

Child Care Services Amendment Bill 2011

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Western Australia

LEGISLATIVE COUNCIL

Child Care Services Amendment Bill 2011

A Bill for

**An Act to amend the *Child Care Services Act 2007* and to
consequentially amend the *Working with Children (Criminal Record
Checking) Act 2004*.**

The Parliament of Western Australia enacts as follows:

1
2
3
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5
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7
8
9

Part 1 — Preliminary

1. Short title

This is the *Child Care Services Amendment Act 2011*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — *Child Care Services Act 2007* amended**

2 **3. Act amended**

3 This Part amends the *Child Care Services Act 2007*.

4 **4. Section 3 amended**

5 (1) In section 3 delete the definitions of:

6 *applicant*

7 *application*

8 *assessment notice*

9 *corporate applicant*

10 *equivalent authority*

11 *interim negative notice*

12 *licensing officer*

13 *managerial officer*

14 *negative notice*

15 *nominated supervising officer*

16 *prescribed offence*

17 *supervising officer*

18 (2) In section 3 insert in alphabetical order:

19
20 *amendment application* means an application under
21 section 32 for the amendment of a licence;

22 *approved* means approved by the CEO;

23 *compliance notice* means a compliance notice given
24 under section 43M;

25 *compliance purposes* means the purposes of
26 performing one or more of the functions mentioned in
27 section 41A;

28 *corporate applicant* means a licence applicant that is a
29 body corporate but is not a public authority;

s. 4

- 1 **corporate licensee** means a licensee that is a body
2 corporate but is not a public authority;
- 3 **entry warrant** means an entry warrant issued under
4 Part 4 Division 2;
- 5 **licence applicant** means —
- 6 (a) in the case of a licence application made on
7 behalf of a public authority — the public
8 authority; and
- 9 (b) in the case of any other licence application —
10 the person who makes the application;
- 11 **licence application** means an application under
12 section 10;
- 13 **licensing officer** means a person designated as a
14 licensing officer under section 40(1);
- 15 **managerial officer**, in relation to a body corporate,
16 means —
- 17 (a) if the body corporate is an incorporated
18 association as defined in the *Associations*
19 *Incorporation Act 1987* section 3(1), a member
20 of the association who —
- 21 (i) holds a prescribed office of the
22 association; or
- 23 (ii) has a function of a prescribed class
24 relating to the provision of a child care
25 service by the association;
- 26 or
- 27 (b) in any other case, an individual who is an
28 officer, as defined in the *Corporations Act 2001*
29 (Commonwealth) section 9, of the body
30 corporate;
- 31 **occupier**, of a place, includes any person who appears
32 to have the control or management of the place;

- 1 **prescribed** means prescribed by regulations made
2 under section 52;
- 3 **record** means any record of information, irrespective of
4 how the information is recorded or stored or able to be
5 recovered and includes —
- 6 (a) any thing from which images, sounds or
7 writings can be reproduced, with or without the
8 aid of anything else; and
- 9 (b) any thing on which information is recorded or
10 stored, whether electronically, magnetically,
11 mechanically or by some other means;
- 12 **relevant record** means a record or document that —
- 13 (a) is required to be kept under this Act; or
14 (b) contains information that is or may be relevant
15 to a contravention of this Act;
- 16 **renewal applicant** means a person who makes a
17 renewal application;
- 18 **renewal application** means an application under
19 section 22 for the renewal of a licence;
- 20 **supervising officer** has the meaning given in
21 section 5A;
- 22
- 23 (3) In section 3 in the definition of **criminal record check**:
- 24 (a) after “issued by” insert:
- 25
- 26 the Police Force of Western Australia,
- 27
- 28 (b) delete “sets out the” and insert:
- 29
- 30 sets out, or summarises in a manner acceptable to the
31 CEO, the
32

s. 5

- 1 (4) In section 3 in the definition of *family day care service*:
2 (a) after “provided” (first occurrence) insert:
3
4 by an individual
5
6 (b) in paragraph (a) delete “person” and insert:
7
8 individual
9
- 10 (5) In section 3 in the definition of *individual applicant* delete “an
11 applicant” and insert:
12
13 a licence applicant
14
- 15 (6) In section 3 in the definition of *usual occupant*:
16 (a) delete “an application” and insert:
17
18 a licence application
19
20 (b) in paragraph (a) before “applicant” insert:
21
22 licence
23
- 24 **5. Section 5A inserted**
25 After section 4 insert:
26
- 27 **5A. Term used: supervising officer**
28 (1) For the purposes of this Act, the *supervising officer* for
29 a child care service at a particular time is —
30 (a) if the licensee for the service is an individual —
31 (i) the licensee; or

- 1 (ii) another individual who is approved by
2 the CEO, in accordance with the
3 regulations, to act in place of the
4 licensee at that time;
- 5 or
- 6 (b) if the licensee for the service is a body
7 corporate or public authority, an individual who
8 is —
- 9 (i) approved by the CEO, in accordance
10 with the regulations, as a person suitable
11 to have responsibility for the day-to-day
12 supervision and control of the service;
13 and
- 14 (ii) nominated by the licensee, in
15 accordance with the regulations, as the
16 supervising officer for the service at that
17 time.
- 18 (2) Regulations made for the purposes of
19 subsection (1)(b)(ii) must not allow a licensee for a
20 child care service to nominate 2 or more individuals as
21 the supervising officer for the service at the same time.
22

23 **6. Part 2 Division 2 heading amended**

24 In the heading to Part 2 Division 2 delete “**Application**” and
25 insert:

26

27 **Licence application**
28

s. 7

1 **7. Section 11 amended**

2 In section 11:

3 (a) delete “An” and insert:

4

5 A licence

6

7 (b) delete paragraph (a) and insert:

8

9 (a) in the approved form; and

10

11 **8. Section 12 amended**

12 (1) In section 12(1):

13 (a) delete “an applicant” and insert:

14

15 a licence applicant

16

17 (b) before “application.” insert:

18

19 licence

20

21 (2) Delete section 12(2) and insert:

22

23 (2) Without limiting subsection (1), for the purpose of
24 deciding whether or not an individual applicant is a fit
25 and proper person to provide the child care service to
26 which the licence application relates, the CEO may ask
27 the applicant to do one or more of the following —

28 (a) undergo an oral or written assessment as to his
29 or her knowledge and understanding of —

30 (i) the operation of this Act; and

31 (ii) the field of child development;

- 1 (b) provide a reference or report specified by the
2 CEO;
- 3 (c) provide evidence that the applicant holds
4 qualifications prescribed in relation to the type
5 of child care service to which the licence
6 application relates;
- 7 (d) undergo a medical, psychiatric or psychological
8 test or examination specified by the CEO.
- 9

10 (3) In section 12(3) before “application” insert:

11

12 licence

13

14 (4) In section 12(4) before “applicant” insert:

15

16 licence

17

18 Note: The heading to amended section 12 is to read:

19 **Further information relevant to licence application**

20 **9. Section 14 amended**

21 (1) In section 14(1) before “application” insert:

22

23 licence

24

25 (2) Delete section 14(2) and insert:

26

27 (2) The CEO must not grant a licence if the licence
28 applicant is disqualified under section 29(4)(e)(i) or
29 30C(4)(d)(i) from holding a licence.

s. 10

- 1 (3) The CEO must not grant a licence unless the CEO is
2 satisfied that —
- 3 (a) the licence applicant is capable of providing the
4 child care service to which the licence
5 application relates (the *relevant service*) in
6 accordance with this Act and any proposed
7 conditions of the licence; and
- 8 (b) without limiting paragraph (a), the licence
9 applicant has sufficient material and financial
10 resources to provide the relevant service in
11 accordance with this Act and any proposed
12 conditions of the licence; and
- 13 (c) the place at which the relevant service is to be
14 provided is suitable for that purpose.
15

16 **10. Sections 15, 16 and 17 replaced**

17 Delete sections 15, 16 and 17 and insert:
18

19 **15. Additional restrictions on grant of licence to**
20 **individual applicant**

- 21 (1) The CEO must not grant a licence to an individual
22 applicant if the applicant is disqualified —
- 23 (a) under section 29(4)(e)(ii) or 30C(4)(d)(ii) from
24 being a managerial officer of a corporate
25 licensee; or
- 26 (b) under section 29(4)(e)(iii) or 30C(4)(d)(iii)
27 from being the supervising officer for a child
28 care service.
- 29 (2) The CEO must not grant a licence to an individual
30 applicant unless the CEO is satisfied that —
- 31 (a) the applicant has the ability to supervise and
32 control on a day-to-day basis the provision of

- 1 the child care service to which the licence
2 application relates (the *relevant service*); and
3 (b) is otherwise a fit and proper person to provide
4 the relevant service; and
5 (c) if the relevant service is a family day care
6 service — each usual occupant is a fit and
7 proper person to associate with children.

8 **16. Additional restrictions on grant of licence to**
9 **corporate applicant**

- 10 (1) The CEO must not grant a licence to a corporate
11 applicant if a managerial officer of the applicant is
12 disqualified under section 29(4)(e)(ii) or 30C(4)(d)(ii)
13 from being a managerial officer of a corporate licensee.
14 (2) The CEO must not grant a licence to a corporate
15 applicant unless the CEO is satisfied that each
16 managerial officer of the applicant is a fit and proper
17 person to be involved in the provision of the child care
18 service to which the licence application relates.
19

20 **11. Section 21 amended**

- 21 (1) In section 21(1):
22 (a) in paragraph (b) delete “25; or” and insert:
23 25 or 29; or
24 (b) in paragraph (c) delete “29; or” and insert:
25 29 or 30B; or
26
27
28
29

s. 12

- 1 (2) In section 21(2) delete “The” and insert:
2
3 Unless it is extended under subsection (3), the
4
5 (3) After section 21(2) insert:
6
7 (3) If an application for another licence is made in respect
8 of the place to which a licence document applies, the
9 CEO may extend the period specified in the licence
10 document so that the existing licence continues to have
11 effect until the application is determined.
12
- 13 **12. Section 22 amended**
- 14 (1) In section 22(2):
15 (a) delete “An application for renewal” and insert:
16
17 A renewal application
18
19 (b) delete paragraph (a) and insert:
20
21 (a) in the approved form; and
22
- 23 (2) Delete section 22(3) and insert:
24
25 (3) If a renewal application is made in accordance with
26 subsection (2) the licence continues to have effect until
27 the renewal application is determined unless the licence
28 is suspended under section 25 or 29 or cancelled under
29 section 29 or 30B.
30

1 (3) Delete section 22(4).

2 **13. Section 23A inserted**

3 After section 22 insert:

4

5 **23A. Further information relevant to renewal application**

6 (1) The CEO may ask a renewal applicant for any
7 additional document or information that the CEO
8 considers is or could be relevant to making a decision
9 on the renewal application.

10 (2) Without limiting subsection (1), for the purpose of
11 deciding whether or not an individual making a
12 renewal application continues to be a fit and proper
13 person to provide the child care service to which the
14 renewal application relates, the CEO may ask the
15 renewal applicant to do anything mentioned in
16 section 12(2)(a), (b), (c) or (d).

17 (3) If the CEO makes a request under subsection (1) or (2),
18 the CEO does not have to consider the renewal
19 application, or consider it further, until the request is
20 complied with.

21 (4) Any costs incurred in complying with a request under
22 subsection (1) or (2) are to be paid by the renewal
23 applicant unless the CEO determines otherwise.

24

25 **14. Section 23 amended**

26 In section 23:

27 (a) in paragraph (a) delete “14(2), 15, 16 or 17” and insert:

28

29 14(3), 15(2) or 16(2)

30

s. 15

1 (b) in paragraph (b) delete “the regulations or a term or
2 condition of the licence; or” and insert:

3
4 this Act; or

5
6 (c) in paragraph (c) before “application” insert:

7
8 renewal

9

10 **15. Part 2 Division 6 heading replaced**

11 Delete the heading to Part 2 Division 6 and insert:

12

13 **Division 6 — Disciplinary matters**

14

15 **16. Section 25 replaced**

16 Delete section 25 and insert:

17

18 **25. Suspension of licence on ground of unacceptable**
19 **risk**

20 (1) The CEO may, by written notice given to the licensee,
21 suspend a licence if the CEO considers that there are
22 reasonable grounds for believing that the continued
23 provision of the child care service to which the licence
24 relates would constitute an unacceptable risk to the
25 wellbeing of the children for whom the service is
26 provided.

27 (2) The CEO may suspend a licence under subsection (1)
28 whether or not the CEO has given the licensee an
29 opportunity to make representations in relation to the
30 proposed suspension.

- 1 (3) The suspension notice —
- 2 (a) must specify the day on which the suspension
- 3 takes effect; and
- 4 (b) must specify the period of the suspension,
- 5 which must not exceed 60 days; and
- 6 (c) must specify the reasons for the CEO’s decision
- 7 to suspend the licence; and
- 8 (d) must explain the effect of subsection (4); and
- 9 (e) may specify measures to be taken by the
- 10 licensee to remove the risk described in
- 11 subsection (1).
- 12 (4) Within 21 days after giving a suspension notice, the
- 13 CEO must, unless the suspension has been revoked
- 14 under section 27, make an allegation to the State
- 15 Administrative Tribunal in relation to the matter giving
- 16 rise to the suspension.
- 17 (5) Section 29(4) applies in relation to proceedings
- 18 commenced by an allegation under subsection (4) as if
- 19 they were proceedings commenced by an allegation
- 20 under section 29(3).
- 21 (6) In proceedings commenced by an allegation under
- 22 subsection (4), the State Administrative Tribunal may,
- 23 in addition to any other order it has power to make,
- 24 make an order confirming, revoking, or extending the
- 25 period of, the suspension.
- 26

27 **17. Section 26 deleted**

28 Delete section 26.

1 **18. Section 27 replaced**

2 Delete section 27 and insert:

3

4 **27. Revocation of suspension**

5 (1) Unless subsection (2) applies, the CEO may, by written
6 notice given to the licensee, revoke the suspension of a
7 licence under section 25 if the CEO —

8 (a) is satisfied that measures specified in the
9 suspension notice under section 25(3)(e) have
10 been taken; or

11 (b) is otherwise satisfied that it is appropriate to do
12 so in the circumstances of the particular case.

13 (2) The CEO cannot take action under subsection (1) if the
14 CEO has made an allegation under section 25(4) in
15 relation to the matter giving rise to the suspension.
16

17 **19. Section 28 amended**

18 In section 28:

19 (a) in paragraph (a) after “revoked” insert:

20

21 by the CEO

22

23 (b) after paragraph (a) insert:

24

25 (ba) the suspension is revoked by the State
26 Administrative Tribunal under section 25(6) or
27 on an application under section 30 for a review
28 of the CEO’s decision to suspend the licence;
29

1 (c) in paragraph (b) after “29” insert:

2

3 or 30B

4

5 **20. Section 29 replaced**

6 Delete section 29 and insert:

7

8 **29. Disciplinary action against licensee**

9 (1) In this section —

10 *specified* means specified in an order under
11 subsection (4).

12 (2) Grounds for disciplinary action against a licensee exist
13 if —

14 (a) the licensee has improperly obtained a licence;
15 or

16 (b) the licensee has contravened this Act; or

17 (c) the CEO is no longer satisfied as to a matter
18 referred to in section 14(3), 15(2) or 16(2) that
19 was relevant to the decision to grant a licence to
20 the licensee; or

21 (d) the licensee has contravened the *Working with*
22 *Children (Criminal Record Checking) Act 2004*
23 section 22; or

24 (e) there are reasonable grounds for believing that
25 the continued provision of the child care service
26 to which a licence held by the licensee relates
27 would constitute an unacceptable risk to the
28 wellbeing of the children for whom the service
29 is provided.

30 (3) If the CEO considers that grounds for disciplinary
31 action against a licensee exist, the CEO may make an

- 1 allegation to the State Administrative Tribunal in
2 respect of that person.
- 3 (4) In proceedings commenced by an allegation under
4 subsection (3) in respect of a person, the State
5 Administrative Tribunal, if satisfied that grounds for
6 disciplinary action exist, may make one or more of the
7 following orders —
- 8 (a) an order reprimanding the person;
 - 9 (b) an order that the person —
 - 10 (i) undertake a specified educational or
11 training course; or
 - 12 (ii) refund to a specified person or body
13 fees or other money received from that
14 person or body in connection with the
15 provision of the child care service to
16 which the licence relates; or
 - 17 (iii) comply with any other specified
18 requirement;
 - 19 (c) an order imposing a condition on, or amending
20 a condition of, a licence held by the person;
 - 21 (d) subject to section 30A, an order requiring the
22 person to pay a penalty not exceeding \$25 000;
 - 23 (e) an order disqualifying the person from one or
24 more of the following —
 - 25 (i) holding a licence;
 - 26 (ii) being a managerial officer of a
27 corporate licensee;
 - 28 (iii) being the supervising officer for a child
29 care service,
30 permanently, for a specified period or until a
31 further order is made by the Tribunal;

- 1 (f) an order suspending a licence held by the
2 person for a specified period or until a further
3 order is made by the Tribunal;
- 4 (g) an order cancelling a licence held by the
5 person.
- 6 (5) The State Administrative Tribunal may make an order
7 under subsection (4)(a), (b)(ii) or (iii), (d) or (e) in
8 respect of a person whether or not at the time when the
9 order is made the person is a licensee.

10 **30A. Limitation on section 29(4)(d)**

- 11 (1) The power described in section 29(4)(d) and the power
12 of a court to impose a penalty for an offence under this
13 Act must not both be exercised in respect of an act or
14 omission of a person that is substantially the same.
- 15 (2) A penalty that exceeds the relevant maximum fine
16 cannot be imposed under section 29(4)(d).
- 17 (3) In subsection (2) —
18 *relevant maximum fine* means, if the penalty is to be
19 imposed in respect of an act or omission that
20 constitutes an offence under this Act, the maximum
21 fine that could be imposed by a court for that offence.

22 **30B. Cancellation of licence if child care service no**
23 **longer provided**

24 The State Administrative Tribunal may, on the
25 application of the CEO, make an order cancelling a
26 licence if the Tribunal is satisfied that the licensee has
27 ceased to provide the child care service to which the
28 licence relates.

- 1 **30C. Disciplinary action against managerial officer**
- 2 (1) In this section —
- 3 *specified* means specified in an order under
- 4 subsection (4).
- 5 (2) Grounds for disciplinary action against a managerial
- 6 officer of a corporate licensee exist if —
- 7 (a) the licensee has contravened this Act and —
- 8 (i) the contravention occurred with the
- 9 managerial officer’s knowledge or
- 10 permission; or
- 11 (ii) the managerial officer failed to use all
- 12 due diligence to prevent the
- 13 contravention;
- 14 or
- 15 (b) the managerial officer is not a fit and proper
- 16 person to be involved in the provision of a child
- 17 care service.
- 18 (3) If the CEO considers that grounds for disciplinary
- 19 action against a managerial officer of a corporate
- 20 licensee exist, the CEO may make an allegation to the
- 21 State Administrative Tribunal in respect of that person.
- 22 (4) In proceedings commenced by an allegation under
- 23 subsection (3) in respect of a person, the State
- 24 Administrative Tribunal, if satisfied that grounds for
- 25 disciplinary action exist, may make one or more of the
- 26 following orders —
- 27 (a) an order reprimanding the person;
- 28 (b) an order requiring the person —
- 29 (i) to undertake a specified educational or
- 30 training course; or
- 31 (ii) to comply with any other specified
- 32 requirement;

- 1 (c) subject to subsection (5), an order requiring the
2 person to pay a penalty not exceeding \$2 500;
- 3 (d) an order disqualifying the person from one or
4 more of the following —
- 5 (i) holding a licence;
- 6 (ii) being a managerial officer of a
7 corporate licensee;
- 8 (iii) being the supervising officer for a child
9 care service,
- 10 permanently, for a specified period or until a
11 further order is made by the Tribunal.
- 12 (5) The State Administrative Tribunal is not to make an
13 order under subsection (4)(c) unless the Tribunal is
14 satisfied that grounds for disciplinary action exist under
15 subsection (2)(a).
- 16 (6) The State Administrative Tribunal may make an order
17 under subsection (4)(a), (b)(ii), (c) or (d) in respect of a
18 person whether or not at the time when the order is
19 made the person is a managerial officer of a corporate
20 licensee.

21 **30D. Offence to employ managerial officer who is**
22 **disqualified**

23 A corporate licensee must not employ or engage a
24 person as a managerial officer of the licensee if the
25 person is disqualified under section 29(4)(e)(ii) or
26 30C(4)(d)(ii).

27 Penalty: a fine of \$60 000.

28

s. 21

1 **21. Section 30 amended**

2 In section 30(1) in the definition of *licensing decision*
3 paragraph (e) after “amend” insert:

4
5 or refuse to amend
6

7 **22. Section 32 amended**

8 After section 32(3) insert:

- 9
- 10 (4) An amendment application must be —
11 (a) in the approved form; and
12 (b) accompanied by the prescribed fee (if any).
- 13 (5) The CEO may ask a licensee making an amendment
14 application for any additional document or information
15 that the CEO considers is or could be relevant to
16 making a decision on the amendment application.
- 17 (6) If the CEO makes a request under subsection (5), the
18 CEO does not have to consider the amendment
19 application, or consider it further, until the request is
20 complied with.
- 21 (7) Any costs incurred in complying with a request under
22 subsection (5) are to be paid by the licensee making the
23 amendment application unless the CEO determines
24 otherwise.
25

26 **23. Section 38 amended**

27 (1) In section 38(1) insert in alphabetical order:

28
29 ***Commonwealth agency*** means —

- 30 (a) a department of the Public Service of the
31 Commonwealth; or

- 1 (b) a Commonwealth agency or instrumentality; or
2 (c) a body, whether corporate or unincorporate, or
3 the holder of an office, post or position,
4 established or continued for a public purpose
5 under a law of the Commonwealth;
6

7 (2) In section 38(2) and (3) after “public authority,” insert:
8

9 a Commonwealth agency,
10

11 (3) In section 38(4) delete “law of this State” and insert:
12

13 written law
14

15 (4) After section 38(5) insert:
16

17 (6A) Subsection (5) does not apply to the disclosure of
18 information by a Commonwealth agency or a
19 corresponding authority in compliance with a request
20 under subsection (3).
21

22 **24. Section 40 amended**

23 (1) In section 40(1) delete “appoint” and insert:
24

25 designate
26

27 (2) In section 40(2) delete “a form approved by the CEO.” and
28 insert:
29

30 the approved form.
31

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- 1 (3) Delete section 40(3) and insert:
2
- 3 (3) A licensing officer must —
4 (a) carry his or her identity card when performing
5 functions under this Act; and
6 (b) if it is practicable to do so, produce his or her
7 identity card before exercising a power under
8 this Act.
9
- 10 (4) In section 40(4) delete “appointment” and insert:
11
12 designation
13
- 14 **25. Section 41A inserted**
15 After section 40 insert:
16
- 17 **41A. Functions of licensing officer**
18 The functions of a licensing officer are as follows —
19 (a) to monitor compliance with this Act;
20 (b) to monitor compliance with the conditions of
21 licences and exemptions under this Act;
22 (c) to monitor compliance with the *Working with*
23 *Children (Criminal Record Checking) Act 2004*
24 by licensees, managerial officers, supervising
25 officers and members of staff in relation to the
26 provision of child care services;
27 (d) to investigate suspected contraventions of this
28 Act;
29 (e) to investigate whether grounds for disciplinary
30 action exist for the purposes of Part 2
31 Division 6;

1 (f) any other functions that are prescribed.

2

3 **26. Part 4 replaced**

4 Delete Part 4 and insert:

5

6 **Part 4 — Compliance and enforcement**

7 **Division 1 — General powers**

8 **42. Power to enter place**

9 (1) In this section —

10 *exempt service* means a child care service to which an
11 order under section 45(1) applies.

12 (2) A licensing officer, for compliance purposes, may enter
13 a place if —

14 (a) it is a place at which a child care service is
15 provided under a licence and the entry occurs
16 during the service's usual hours of operation; or

17 (b) it is a place at which an exempt service is
18 provided and the entry occurs during the
19 service's usual hours of operation; or

20 (c) it is a place at which children attending a child
21 care service are present for the purposes of an
22 excursion; or

23 (d) its occupier gives informed consent to the
24 entry; or

25 (e) the entry is authorised by an entry warrant.

- 1 (3) For the purposes of subsection (2)(d), an occupier gives
2 informed consent if the occupier gives consent after
3 being informed by the licensing officer —
- 4 (a) of the powers the officer wants to exercise in
5 respect of the place; and
- 6 (b) of the reasons why the officer wants to exercise
7 those powers; and
- 8 (c) that the occupier can refuse to consent to the
9 officer entering the place.

10 **43A. Powers after entering place**

- 11 A licensing officer who enters a place under
12 section 42(2) may do any of the following —
- 13 (a) inspect the place and any thing at the place;
- 14 (b) search the place and any thing at the place;
- 15 (c) measure, test, photograph or film any part of
16 the place or any thing at the place;
- 17 (d) take any thing, or a sample of or from any
18 thing, at the place for analysis or testing;
- 19 (e) operate equipment or facilities at the place or
20 direct a person at the place to do so;
- 21 (f) make a copy of, or take an extract from, any
22 record or document at the place;
- 23 (g) seize any thing that is or may afford evidence
24 of a contravention of this Act;
- 25 (h) direct the occupier of the place, or a person at
26 the place, to give the officer such assistance as
27 the officer reasonably requires for compliance
28 purposes.

- 1 **43B. Obtaining information, records and documents**
- 2 (1) A licensing officer, for compliance purposes, may do
- 3 any of the following —
- 4 (a) direct a person —
- 5 (i) to give such information as is required;
- 6 or
- 7 (ii) to answer a question put to the person,
- 8 in relation to any matter;
- 9 (b) direct a person to produce a record or document
- 10 that is in the person’s possession or under the
- 11 person’s control;
- 12 (c) make a copy of a record or document produced
- 13 in response to a direction under paragraph (b).
- 14 (2) A direction under subsection (1)(a) —
- 15 (a) must specify the time at or within which the
- 16 information or answer is to be given; and
- 17 (b) may require that the information or answer —
- 18 (i) be given orally or in writing; and
- 19 (ii) be given at, or sent or delivered to, a
- 20 place specified in the direction; and
- 21 (iii) in the case of written information or a
- 22 written answer, be sent or delivered by
- 23 any means specified in the direction;
- 24 and
- 25 (iv) be given on oath or affirmation or
- 26 verified by statutory declaration.
- 27 (3) A direction under subsection (1)(b) —
- 28 (a) must specify the time at or within which the
- 29 record or document is to be produced; and

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- 1 (b) may require that the record or document be
2 produced —
- 3 (i) at any place specified in the direction;
4 and
- 5 (ii) by any means specified in the direction.
- 6 (4) If under subsection (1)(a) or (b) a licensing officer
7 gives an oral direction to a person to give information
8 or an answer, or to produce a record or document, the
9 officer must inform the person that the person is
10 required, under this Act, to give the information or
11 answer, or produce the record or document, as the case
12 may be.
- 13 (5) If under subsection (1)(a) or (b) a licensing officer
14 gives a written direction to a person to give information
15 or an answer, or to produce a record or document, the
16 direction must state that the person is required, under
17 this Act, to give the information or answer, or produce
18 the record or document, as the case may be.
- 19 (6) A licensing officer may administer an oath or
20 affirmation for the purposes of subsection (2)(b)(iv)
21 and for that purpose has the authority of a
22 commissioner for declarations.
- 23 **43C. Additional powers in relation to relevant records**
- 24 A licensing officer, for compliance purposes, may do
25 any of the following —
- 26 (a) operate a computer or other thing on which the
27 officer suspects on reasonable grounds a
28 relevant record is or may be stored or direct a
29 person who has the custody or control of the
30 computer or thing to do so;
- 31 (b) direct a person who is or appears to be in
32 control of a record or document that the officer
33 suspects on reasonable grounds is a relevant

- 1 record to give the officer a translation, code,
2 password or other information necessary to
3 gain access to or interpret and understand the
4 record or document;
- 5 (c) make a copy of or take an extract from, or
6 download or print out, or photograph or film, a
7 record or document that the officer suspects on
8 reasonable grounds is a relevant record;
- 9 (d) seize a record or document that the officer
10 suspects on reasonable grounds is a relevant
11 record and retain it for as long as is necessary
12 for the purposes of this Act;
- 13 (e) seize a computer or other thing on which the
14 officer suspects on reasonable grounds a
15 relevant record is or may be stored and retain it
16 for as long as is necessary for the purposes of
17 this Act;
- 18 (f) take reasonable measures to secure or protect a
19 relevant record, or computer or other thing on
20 which a relevant record is or may be stored,
21 against damage or unauthorised removal or
22 interference.

23 **43D. Directions generally**

- 24 (1) A direction under this Division may be given orally or
25 in writing.
- 26 (2) A person who, without reasonable excuse, fails to
27 comply with a direction given to the person under this
28 Division commits an offence.
29 Penalty: a fine of \$12 000.

- 1 **43E. Exercise of power may be recorded**
- 2 A licensing officer may record the exercise of a power
- 3 under this Division, including by making an
- 4 audiovisual recording.
- 5 **43F. Assistance and use of force**
- 6 (1) This section applies in relation to the exercise of a
- 7 power under this Division.
- 8 (2) A licensing officer exercising the power may authorise
- 9 as many other people to assist in exercising the power
- 10 as are reasonably necessary in the circumstances.
- 11 (3) In exercising the power a licensing officer, and any
- 12 person authorised under subsection (2) to assist a
- 13 licensing officer, may use any force that is reasonably
- 14 necessary in the circumstances.
- 15 (4) A person authorised under subsection (2) who assists a
- 16 licensing officer in the exercise of the power is to be
- 17 taken, for the purposes of this Act, to be performing a
- 18 function under this Act.
- 19 **43G. Seizure**
- 20 (1) If a licensing officer seizes any thing under this
- 21 Division, the officer must give the person who was in
- 22 possession of it a receipt for it in the approved form.
- 23 (2) If a licensing officer seizes any thing under this
- 24 Division, the officer must if practicable allow a person
- 25 who is otherwise entitled to possession of it to have
- 26 reasonable access to it.
- 27 (3) A licensing officer who seizes any thing under this
- 28 Division may take reasonable measures to prevent the
- 29 thing being concealed, lost, damaged or destroyed.

- 1 **43J. Application for entry warrant**
- 2 (1) In this section —
- 3 *application* means an application under section 43I;
- 4 *remote communication* means any way of
- 5 communicating at a distance including by telephone,
- 6 fax, email and radio.
- 7 (2) A reference in this section to making an application
- 8 includes a reference to giving information in support of
- 9 the application.
- 10 (3) An application must be made in person before a JP
- 11 unless —
- 12 (a) the warrant is needed urgently; and
- 13 (b) the applicant reasonably suspects that a JP is
- 14 not available within a reasonable distance of the
- 15 applicant,
- 16 in which case —
- 17 (c) the application may be made to the JP by
- 18 remote communication; and
- 19 (d) the JP must not grant it unless satisfied about
- 20 the matters in paragraphs (a) and (b).
- 21 (4) An application must be made in writing unless —
- 22 (a) the application is made by remote
- 23 communication; and
- 24 (b) it is not practicable to send the JP written
- 25 material,
- 26 in which case —
- 27 (c) the application may be made orally; and
- 28 (d) the JP must make a written record of the
- 29 application and any information given in
- 30 support of it.

- 1 (5) An application must be made on oath unless —
- 2 (a) the application is made by remote
- 3 communication; and
- 4 (b) it is not practicable for the JP to administer an
- 5 oath to the applicant,
- 6 in which case —
- 7 (c) the application may be made in an unsworn
- 8 form; and
- 9 (d) if the JP issues an entry warrant, the applicant
- 10 must as soon as is practicable send the JP an
- 11 affidavit verifying the application and any
- 12 information given in support of it.
- 13 (6) If on an application made by remote communication a
- 14 JP issues an entry warrant, the JP must if practicable
- 15 send a copy of the original warrant to the applicant by
- 16 remote communication, but otherwise —
- 17 (a) the JP must send the applicant by remote
- 18 communication any information that must be
- 19 set out in the warrant; and
- 20 (b) the applicant must complete a form of warrant
- 21 with the information received and give the JP a
- 22 copy of the form as soon as is practicable after
- 23 doing so; and
- 24 (c) the JP must attach the copy of the form to the
- 25 original warrant and any affidavit received
- 26 from the applicant and make them available for
- 27 collection by the applicant.
- 28 (7) The copy of the original warrant sent, or the form of
- 29 the warrant completed, as the case may be, under
- 30 subsection (6) has the same force and effect as the
- 31 original warrant.
- 32 (8) If an applicant contravenes subsection (5)(d) or (6)(b),
- 33 any evidence obtained under the entry warrant is not

- 1 admissible in proceedings in a court or the State
2 Administrative Tribunal.
- 3 **43K. Issuing entry warrant**
- 4 (1) On an application under section 43I, a JP may issue an
5 entry warrant if satisfied that it is necessary for a
6 licensing officer to enter a place for compliance
7 purposes.
- 8 (2) An entry warrant must contain the following
9 information —
- 10 (a) a reasonably particular description of the place
11 to which it relates;
- 12 (b) a reasonably particular description of the
13 compliance purposes for which entry to the
14 place is required;
- 15 (c) if a contravention of this Act is suspected, the
16 provision concerned;
- 17 (d) the period, not exceeding 14 days, during which
18 it may be executed;
- 19 (e) the name of the JP who issued it;
- 20 (f) the date and time when it was issued.
- 21 (3) An entry warrant must be in the prescribed form.
- 22 (4) If a JP refuses to issue an entry warrant, the JP must
23 record on the application the fact of, the date and time
24 of, and the reasons for, the refusal.
- 25 **43L. Effect of entry warrant**
- 26 (1) An entry warrant has effect according to its content and
27 this section.
- 28 (2) An entry warrant comes into force when it is issued by
29 a JP.

- 1 (3) An entry warrant may be executed by any licensing
2 officer.

3 **Division 3 — Compliance notices**

4 **43M. CEO may give compliance notice**

- 5 (1) The CEO may give a licensee a compliance notice if
6 the CEO believes on reasonable grounds that the
7 licensee —
- 8 (a) is contravening a provision of this Act; or
 - 9 (b) has contravened a provision of this Act in
10 circumstances that make it likely that the
11 contravention will be repeated.
- 12 (2) A compliance notice must —
- 13 (a) be in writing; and
 - 14 (b) specify the provision of this Act (the *relevant*
15 *provision*) that the CEO believes is being, or
16 has been, contravened; and
 - 17 (c) state, briefly, how it is believed the relevant
18 provision is being, or has been, contravened;
19 and
 - 20 (d) specify the measures the licensee must take to
21 remedy the contravention, or to prevent a
22 further contravention, of the relevant provision,
23 as the case requires; and
 - 24 (e) specify the day on or before which the
25 measures are to be taken; and
 - 26 (f) state that contravention of the notice is an
27 offence under this Act and grounds for
28 disciplinary action under Part 2 Division 6; and
 - 29 (g) inform the licensee that the licensee has a right
30 to apply under section 43O for a review of the
31 CEO's decision to give the notice.

1 (3) The day specified under subsection (2)(e) must be at
2 least 7 days after the day on which the compliance
3 notice is given to the licensee.

4 (4) The CEO may, by written notice given to the licensee,
5 amend or cancel a compliance notice.

6 **43N. Contravention of compliance notice**

7 A licensee who, without reasonable excuse, fails to
8 comply with a compliance notice given to the licensee
9 commits an offence.

10 Penalty: a fine of \$12 000.

11 **43O. Review of decision to give compliance notice**

12 A licensee aggrieved by a decision of the CEO to give
13 a compliance notice may apply to the State
14 Administrative Tribunal for a review of the decision.

15 **Division 4 — Proceedings and evidence**

16 **43P. Legal proceedings**

17 (1) Proceedings for an offence under this Act or in respect
18 of any other matter arising under this Act may be
19 commenced in the name of the CEO by the CEO or a
20 person authorised to do so by the CEO.

21 (2) In any proceedings no proof is required of —

22 (a) the appointment of the CEO; or

23 (b) the authorisation of a person under
24 subsection (1),

25 but an averment in a prosecution notice or other
26 document that the person is so appointed or authorised
27 is to be taken to be proved in the absence of evidence
28 to the contrary.

- 1 (3) Subsection (1) does not limit the ability of a person to
2 commence or conduct the prosecution of an offence if
3 the person has authority at law to do so.

4 **43Q. Evidentiary certificate**

- 5 (1) In proceedings under this Act production of a
6 certificate containing a statement described in
7 subsection (2) and purporting to be signed by the CEO
8 is, without proof of any appointment or signature,
9 evidence of the facts stated in the certificate.
- 10 (2) A certificate may state any or all of the following —
- 11 (a) that a person holds or held, or does not or did
12 not hold, a licence in relation to a particular
13 child care service;
- 14 (b) that a licence specifies or specified, or does not
15 or did not specify, a particular place;
- 16 (c) the conditions to which a licence is or was
17 subject;
- 18 (d) that a licence has or had been suspended or
19 cancelled;
- 20 (e) that a person has or had been disqualified
21 from —
- 22 (i) holding a licence; or
- 23 (ii) being a managerial officer of a
24 corporate licensee; or
- 25 (iii) being the supervising officer for a child
26 care service;
- 27 (f) that a compliance notice has or had been given
28 to a person;
- 29 (g) the day, days or period on or during which
30 anything referred to in any of paragraphs (a)
31 to (f) applied.

- 1 **43. No privilege against self-incrimination**
- 2 (1) A person is not excused from complying with a
- 3 direction under section 43B(1)(a) to give information,
- 4 answer a question or produce a record or document on
- 5 the ground that complying with the direction might
- 6 tend to incriminate the person or render the person
- 7 liable to a penalty.
- 8 (2) However, any information or answer given by an
- 9 individual in compliance with such a direction is not
- 10 admissible in evidence against the individual in
- 11 proceedings under Part 2 Division 6 or in criminal
- 12 proceedings other than proceedings for perjury or for
- 13 an offence under section 49.
- 14 **44. Evidence Act 1906 not affected**
- 15 This Division is in addition to and does not affect the
- 16 operation of the *Evidence Act 1906*.
- 17
- 18 **27. Section 45A inserted**
- 19 At the beginning of Part 5 insert:
- 20
- 21 **45A. Publication of information about child care services**
- 22 (1) The CEO may cause to be published, in any form or
- 23 manner the CEO considers appropriate, information
- 24 concerning any of the following —
- 25 (a) child care services;
- 26 (b) licensees or other persons involved in the
- 27 provision of child care services;
- 28 (c) matters that adversely affect or may adversely
- 29 affect the interests of children to whom child
- 30 care services are provided.

- 1 (2) Without limiting subsection (1), information published
2 under this section may include details of —
3 (a) compliance notices; and
4 (b) orders made by the State Administrative
5 Tribunal in proceedings under Part 2
6 Division 6.
- 7 (3) Information published under this section may identify a
8 particular child care service or a particular person, but
9 not a child.
- 10 (4) The CEO must not publish information under this
11 section unless satisfied that it is in the public interest to
12 do so.
- 13 (5) Without limiting section 51, no civil or criminal
14 liability is incurred by the CEO or any other person in
15 respect of the publication, in good faith, of information
16 under this section.
17

18 **28. Section 45 amended**

19 After section 45(2) insert:
20

- 21 (3A) An order made under subsection (1) may specify
22 conditions subject to which the exemption is to apply.
- 23 (3B) A person who provides a child care service to which an
24 order made under subsection (1) applies must not
25 contravene a condition specified in the order.
26 Penalty: a fine of \$12 000.
27

s. 29

1 **29. Section 49 replaced**

2 Delete section 49 and insert:

3

4 **49. False or misleading information**

5 A person must not —

6 (a) in, or in connection with, an application under
7 this Act; or

8 (b) in compliance or purported compliance with a
9 direction or requirement under this Act; or

10 (c) for any other purpose under this Act,

11 give information that the person knows is false or
12 misleading in a material particular.

13 Penalty: a fine of \$6 000.

14

15 **30. Section 50 amended**

16 Delete section 50(2)(b) and insert:

17

18 (b) for the purpose of proceedings under this Act;
19 or

20

21 **31. Section 51A inserted**

22 After section 50 insert:

23

24 **51A. CEO may require statutory declaration**

25 The CEO may require any document or information
26 provided to the CEO or a departmental officer for the
27 purposes of this Act to be verified by statutory
28 declaration.

29

1 **32. Section 51 amended**

2 (1) Delete section 51(3) and insert:

3

4 (3) The State is also relieved of any liability that it might
5 otherwise have had for another person having done
6 anything as described in subsection (1).

7

8 (2) Delete section 51(4).

9 **33. Section 53A inserted**

10 After section 52 insert:

11

12 **53A. Regulations may refer to published documents**

13 (1) Regulations made under section 52 may adopt the text
14 of any published document specified in the
15 regulations —

16 (a) as that text exists at a particular date; or

17 (b) as that text may from time to time be amended.

18 (2) The text may be adopted —

19 (a) wholly or in part; or

20 (b) as modified by the regulations.

21 (3) The adoption may be direct (by reference made in the
22 regulations), or indirect (by reference made in any text
23 that is itself directly or indirectly adopted).

24 (4) The adoption of text is of no effect unless —

25 (a) the adopted text; and

26 (b) if text is adopted as it may from time to time be
27 amended, either —

28 (i) the amendments to the text; or

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1 (ii) the text as amended,
2 can at all reasonable times be inspected or purchased
3 by the public.
4

5 **34. Part 6 Division 1 heading inserted**

6 After the heading to Part 6 insert:
7

8 **Division 1 — Provisions relating to repeal of *Children***
9 ***and Community Services Act 2004* Part 8**
10

11 **35. Section 54 amended**

12 In section 54 delete “Part —” and insert:
13

14 Division —
15

16 Note: The heading to amended section 54 is to read:

17 **Terms used**

18 **36. Section 55 amended**

19 In section 55 delete “Part” (first occurrence) and insert:
20

21 Division
22

23 **37. Section 61 amended**

24 In section 61(1) delete “Part” and insert:
25

26 Division
27

1 **38. Part 6 Division 2 inserted**

2 At the end of Part 6 insert:

3

4 **Division 2 — Provisions relating to *Child Care Services***
5 ***Amendment Act 2011***

6 **62A. *Interpretation Act 1984* not affected**

7 The provisions of this Division are additional to and do
8 not affect the application of the *Interpretation Act 1984*
9 Part V.

10 **62B. Licensing officers**

11 An appointment that was in effect under section 40(1)
12 immediately before the day on which the *Child Care*
13 *Services Amendment Act 2011* section 24(1) (the
14 ***amending provision***) comes into operation is, on and
15 after that day, to be taken to be a designation under
16 section 40(1) as amended by the amending provision.

17 **62C. Supervising officers**

18 (1) In this section —
19 ***commencement day*** means the day on which the *Child*
20 *Care Services Amendment Act 2011* section 4(2) comes
21 into operation;

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

25 (2) An individual who, immediately before the
26 commencement day, was the supervising officer for a
27 child care service under paragraph (a)(ii) of the old
28 definition is, on and after that day, to be taken to be an
29 individual approved for the purposes of
30 section 5A(1)(a)(ii) in relation to that service.

- 1 (3) An individual who, immediately before the
2 commencement day, was the supervising officer for a
3 child care service under paragraph (b)(i) or (ii) of the
4 old definition is, on and after that day, to be taken to be
5 an individual approved for the purposes of
6 section 5A(1)(b)(i) in relation to that service.

7 **62D. Suspensions**

- 8 (1) This section applies if, immediately before the day on
9 which the *Child Care Services Amendment Act 2011*
10 section 16 comes into operation, a suspension of a
11 licence (the *existing suspension*) was in effect under
12 this Act.
- 13 (2) The existing suspension continues to have effect until
14 one of the following happens —
- 15 (a) the suspension is revoked by the CEO under
16 subsection (3);
- 17 (b) the suspension is revoked by the State
18 Administrative Tribunal on an application
19 under section 30 for a review of the CEO's
20 decision to suspend the licence;
- 21 (c) the licence is cancelled under section 29 or 30B
22 or expires;
- 23 (d) the licence is surrendered in accordance with
24 the regulations.
- 25 (3) The CEO may, by written notice given to the licensee,
26 revoke the existing suspension if the CEO —
- 27 (a) is satisfied that the steps specified in the
28 suspension notice relating to the suspension
29 have been taken; or
- 30 (b) is otherwise satisfied that it is appropriate to do
31 so in the circumstances of the particular case.

- 1 **62E. Transitional regulations**
- 2 (1) If there is no sufficient provision in this Division for
- 3 dealing with a transitional matter, regulations made
- 4 under this Act may prescribe all matters that are
- 5 required or necessary or convenient to be prescribed
- 6 for dealing with the matter.
- 7 (2) In subsection (1) —
- 8 *transitional matter* means a matter that needs to be
- 9 dealt with for the purpose of effecting the transition
- 10 from this Act as in force immediately before the
- 11 commencement of a provision of the *Child Care*
- 12 *Services Amendment Act 2011* to this Act as in force
- 13 after that commencement.
- 14 (3) Regulations referred to in subsection (1) may provide
- 15 that a specified provision of this Act does not apply, or
- 16 applies with specified modifications, to or in relation to
- 17 any matter.
- 18 (4) If regulations referred to in subsection (1) provide that
- 19 a specified state of affairs is to be taken to have
- 20 existed, or not to have existed, on and from a day that
- 21 is earlier than the day on which the regulations are
- 22 published in the *Gazette* but not earlier than the
- 23 commencement of the relevant provision of the *Child*
- 24 *Care Services Amendment Act 2011*, the regulations
- 25 have effect according to their terms.
- 26 (5) In subsections (3) and (4) —
- 27 *specified* means specified or described in the
- 28 regulations.
- 29 (6) If regulations contain a provision referred to in
- 30 subsection (4), the provision does not operate so as —
- 31 (a) to affect, in a manner prejudicial to any person
- 32 (other than the State, an authority of the State
- 33 or a local government), the rights of that person

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- 1 existing before the regulations were published
2 in the *Gazette*; or
3 (b) to impose liabilities on any person (other than
4 the State, an authority of the State or a local
5 government), in respect of anything done or
6 omitted to be done before the regulations were
7 published in the *Gazette*.
8

9 **39. Schedule 1 amended**

10 (1) Delete Schedule 1 item 2 and insert:
11

- 12 2. Regulating —
13 (a) objections to the grant of licences; and
14 (b) the surrender of licences.
15

16 (2) In Schedule 1 item 5:

17 (a) delete “an applicant or licensee” and insert:
18

19 a person
20

21 (b) after “application” insert:
22

23 under this Act
24

25 (3) Delete Schedule 1 items 7 and 8 and insert:
26

27 7. Providing for and in relation to the approval of individuals
28 by the CEO for the purposes of section 5A(1)(a)(ii) and
29 (b)(i), including —

- 30 (a) the making of applications for approval; and
31 (b) matters of which the CEO has to be satisfied before
32 giving approval, including requirements as to the

Child Care Services Amendment Bill 2011

Part 3 Working with Children (Criminal Record Checking) Act 2004
amended

s. 40

1 **Part 3 — *Working with Children (Criminal Record***
2 ***Checking) Act 2004* amended**

3 **40. Act amended**

4 This Part amends the *Working with Children (Criminal Record*
5 *Checking) Act 2004*.

6 **41. Section 38 amended**

7 In section 38(3)(b) delete “a nominated supervising officer,”.

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