

Child Care Services Amendment Regulations 2011

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Child Care Services Amendment Regulations 2011*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *Child Care Services Amendment Act 2011* Part 2 comes into operation.

3. Regulations amended

These regulations amend the *Child Care Services Regulations 2007*.

4. Regulation 2 replaced

Delete regulation 2 and insert:

2. Managerial officer of incorporated association: s. 3

- (1) For the purposes of paragraph (a)(ii) of the definition of *managerial officer* in section 3 of the Act, the prescribed class of function is responsibility, as a member of the committee of an incorporated association, for managing the provision of a child care service by the association.
- (2) For the purposes of subregulation (1), it does not matter that the responsibility is exercised with other people.

5. Regulation 4 amended

- (1) In regulation 4(1) delete the definition of *first aid qualifications*.
- (2) In regulation 4(1) insert in alphabetical order:

first aid qualification means a certificate or other document evidencing the successful completion of an approved first aid training course;

- (3) In regulation 4(2):
 - (a) in paragraph (f)(ii) delete “current first aid qualifications; and” and insert:

a current first aid qualification; and
 - (b) in paragraph (g)(ii) delete “current first aid qualifications.” and insert:

a current first aid qualification.

6. Regulation 5A deleted

Delete regulation 5A.

7. Part 3A inserted

After Part 2 insert:

Part 3A — Supervising officers

Division 1 — Approvals

6A. Terms used

In this Division, unless the contrary intention appears —

application means —

- (a) an application made under regulation 6D(1) for an approval to act; or
- (b) an application made under regulation 6D(2) for a supervisor approval;

approval means —

- (a) an approval to act; or
- (b) a supervisor approval;

approval criteria has the meaning given in regulation 6C(1);

approval to act has the meaning given in regulation 6D(1);

supervisor approval has the meaning given in regulation 6D(2).

6B. Purpose of Division

The purpose of this Division is to set out provisions relating to approvals for the purposes of section 5A(1)(a)(ii) and (b)(i) of the Act.

6C. Approval criteria

(1) For the purposes of this Division the *approval criteria* are —

- (a) that the applicant has the ability to supervise and control on a day-to-day basis the provision of a child care service; and
- (b) that the applicant is otherwise a fit and proper person to be involved in the provision of a child care service; and
- (c) that the applicant holds at least one relevant qualification.

(2) In subregulation (1)(c) —

relevant qualification means —

- (a) a degree or diploma in early childhood care or early childhood education from an Australian university or other tertiary institution; or
- (b) a 2 year certificate in child care studies; or
- (c) a diploma or associate diploma in child care; or
- (d) a mothercraft nursing qualification; or
- (e) a degree or diploma in education, social sciences or behavioural sciences; or
- (f) a certificate or other document evidencing the successful completion of an approved first aid training course.

6D. Application for approval

(1) An individual may apply to the CEO for approval to act in place of an individual who holds a licence (an *approval to act*).

(2) An individual may apply to the CEO for approval as a person suitable to have responsibility for the day-to-day supervision and control of a child care service (a *supervisor approval*).

6E. Form of application

- (1) An application must be —
 - (a) in writing; and
 - (b) in the approved form.
- (2) The approved form must —
 - (a) be completed in accordance with any instructions on or attached to the form; and
 - (b) be accompanied by any information or document (including a criminal record check) specified in the form; and
 - (c) in the case of an application for an approval to act — be accompanied by the licensee’s written consent to the application.
- (3) Despite subregulation (2), the CEO may consider and deal with an application if, in the opinion of the CEO, the requirements of that subregulation have been substantially complied with.

6F. CEO may seek additional information

- (1) The CEO may ask an applicant for any additional information or document that the CEO considers is or could be relevant to making a decision on the application.
- (2) Without limiting subregulation (1), for the purpose of deciding whether or not an applicant meets the criteria listed in regulation 6C(1)(a) and (b), the CEO may ask the applicant to do one or more of the following —
 - (a) undergo an oral or written assessment as to his or her knowledge and understanding of —
 - (i) the operation of this Act; and
 - (ii) the field of child development;
 - (b) provide a reference or report specified by the CEO;
 - (c) undergo a medical, psychiatric or psychological test or examination specified by the CEO.
- (3) If the CEO makes a request under subregulation (1) or (2), the CEO does not have to consider the application, or consider it further, until the request is complied with.
- (4) Any costs incurred in complying with a request under subregulation (1) or (2) are to be paid by the applicant unless the CEO determines otherwise.

6G. Referees

- (1) If an application nominates referees for the applicant, those referees must include —
 - (a) a referee who knows the applicant and who has had experience in children’s services; and
 - (b) a referee who is a previous employer of the applicant or who has worked with the applicant in a paid or unpaid capacity.
- (2) A person is not eligible to act as a referee for an applicant if the person is —
 - (a) an employee of the applicant; or
 - (b) married, or related (including by marriage), to the applicant; or
 - (c) a de facto partner of the applicant; or
 - (d) another applicant.

6H. Decision as to approval

- (1) The CEO may grant or refuse to grant an approval.
- (2) The CEO must not grant an approval unless the CEO is satisfied that the applicant meets the approval criteria.
- (3) The CEO must not grant an approval if the applicant is disqualified under section 29(4)(e)(iii) or 30C(4)(d)(iii) of the Act from being the supervising officer for a child care service.
- (4) The CEO must give written notice of his or her decision under subregulation (1) to the applicant.

6I. Conditions of approval

- (1) The CEO may grant an approval subject to any conditions that the CEO considers appropriate.
- (2) Without limiting subregulation (1), it is a condition of each approval that the holder of the approval notifies the CEO in writing of a change in his or her name or mailing address.
- (3) A person who contravenes a condition of his or her approval commits an offence.
Penalty: a fine of \$2 000.

6J. Amendment of conditions

- (1) In this regulation —
amend a condition, in relation to an approval, means —
 - (a) to impose a new condition on the approval; or

- (b) to change or remove an existing condition of the approval (other than the condition referred to in regulation 6I(2)).
- (2) The CEO may, by written notice given to the holder of an approval, amend a condition.
- (3) The CEO may exercise the power in subregulation (2) —
 - (a) on the CEO's own initiative; or
 - (b) on an application made by the holder of the approval in the approved form.
- (4) The CEO may ask an applicant under subregulation (3)(b) for any additional information or document that the CEO considers is or could be relevant to making a decision on the application.
- (5) If the CEO makes a request under subregulation (4), the CEO does not have to consider the application, or consider it further, until the request is complied with.

6K. Reassessment of suitability

- (1) The CEO may at any time reassess whether the holder of an approval meets the approval criteria.
- (2) The CEO may ask the holder of an approval for any information or document that the CEO considers is or could be relevant to a reassessment under subregulation (1).
- (3) Without limiting subregulation (2), the CEO may, for the purposes of a reassessment under subregulation (1), ask the holder of an approval to do one or more of the things listed in regulation 6F(2).

6L. Suspension or cancellation of approval

- (1) The CEO may suspend or cancel an approval if —
 - (a) the CEO is no longer satisfied that the holder of the approval meets the approval criteria; or
 - (b) the holder of the approval is disqualified under section 29(4)(e)(iii) or 30C(4)(d)(iii) of the Act from being the supervising officer for a child care service.
- (2) Before exercising the power in subregulation (1), the CEO must —
 - (a) give the holder of the approval a notice (a *show cause notice*) stating the following —
 - (i) that the CEO intends to suspend or cancel the approval;

- (ii) the reasons for the proposed suspension or cancellation;
 - (iii) that the holder of the approval may, within 30 days after the notice is given, give the CEO a written response to the proposed suspension or cancellation;
 - and
 - (b) consider any written response from the holder of the approval received within the period referred to in paragraph (a)(iii).
- (3) The CEO must give the holder of an approval written notice of a decision to suspend or cancel the approval under subregulation (1) (a *notice of decision*).
- (4) A notice of decision must state —
- (a) the day on which the decision takes effect; and
 - (b) in the case of a decision to suspend — the period of suspension.
- (5) A decision to suspend or cancel an approval under subregulation (1) takes effect —
- (a) at the end of 14 days after the giving of the notice of decision; or
 - (b) if another period is specified in the notice of decision — at the end of that period.

6M. Surrender of approval

- (1) A person who holds an approval may, by written notice given to the CEO, surrender the approval.
- (2) A notice under subregulation (1) must be in the approved form.
- (3) On the surrender of an approval under subregulation (1), the approval ceases to have effect.

6N. Approval document

- (1) If the CEO grants an approval to a person the CEO must issue an approval document to the person.
- (2) An approval document —
 - (a) must contain the following information —
 - (i) the name of the holder of the approval;
 - (ii) any conditions of the approval;
 - and
 - (b) may contain any other information the CEO considers appropriate.

6O. Return of approval document required in certain circumstances

- (1) If an approval —
- (a) has been suspended or cancelled under regulation 6L; or
 - (b) has been surrendered under regulation 6M,
- the person who was the holder of the approval must, as soon as practicable after the suspension, cancellation or surrender, return his or her approval document to the CEO.
- Penalty: a fine of \$2 000.
- (2) If the CEO amends a condition of an approval under regulation 6J, the holder of the approval must, if required by the CEO to do so, return his or her approval document to the CEO for amendment.
- Penalty: a fine of \$2 000.

6P. Review by State Administrative Tribunal

- (1) In this regulation —
- person aggrieved* means —
- (a) a person upon whose application a relevant decision is made; or
 - (b) the person to whom a relevant decision relates.
- relevant decision* means a decision of the CEO —
- (a) under regulation 6H to refuse to grant an approval;
 - (b) under regulation 6I to grant an approval subject to a particular condition;
 - (c) under regulation 6J to amend or refuse to amend a condition of an approval;
 - (d) under regulation 6L to suspend or cancel an approval.
- (2) A person aggrieved by a relevant decision may apply to the State Administrative Tribunal for a review of the decision.

6Q. Offence to pretend to be holder of approval

A person must not hold himself or herself out as being the holder of an approval unless the person holds an approval.

Penalty: a fine of \$6 000.

Division 2 — Nominations

6R. Terms used

In this Division —

licensee means a corporate licensee or a public authority that is the holder of a licence;

nomination means a nomination made under regulation 6T(1);

supervisor approval has the meaning given in regulation 6D(2).

6S. Purpose of Division

The purpose of this Division is to set out provisions relating to nominations for the purposes of section 5A(1)(b)(ii) of the Act.

6T. Nomination

- (1) A licensee for a child care service may nominate an individual who holds a supervisor approval (the *nominee*) as the supervising officer for the service.
- (2) A nomination must be —
 - (a) made to the CEO in writing; and
 - (b) in the approved form; and
 - (c) accompanied by the nominee's written consent to the nomination.
- (3) A nomination must specify the times when the nominee is to be the supervising officer for the service concerned.
- (4) For the purposes of subregulation (3) a nomination may specify —
 - (a) all times when the service is provided; or
 - (b) particular times when the service is provided.
- (5) If there is more than one nominee for a child care service, the times specified under subregulation (3) in respect of a nominee must not be the same as, or overlap with, the times specified in respect of another nominee.
- (6) A nomination made in accordance with this regulation takes effect —
 - (a) on the day on which the nomination is made to the CEO; or
 - (b) if another day is specified in the nomination — on that day.

6U. Amendment or revocation of nomination

- (1) A licensee may, by written notice given to the CEO, amend or revoke a nomination made by the licensee.
- (2) If a person nominated as the supervising officer for a child care service ceases to be employed as a member of the staff of the service, the licensee for the service must, by written notice given to the CEO, revoke the nomination.
Penalty: a fine of \$2 000.
- (3) A notice under subregulation (1) or (2) must be in the approved form.
- (4) If a notice is given under subregulation (1) or (2), the amendment or revocation, as the case requires, takes effect —
 - (a) on the day on which the notice is given to the CEO; or
 - (b) if another day is specified in the notice — on that day.

8. Part 3 Division 1 heading inserted

At the beginning of Part 3 insert:

Division 1 — Provisions relating to repeal of *Children and Community Services Act 2004* Part 8

9. Regulation 6 amended

- (1) In regulation 6(1) delete “Part —” and insert:

Division —

- (2) In regulation 6(2) delete “Part” and insert:

Division

10. Part 3 Division 2 inserted

At the end of Part 3 insert:

Division 2 — Provision relating to *Child Care Services Amendment Act 2011*

11. Supervising officers

(1) In this regulation —

commencement day means the day on which the *Child Care Services Amendment Act 2011* section 4(2) comes into operation;

old definition means the definition of *supervising officer* in section 3 of the Act as in force immediately before the commencement day.

(2) An individual who, immediately before the commencement day, was the supervising officer for a child care service under paragraph (b)(i) of the old definition is, on and after that day, to be taken to have been nominated by the licensee of the service as the supervising officer for the service at all times when the service is provided.

(3) Regulation 6U applies to a nomination that has effect because of the operation of subregulation (2) as if the nomination had been made by the licensee of the child care service.

By Command of the Governor,

R. KENNEDY, Clerk of the Executive Council.
