection (1) and for another purpose.

*Example—*

The chief executive or authorised officer 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 199.

# **Part 8 Information, records and privacy**

## **Division 1 Registers**

### **213 Register of approved providers**

- (1) The chief executive must keep a register of approved providers.
- (2) The register of approved providers must contain the following for each approved provider—
  - (a) the provider's name;
  - (b) the provider's address;
  - (c) any conditions to which the provider's approval is subject;
  - (d) the date the provider's provider approval was granted;
  - (e) the provider's provider approval number;

- (f) the service approval numbers for all QEC approved services operated by the provider.
- (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.

## **214 Register of QEC approved services**

- (1) The chief executive must keep a register of QEC approved services.
- (2) The register of QEC approved services must contain the following information for each service—
  - (a) the name of the service;
  - (b) the name of the approved provider of the service;
  - (c) the address of the premises for the service;
  - (d) the contact details for the service;
  - (e) the hours and days of operation of the service;
  - (f) any conditions to which the service's service approval is subject;
  - (g) any service waivers and temporary waivers applying to the service;
  - (h) the maximum number of children who can be cared for by the service at any time;
  - (i) the date the approved provider was granted the service approval for the service;
  - (j) the service approval number for the service;
  - (k) the provider approval number of the approved provider that operates the service.
- (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.

## **Division 2                      Publication**

### **215      Publication of information about providers and services**

- (1) The chief executive may publish the following information about each approved provider and each QEC approved service—
  - (a) the name of the provider or service;
  - (b) the address of the QEC service premises for a service;
  - (c) the contact details for the service;
  - (d) the hours and days of operation of the service;
  - (e) any conditions to which the provider approval or service approval for the service is subject;
  - (f) any service waivers and temporary waivers applying to the service;
  - (g) the maximum number of children who can be cared for by the service at any time;
  - (h) the date the approved provider was granted the service approval for the service;
  - (i) the service approval number for the service;
  - (j) the provider approval number of the approved provider that operates the service.
- (2) The chief executive must publish the register of approved providers and QEC approved services on the department's website.
- (3) The chief executive may publish information about the following on the department's website—
  - (a) enforcement actions taken under this Act, including information about compliance notices, prosecutions, or suspension or cancellation of approval;
  - (b) other matters prescribed under a regulation.



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- (4) Information published under this section must not include information that could identify or lead to the identification of an individual other than—
- (a) an approved provider; or
  - (b) a person who is being prosecuted for an offence against this Act.

## **Division 3                      Confidentiality**

### **Subdivision 1                  Requirements for persons involved in administering this Act**

#### **216      Duty of confidentiality**

- (1) This section applies to a person—
- (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 record or use the information, or disclose it to anyone, other than under this division.

Maximum penalty—40 penalty units.

- (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.

## **217 Recording, use or disclosure for authorised purpose**

The person may record, use or disclose the information for any of the following—

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

## **218 Disclosure to relevant entities in other jurisdictions**

- (1) The person may disclose the information to an officer of a department of another State or the Commonwealth responsible for the administration or enforcement of a law about education and care.
- (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).

## **219 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 QEC service or the safe and appropriate provision of education and care to a child.
- (2) The person may disclose the information to the chief executive of the department in which the other Act is administered.

## **Subdivision 2      Use and disclosure of URL data relating to approved kindergarten programs**

### **220      Definitions for sdiv 2**

In this subdivision—

***approved kindergarten program*** means a program provided by a QEC approved service for which the service receives kindergarten program funding from the department or a central governing body.

***authorised officer***, of a central governing body, means an employee or officer of the central governing body who is authorised in writing by the chief executive to receive, use and disclose URL data for the purposes of this subdivision.

***central governing body*** means an entity, prescribed under a regulation, that receives funding from the department for an approved kindergarten program provided by one or more relevant services to which the entity provides all or part of the funding.

***disability*** includes a condition attributable to—

- (a) a physical, intellectual, hearing, vision or speech–language impairment, or a developmental delay; or
- (b) an autistic spectrum disorder; or
- (c) a combination of impairments mentioned in paragraph (a), a developmental delay or an autistic spectrum disorder.

**health practitioner** means a person registered under the Health Practitioner Regulation National Law to practise a health profession.

**relevant service** means a QEC approved service that provides an approved kindergarten program.

**URL data** means—

- (a) the following information about a child who is enrolled at a relevant service in an approved kindergarten program—
  - (i) the child’s name, date of birth and gender;
  - (ii) the address of the child’s primary residence;
  - (iii) whether the child identifies, or has a parent who identifies, as being of Aboriginal or Torres Strait Islander descent;
  - (iv) if the primary language of the child, or, if the child has not learned to speak, the child’s family, is not English—the primary language of the child or the child’s family;
  - (v) whether the child, or a parent of the child, holds a health care card under the *Social Security Act 1991* (Cwlth);
  - (vi) whether the child—
    - (A) has been diagnosed by a health practitioner as having, or is suspected by a health practitioner of having, a disability or long-term medical condition; and
    - (B) needs additional assistance because of the disability or medical condition;
  - (vii) the number of hours for which the child attended an approved kindergarten program during a particular period;
  - (viii) other information about a child prescribed under a regulation; or

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- (b) the following information about a staff member of a relevant service who delivers an approved kindergarten program—
- (i) the staff member's name;
  - (ii) for a qualification in early childhood studies or child care studies held by the staff member—
    - (A) the name of the qualification; and
    - (B) the date on which the qualification was issued; and
    - (C) the institution that issued the qualification;
  - (iii) whether the staff member holds full registration or provisional registration under the *Education (Queensland College of Teachers) Act 2005* and, if so, the staff member's identification number under that Act;
  - (iv) whether the staff member identifies as being of Aboriginal or Torres Strait Islander descent;
  - (v) if the primary language of the staff member is not English—the primary language of the staff member;
  - (vi) other information about a staff member prescribed under a regulation.

**221 Disclosure of URL data to chief executive and central governing bodies by relevant services**

- (1) An authorised person for a relevant service may disclose URL data to the chief executive.
- (2) An authorised person for a CGB service may disclose URL data to an authorised officer of the central governing body.
- (3) An authorised officer of a central governing body may disclose URL data received under this section to the chief executive.
- (4) In this section—

*authorised person*, for a relevant service, means the following—

- (a) the approved provider of the relevant service;
- (b) a staff member of the relevant service;
- (c) an employee of the approved provider of the relevant service who administers URL data in the course of performing the employee's duties.

*CGB service* means a relevant service that—

- (a) receives funding from a central governing body for an approved kindergarten program; and
- (b) has been directed in writing by the central governing body to disclose URL data to it for the purpose of this section.

## **222 Use and disclosure of URL data by chief executive**

- (1) The chief executive may use URL data received under this subdivision for the following purposes—
  - (a) quality assuring of funding provided to relevant services and central governing bodies for approved kindergarten programs;
  - (b) planning for, monitoring of outcomes of, and reporting on, early childhood initiatives;
  - (c) preparing the data for disclosure under section 223.
- (2) For the purpose of subsection (1)(a), the chief executive may disclose URL data, including URL data that has been aggregated, to an authorised officer of a central governing body.
- (3) For subsection (1)(b), URL data may be reported only if it has been aggregated and does not identify, directly or indirectly, any person to whom it relates.

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**223 Disclosure of URL data to Australian Bureau of Statistics and Australian Institute of Health and Welfare**

- (1) The chief executive may disclose URL data to a prescribed entity for the purpose of meeting Queensland's obligations under the early childhood data agreement.
- (2) A prescribed entity that receives URL data under this section must ensure the data is collected, stored and used in a way that ensures the privacy of the persons to whom it relates is protected.
- (3) In this section—

*early childhood data agreement* means the agreement between the Commonwealth and the States called the 'National information agreement on early childhood education and care', signed on behalf of the Queensland Government by the chief executive on 19 February 2010.

*prescribed entity* means—

- (a) the Australian Bureau of Statistics; or
- (b) the Australian Institute of Health and Welfare established under the *Australian Institute of Health and Welfare Act 1987* (Cwlth).

**224 Recording, use and disclosure of URL data by authorised officer of central governing body**

- (1) An authorised officer of a central governing body may use URL data received under this subdivision for the following purposes—
  - (a) quality assuring and distributing funding received from the department for approved kindergarten programs;
  - (b) planning, developing and implementing services for children and parents;
  - (c) planning, developing and implementing professional development programs for staff members of relevant services;
  - (d) implementing curriculum development initiatives;

- (e) reporting on the central governing body's performance.
- (2) For subsection (1)(e), URL data may be reported only if it has been aggregated and does not identify, directly or indirectly, any person to whom it relates.
- (3) A person who is or has been an authorised officer of a central governing body and who receives or received URL data under this subdivision must not record or use the data, or disclose the data to anyone, other than under this section or section 221(3).

Maximum penalty—40 penalty units.

## **Part 9                      Legal proceedings**

### **Division 1                Evidence**

#### **225      Application of div 1**

This division applies to a proceeding under this Act.

#### **226      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.

#### **227      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.



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## 228 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 record or an extract from a record;
  - (iv) 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—
  - (i) an approved provider; or
  - (ii) a person with management or control of a QEC approved service;
- (d) on a stated day, or during a stated period, a QEC service was, or was not, a QEC approved service;
- (e) on a stated day, or during a stated period, a stated person was, or was not, a nominee for a QEC approved service;
- (f) on a stated day, or during a stated period, a service approval was, or was not, subject to a stated condition;
- (g) on a stated day, or during a stated period, a service approval was, or was not, suspended or cancelled;
- (h) 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;
- (i) on a stated day, a stated person was given a stated notice or direction under this Act;
- (j) on a stated day, a stated requirement was made of a stated person.

## **Division 2                      Offence proceedings**

### **229      Summary proceedings for offences**

- (1) A proceeding for an offence against this Act is a summary offence.
- (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.

### **230      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.

### **231      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.

## **232 Liability of executive officer—particular offences committed by corporation**

- (1) An executive officer of a corporation commits an offence if—
  - (a) the corporation commits an offence against an executive liability provision; and
  - (b) the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence.

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

- (2) In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps for subsection (1)(b), a court must have regard to—
  - (a) whether the officer knew, or ought reasonably to have known, of the corporation’s conduct constituting the offence against the executive liability provision; and
  - (b) whether the officer was in a position to influence the corporation’s conduct in relation to the offence against the executive liability provision; and
  - (c) any other relevant matter.

- (3) The executive officer may be proceeded against for, and convicted of, an offence against subsection (1) whether or not the corporation has been proceeded against for, or convicted of, the offence against the executive liability provision.
- (4) This section does not affect any of the following—
  - (a) the liability of the corporation for the offence against the executive liability provision;
  - (b) the liability, under section 233, of the executive officer for the offence against the executive liability provision;
  - (c) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the executive liability provision.
- (5) In this section—

*executive liability provision* means either of the following provisions—

  - section 19
  - section 53(1).

### **233 Executive officer may be taken to have committed offence**

- (1) If a corporation commits an offence against a deemed executive liability provision, each executive officer of the corporation is taken to have also committed the offence if—
  - (a) the officer authorised or permitted the corporation's conduct constituting the offence; or
  - (b) the officer was, directly or indirectly, knowingly concerned in the corporation's conduct.
- (2) The executive officer may be proceeded against for, and convicted of, the offence against the deemed executive liability provision whether or not the corporation has been proceeded against for, or convicted of, the offence.
- (3) This section does not affect either of the following—

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- (a) the liability of the corporation for the offence against the deemed executive liability provision;
- (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the deemed executive liability provision.
- (4) In this section—
- deemed executive liability provision* means any of the following provisions—
- section 53(2)
  - section 121
  - section 122.

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

- (1) In proceedings taken against the approved provider of a QEC approved service for an offence against a provision of this Act, it is a defence for the approved provider to prove the approved provider 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.

#### **235 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.

## **236 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 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.

# **Part 10 Miscellaneous**

## **Division 1 Application of Working with Children (Risk Management and Screening) Act 2000**

### **237 Application of Act to corporations**

- (1) This section applies for the application of the Working with Children Act.
- (2) If a corporation carries on a business that includes conducting a QEC 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 service approval—persons with management or control of the service.

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**238 Pending working with children check application—corporate approved provider**

- (1) This section applies if—
  - (a) a corporation holds a provider approval; and
  - (b) an individual who does not hold a working with children authority becomes an executive officer of the corporation or a person with management or control of the service; and
  - (c) the individual makes a working with children check application.
- (2) Section 15(1) does not apply to the individual until the application is decided or is withdrawn.

**Division 2 Other matters**

**240 Delegation by chief executive**

- (1) The chief executive may delegate the chief executive's functions and powers under this Act to an appropriately qualified officer or employee of the department.
- (2) A delegation of a function or power may permit the subdelegation of the function or 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 function or power.

*Example of standing—*

a person's classification level in the public service

## **241 Protecting prescribed persons from liability**

- (1) A prescribed person is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to a prescribed person, the liability attaches instead to the State.
- (3) This section does not apply to a prescribed person if the person is also a prescribed person under the *Public Sector Act 2022*, section 267.

*Note—*

For protection from civil liability in relation to prescribed persons under the *Public Sector Act 2022*, section 267, see the *Public Sector Act 2022*, section 269.

- (4) In this section—

***prescribed person*** means—

- (a) an authorised person for a QEC approved service within the meaning of section 130; or
- (b) an authorised person for a relevant service within the meaning of section 221; or
- (c) a person acting under the direction of any of the following—
  - (i) the chief executive;
  - (ii) a public service officer or employee;
  - (iii) a person mentioned in paragraph (a) or (b).

## **242 Multiple holders of an approval**

If more than one person holds a provider approval under this Act, each holder of the approval is jointly and severally responsible for compliance with this Act.

## **243 Approved forms**

The chief executive may approve forms for use under this Act.



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**244 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about the following—
  - (a) standards for QEC services;
  - (b) requirements for educational programs, including the quality of those programs and their development, documentation and delivery;
  - (c) requirements and standards to be complied with for the safety, health and wellbeing of children being educated and cared for by a QEC service;
  - (d) requirements and standards to be complied with for safety, security, cleanliness, comfort, hygiene and repair of premises, outdoor spaces, fencing, gates, resources and equipment used for providing QEC services;
  - (e) requirements and standards about the premises to be used to provide a QEC service including setting, design, layout, space, security and entitlement to occupy;
  - (f) requirements and standards for staffing of QEC services including appointment of staff, approval of qualifications, numbers and qualifications of educators;
  - (g) requirements and standards about educators' relationships with children, interactions and behaviour guidance and inclusion policies and practice for QEC services;
  - (h) requirements and standards about the leadership and management of QEC services including governance, suitability of all staff members and volunteers, management of grievances and complaints, and the provision of information to families;
  - (i) records, policies and procedures to be kept by approved providers including enrolment and attendance information;

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- (j) requirements and standards about first aid and management of children's medical conditions;
  - (k) giving information to the chief executive about education and care provided under a service approval;
  - (l) information required to be submitted for applications under this Act;
  - (m) requirements and standards for the provision and display of information by approved providers;
  - (n) the publication of information about enforcement actions taken under this Act, including notice and review of proposals to publish information;
  - (o) fees, including the waiving, reducing, deferring and refunding of fees.
- (3) A regulation may do the following—
- (a) exempt any QEC service or any type of class or QEC service from complying with all regulations, or any regulation, made under this Act;
  - (b) provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation.

## **Part 11                      Repeal, savings and    transitional provisions**

### **Division 1                      Repeal**

#### **245      Repeal of Child Care Act 2002**

The Child Care Act 2002, No. 55 is repealed.

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## Division 2                      **Savings and transitionals for the Education and Care Services Act 2013**

### 246      **Definitions for div 2**

In this division—

*commencement* means the commencement of the provision in which the term is used.

*repealed Act* means the *Child Care Act 2002*.

### 247      **Centre based service taken to be QEC approved service if licence not revoked or suspended**

- (1) This section applies if immediately before the commencement—
  - (a) a person held a licence for a centre based service under the repealed Act that is not revoked or suspended; and
  - (b) the centre based service is a QEC service to which this Act applies.
- (2) On the commencement—
  - (a) the service becomes a QEC approved service; and
  - (b) the person becomes—
    - (i) an approved provider; and
    - (ii) the holder of a service approval for the service; and
  - (c) subject to subsection (3), the provider approval and service approval are subject to the conditions, relevant to each approval, that applied to the licence immediately before the commencement.
- (3) However, for a condition that applied to the licence immediately before the commencement, the chief executive may decide that the condition—

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- (a) does not apply to the provider approval and service approval from the commencement; or
- (b) will instead be the subject of the service waiver or temporary waiver the chief executive considers appropriate from the commencement.

**248 Centre based service for which licence suspended immediately before commencement**

- (1) This section applies if a person held a licence for a centre based service under the repealed Act and the licence was suspended immediately before the commencement.
- (2) The repealed Act continues to apply until the matter of the suspension is finally decided.
- (3) Subsection (5) applies if the suspension is lifted or otherwise ends other than by the licence being revoked.
- (4) From the day the suspension ends—
  - (a) the centre based service to which the licence relates becomes a QEC approved service to which this Act applies; and
  - (b) a person holding the licence becomes—
    - (i) an approved provider; and
    - (ii) the holder of a service approval for the service; and
  - (c) subject to subsection (3), the provider approval and service approval are subject to the conditions, relevant to each approval, that applied to the licence immediately before the day the suspension ends.
- (5) However, for a condition that applied to the licence immediately before the commencement the chief executive may decide that the condition—
  - (a) does not apply to the provider approval and service approval from the commencement; or

- (b) will instead be the subject of the service waiver or temporary waiver the chief executive considers appropriate from the commencement.

**249 Centre based service for which licence subject to a show cause process immediately before commencement**

- (1) This section applies if a person held a licence for a centre based service under the repealed Act and the licence was subject to a show cause notice immediately before the commencement.
- (2) From the commencement, the show cause notice continues as if it were given for a service approval under this Act.
- (3) However, the stated period to show cause given under the repealed Act continues to apply and is taken to have started when given under the repealed Act.

**250 Chief executive to issue copies of provider approvals and service approvals**

- (1) This section applies if a person becomes an approved provider and a service approval holder under section 247 or 248.
- (2) The chief executive must, within 3 months from the time the person becomes an approved provider and a service approval holder, issue the person with copies of the provider approval and service approvals.

**251 Time within which supervisor and nominee must be appointed**

- (1) This section applies to a centre based service that becomes a QEC approved service under this division from the commencement or another day (each the *stated day*).
- (2) Sections 113 and 114 do not apply to the service until 3 months from the stated day.

## **252 Applications for a licence under the repealed Act**

- (1) This section applies if—
  - (a) before the commencement, a person applied for a licence under the repealed Act; and
  - (b) immediately before the commencement, the application had not been decided.
- (2) The chief executive must continue to deal with and decide the application as if it were an application for a provider approval and service approval made under this Act.

## **253 Person may apply to QCAT after commencement for decisions made under repealed Act**

- (1) This section applies if immediately before the commencement—
  - (a) a person had a right to apply to QCAT to have a decision of the chief executive reviewed; but
  - (b) the person had not yet applied to QCAT for a review of the chief executive's decision.
- (2) The person may apply to QCAT for the review under the repealed Act after the commencement as if the repealed Act had not been repealed.
- (3) However, in exercising its powers for the review, QCAT must make the orders it considers necessary having regard the provisions of this Act.

## **254 Applications to QCAT before commencement continue after commencement**

- (1) This section applies if immediately before the commencement—
  - (a) a person had applied to QCAT to have a decision of the chief executive reviewed; but
  - (b) QCAT had not yet finished dealing with the application for a review of the decision.

- (2) QCAT may continue to hear the application under the repealed Act after the commencement as if the repealed Act had not been repealed.
- (3) However, in exercising its powers for the review, QCAT must make the orders it considers necessary having regard the provisions of this Act.

**255 Person may apply to chief executive for decisions about compliance notices made under repealed Act**

- (1) This section applies if immediately before the commencement—
  - (a) a person had a right to apply to the chief executive under the repealed Act, section 164B to have a decision reviewed; but
  - (b) the person had not yet applied to the chief executive for the review.
- (2) The person may apply to the chief executive under section 209 of this Act after the commencement.
- (3) However, for subsection (2), the period within which a licensee may apply for a review of the decision is the period stated in the repealed Act rather than the period under this Act.

**256 Applications to chief executive about compliance notices before commencement**

- (1) This section applies if immediately before the commencement—
  - (a) a person had applied to the chief executive to have a decision reviewed under the repealed Act, section 164B; but
  - (b) the chief executive had not yet decided the matter.
- (2) The chief executive must continue to consider the matter under section 209 of this Act after the commencement.

**257 Persons authorised to receive, use and disclose URL data**

- (1) This section applies to a person who, immediately before the commencement, was authorised by the chief executive to receive, use and disclose URL data.
- (2) The person is taken to be an authorised officer under part 8, division 3, subdivision 2.

**258 Compliance notices in force under the repealed Act**

- (1) This section applies to a compliance notice—
  - (a) in force under the repealed Act immediately before the commencement; and
  - (b) given to a person to whom this Act applies.
- (2) From the commencement, the compliance notice is taken to be a compliance notice under this Act.

**259 Prohibition notices in force under the repealed Act**

- (1) This section applies to a prohibition notice—
  - (a) in force under the repealed Act immediately before the commencement; and
  - (b) given to a person to whom this Act applies.
- (2) From the commencement, the prohibition notice is taken to be a prohibition notice under this Act.

**260 Information retention and sharing**

- (1) The chief executive must keep all information held by the chief executive in relation to—
  - (a) the licensing of child care services under the repealed Act to which this Act applies; and
  - (b) the monitoring and enforcement under the repealed Act in relation to child care services to which this Act applies.



- (2) Information referred to in subsection (1) may be—
- (a) used for information purposes under this Act; and
  - (b) held by the chief executive in any form; and
  - (c) made available to the Regulatory Authorities of other participating jurisdictions and the National Authority.
- (3) A licensee of a child care service existing immediately before the commencement and to which this Act applies must, in the way prescribed under a regulation—
- (a) continue to keep all documents that were required under the repealed Act to be kept for the service immediately before the commencement; and
  - (b) make those documents available to the chief executive on request.

Maximum penalty—20 penalty units.

- (4) In this section—

***National Authority*** has the meaning given in the Education and Care Services National Law (Queensland).

***Regulatory Authority*** has the meaning given in the Education and Care Services National Law (Queensland).

## Schedule 1 Dictionary

### section 6

***adjunct care*** means education and 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.

***affected premises***, for part 3, division 3, see section 55(1)(b).

***approved kindergarten program***, for part 8, division 3, subdivision 2, see section 220.

***approved provider*** means a Queensland approved provider.

***authorised officer*** means—

- (a) generally—see section 136: or
- (b) for part 8, division 3, subdivision 2—see section 220.

***Building Act requirements*** means the requirements under the *Building Act 1975* that must be complied with in carrying out building work for a QEC service.

***building certifier*** means a building certifier under the *Building Act 1975*.

***carer***, in relation to a stand-alone service, means a person—

- (a) who is engaged to provide education and care of a child in the course of a stand-alone service; or
- (b) who is conducting the stand-alone service and providing education and care of children in the course of the service.

**central governing body**, for part 8, division 3, subdivision 2, see section 220.

**centre based service** has the meaning given in the repealed Act.

**chief executive (employment screening)** means the chief executive of the department in which the Working with Children Act is administered.

**commencement**, for part 11, division 2, see section 246.

**commissioner for declarations** see the *Justices of the Peace and Commissioners for Declarations Act 1991*, section 3.

**compliance notice** see section 193(2).

**conviction** means a finding of guilt or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.

**court**, for part 6, see section 136.

**cousin** includes second cousin.

**disability**, for part 8, division 3, subdivision 2, see section 220.

**disqualified person** means a person for whom a negative notice or a prohibition notice is in force.

**document certification requirement** see section 178(6).

**document production requirement** see section 178(2).

**Education and Care Services National Law (Queensland)** has the meaning given in the *Education and Care Services National Law (Queensland) Act 2011*.

**educator** means an individual who provides education and care for children as a part of a QEC service.

**electronic document**, for part 6, see section 136.

**emergency care** means regulated education and care provided to a child in the course of a QEC approved 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 approved provider's control.

*Example for paragraph (b)—*

regulated education and care provided to a child between 4.00p.m. and 4.30p.m., in circumstances where the approved provider has agreed with the child's parent to provide regulated education and care to the child until 4.00p.m. but the parent does not return to collect the child until 4.30p.m.

***exceptional circumstances service approval***, for part 3, division 3, see section 55(2)(b).

***executive officer***, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

***exemption notice*** means an exemption notice under the Working with Children Act.

***former owner***, for part 6, see section 136.

***for reward***, in relation to the provision of care of a child in a stand-alone service—

- (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 for providing the care. The care provided under the arrangement is not provided for reward.

***general power***, for part 6, see section 136.

***guardian***, in relation to a child, means the legal guardian of the child.

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***harm***, to a child, has the meaning given in the *Child Protection Act 1999*, section 9.

***help requirement***, for part 6, see section 136.

***holiday care*** means care provided to school children, during a school holiday, at a place other than a home.

***home***, in relation to a stand-alone service, means premises used as a private residence.

***identity card***, for part 6, see section 136.

***information notice***, for part 6, see section 136.

***information requirement***, for part 6, see section 136.

***licence***, means a licence granted under the repealed Act, including a provisional licence issued under section 20 of that Act.

***mobile service*** see section 10.

***negative notice*** means a negative notice under the Working with Children Act.

***nominee*** means an adult appointed as nominee under section 114.

***notice*** means a written notice.

***occupant***, of a home in which care is provided, means a person who—

- (a) resides in the home; or
- (b) is usually present in the home when the care of children is provided.

***occupier***, for part 6, see section 136.

***of***, a place, for part 6, see section 136.

***offence warning***, for part 6, see section 136.

***owner***, for part 6, see section 136.

***parent***, in relation to a child, includes—

- (a) a guardian of the child; and

- (b) a person who has parental responsibility for the child under a decision or order of a court.

***personal details requirement***, for part 6, see section 136.

***person in control***, for part 6, see section 136.

***person with management or control***, in relation to a QEC service, means—

- (a) if the provider of a service or intended provider of a service is a body corporate, an officer of the body corporate within the meaning of the Corporations Act who is responsible for managing the delivery of the education and care service; or
- (b) in any other case, a person who has the responsibility, alone or with others, for managing the delivery of the education and care service.

***place***—

- (a) for part 6, see section 136; or
- (b) otherwise, includes premises and vacant land.

***premises***—

- (a) for part 6, see section 136; or
- (b) otherwise, includes a building and a vehicle.

***prohibition notice*** means a prohibition notice in force under part 6, division 8, subdivision 3.

***provider approval*** means a Queensland provider approval.

***public place***, for part 6, see section 136.

***QEC approved service*** means a Queensland approved education and care service.

***QEC service*** see section 8.

***QEC service premises*** means each place at which a QEC service operates or is to operate.

***Queensland approved education and care service*** means a Queensland education and care service for which a service approval exists.

***Queensland approved provider***—

- (a) generally, means a person who holds a Queensland provider approval; and
- (b) in relation to a service approval, means the approved provider holding the service approval.

***Queensland education and care service*** see section 8.

***Queensland provider approval*** means a provider approval as in force under part 2.

***Queensland service approval*** means a service approval granted under part 3, divisions 2 or 3, as in force under this Act.

***reasonably believes***, for part 6, see section 136.

***reasonably suspects***, for part 6, see section 136.

***regulated education and care*** see section 7.

***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.

***relevant service***, for part 8, division 3, subdivision 2, see section 220.

***repealed Act*** means the *Child Care Act 2002*.

**replacement premises**, for part 3, division 3, see section 55(2)(b).

**reward** see definition for *reward*.

**school** means—

- (a) a State school within the meaning of the *Education (General Provisions) Act 2006*; or
- (b) an accredited school under the *Education (Accreditation of Non-State Schools) Act 2017*.

**school age care service** means a QEC approved service for which, under the conditions of its service approval, the children receiving education and care must never include a child who is not a school child.

**school child** means a child who—

- (a) is enrolled at a school; and
- (b) attends, or in the current calendar year will attend, school.

**service approval** means a Queensland service approval.

**service approval number** see section 52(2)(g).

**service capacity**, in relation to a QEC service, see section 50.

**service waiver** means a waiver of a requirement that a QEC approved service comply with matters prescribed under this Act.

*Note*—

A service waiver may be granted by the chief executive under part 3, division 8.

**show cause notice**—

- (a) for part 2, division 4—see section 22(2); and
- (b) for the suspension of a provider approval under part 2, division 5—see section 26(2); and
- (c) for the cancellation of a provider approval under part 2, division 5—see section 32(2); and
- (d) for part 3, division 4—see section 67(2); and



- (e) for the suspension of a service approval under part 3, division 6—see section 77(2); and
- (f) for the cancellation of a service approval under part 3, division 6—see section 83(2); and
- (g) for part 6, division 8, subdivision 3—see section 197(1).

**staff member** means—

- (a) for a QEC approved service—any individual (other than a volunteer) employed, appointed or engaged to work in or as part of the service, whether as an educator or otherwise; or
- (b) for a stand-alone service—a person engaged in a position in the service, or a person conducting the service and carrying out the functions of a position in the service.

**stand-alone service** see section 9.

**supervisor** means an individual—

- (a) who is at least 18 years of age; and
- (b) who consents in writing to being appointed as a supervisor; and
- (c) who holds a prescribed qualification or is actively working towards a prescribed qualification in the way prescribed under a regulation.

**temporary waiver** means a waiver, for a stated period, of a requirement that a QEC approved service comply with a matters prescribed under this Act.

*Note—*

A temporary waiver may be granted by the chief executive under part 3, division 9.

**transferee**, for part 3, division 5, see section 70.

**transferor**, for part 3, division 5, see section 70.

**triennial inspection**, for part 6, division 10, see section 207(1).

***URL data***, for part 8, division 3, subdivision 2, see section 220.

***vehicle***, for part 6, see section 136.

***Working with Children Act*** means the *Working with Children (Risk Management and Screening) Act 2000*.

***working with children authority*** see the Working with Children Act, schedule 7.

***working with children check application*** see the Working with Children Act, schedule 7.

***working with children check (exemption) application*** see the Working with Children Act, schedule 7.

***working with children clearance*** see the Working with Children Act, section 220(2).