

Version No. 018
Children's Services Act 1996
No. 53 of 1996

Version incorporating amendments as at 14 July 2008

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Version No. 018
Children's Services Act 1996
No. 53 of 1996

Version incorporating amendments as at 14 July 2008

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose

The main purpose of this Act is to provide for the licensing and regulation of children's services.

2 Commencement

- (1) Section 1 and this section come into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 1 July 1998, it comes into operation on that day.

S. 2(3)
substituted by
No. 72/1997
s. 14.

3 Definitions

- (1) In this Act—

authorised officer means a person appointed by the Secretary under section 35 for the purposes of this Act;

children's service means a service providing care or education for 5 or more children under the age of 6 years in the absence of their parents or guardians—

- (a) for fee or reward; or
- (b) while the parents or guardians of the children use services or facilities provided by the proprietor of the service;

S. 3(1) def. of
Department
substituted by
No. 58/2007
s. 52(1)(a).

Department means the Department of Education and Early Childhood Development;

guardian, in relation to a child, means the legal guardian of the child or the person who has the custody or control of the child but does not include a person providing children's services to a child;

licensee means a person who holds a licence to operate a children's service under this Act;

proprietor, in relation to a children's service, includes the owner of the service and any person who manages or controls the service and, in relation to any proposed children's service, includes the person who proposes to operate the service;

relative, in relation to a child means a parent, grandparent, brother, sister, uncle, aunt or cousin of the whole blood or half-blood or by marriage including a defacto marriage, and whether or not the relationship depends on adoption of the child;

S. 3(1) def. of
Secretary
substituted by
No. 58/2007
s. 52(1)(b).

Secretary means the Secretary to the Department of Education and Early Childhood Development;

this Act includes regulations made under the Act.

- (2) If, under the **Public Administration Act 2004**, the name of the Department of Education and Early Childhood Development is changed, a reference in the definitions of Department and Secretary in subsection (1) to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.
- (3) In this Act a reference to an absence in relation to an applicant, licensee or proprietor that is a body corporate includes a reference to the absence of the directors of the body corporate.

S. 3(2)
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 30),
58/2007
s. 52(2).

4 Act to bind the Crown

- (1) This Act binds the Crown, not only in right of Victoria but also, so far as the legislative capacity of Parliament permits, the Crown in all its other capacities.
- (2) Nothing in this Act makes the Crown in any of its capacities liable to be prosecuted for an offence.

5 Non-application of this Act

- (1) Nothing in this Act applies in circumstances where the children being cared for or educated are—
- (a) patients in a hospital which is a registered funded agency under the **Health Services Act 1988**;
- (b) students enrolled at a preparatory level or above at a Government school or a non-Government school within the meaning of the **Education and Training Reform Act 2006**;
- (c) recipients of protection, care or accommodation being provided by a community service or secure welfare service established under section 44 of the **Children,**

S. 5(1)(b)
substituted by
No. 24/2006
s. 6.1.2(Sch. 7
item 6).

S. 5(1)(c)
substituted by
No. 48/2006
s. 42(Sch.
item 6).

Youth and Families Act 2005 or a community service registered under Division 3 of Part 3.3 of that Act;

(d) clients of a registered service or a residential program within the meaning of the **Intellectually Disabled Person's Services Act 1986**.

- (2) Nothing in this Act applies in circumstances where the children are being cared for or educated in the children's own home or by a relative of the children.
- (3) Subsection (1)(b) does not prevent the Secretary from imposing conditions on any licence for a children's service relating to children who are enrolled at a school referred to in that paragraph being cared for or educated by the children's service.

6 Exemption

- (1) The Minister, by notice published in the Government Gazette, may declare that all or any of the provisions of this Act do not apply to any specified children's service or any specified class or type of children's service.
- (2) A declaration may be made subject to any terms and conditions that are specified in the notice.
- (3) A notice remains in force for any period that is specified in the notice or, if no period is specified, until the Minister, by notice published in the Government Gazette, revokes the earlier notice.
- (4) A notice of revocation under subsection (3) does not apply to a children's service or a class or type of children's service until 60 days after the publication of the notice in the Government Gazette.

PART 2—OFFENCES

7 Offence to carry on unlicensed children's service

A person must not own, operate, manage or control a children's service if the service is not licensed under this Act.

Penalty: 240 penalty units.

S. 7
amended by
No. 22/2008
s. 6.

8 Offence to advertise unlicensed etc. children's service

- (1) A person must not publish or cause to be published an advertisement for a children's service unless the children's service is licensed to operate under this Act or an approval in principle has been granted for the children's service under this Act.

Penalty: 120 penalty units.

- (2) It is a defence to a charge under subsection (1) if the defendant proves that he or she took reasonable steps or exercised due diligence to determine that the children's service was licensed to operate under this Act or an approval in principle had been granted for the children's service under this Act.

S. 8(1)
amended by
No. 22/2008
s. 7(2).

PART 3—LICENSING OF CHILDREN'S SERVICES

Division 1—Approval in principle

9 Application for approval in principle

- (1) A person may apply to the Secretary for approval in principle of—
- (a) the use of particular land or premises for operating a children's service; or
 - (b) premises proposed to be constructed for use in operating a children's service; or
 - (c) alterations or extensions to premises used or proposed to be used for operating a children's service—

and the operation of a children's service at those premises.

- (2) An application must—
- (a) be in writing; and
 - (b) contain the prescribed information; and
 - (c) be accompanied by the prescribed fee.
- (3) An applicant for approval in principle must give the Secretary—
- (a) any further information relating to the application that the Secretary requests including information about—
 - (i) the proprietor of the children's service and, if the proprietor is a body corporate, any director or officer of the body corporate who may exercise control over the operation of the children's service; and

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- (ii) whether the proprietor intends to be present at the premises where the children's service is to operate at all times or to employ a person to manage or control the children's service in the absence of the proprietor; and
 - (b) any design sketches and construction drawings, plans or specifications relating to the premises proposed to be used or constructed, altered or extended that the Secretary requests.

10 Criteria for grant of approval in principle

- (1) In determining whether to grant or refuse to grant approval in principle to operate a children's service the Secretary must consider whether the design and the location of the premises to be used for the operation of the children's service are satisfactory for that purpose.
- (2) The Secretary must not grant approval in principle for the operation of a children's service unless the Secretary is satisfied that the person who is or is likely to be the proprietor of the service or, if the person is a body corporate, any director or other officer of the body corporate who exercises or may exercise control over the operation of the service is a fit and proper person to be such a proprietor or to exercise such control.

11 Fit and proper person

- (1) For the purposes of this Part, the Secretary may take into account all or any of the following matters in determining whether a person is to be taken to be a fit and proper person to operate a children's service or in the case of a body corporate to be the director or other officer of the body corporate who exercises or may exercise control over the operation of the service—

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- (a) the person has within the 10 years preceding the application been found guilty of an indictable offence against the person or an offence involving dishonesty, fraud or trafficking in drugs of dependence where the maximum penalty exceeds 3 months imprisonment;
 - (b) the person has been found guilty of an offence against this Act or any previous corresponding Act;
 - (c) the person is not of sound financial reputation and stable financial background;
 - (d) the person is not of good repute having regard to character, honesty and integrity.
- (2) For the purposes of this Part, the Secretary may take into account all or any of the matters referred to in subsection (1)(a), (b) or (d) in determining whether a person is to be taken to be a fit and proper person to manage or control a children's service in the absence of the proprietor.
- (3) This section does not limit the circumstances in which a person may be considered not to be a fit and proper person to operate a children's service or, in the case of a body corporate, to be the director or other officer of the body corporate who exercises or may exercise control over the operation of the service or to manage or control a children's service in the absence of the proprietor.

12 Decision on application

- (1) The Secretary must decide whether to grant (whether or not subject to conditions) or to refuse to grant an application under section 9.

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- (2) The Secretary must give notice in writing to the applicant of his or her decision within 60 days after receiving the application or, if the Secretary requests further information from the applicant, within 60 days after receiving that information.

13 Certificate of approval in principle

If the Secretary approves an application under section 9 he or she must issue a certificate of approval in principle stating—

- (a) the name of the person to whom it is issued; and
- (b) any conditions to which it is subject.

14 Revocation of certificate

- (1) If the Secretary is satisfied that—
- (a) a person to whom an approval in principle relates has ceased to be a fit and proper person to operate a children's service; or
 - (b) if the approval in principle relates to a body corporate, a director or other officer of the body corporate who exercises or may exercise control over the body corporate has ceased to be a fit and proper person to operate a children's service—

the Secretary, by notice in writing given to the person or body corporate, may revoke the certificate.

- (2) Except as provided in subsection (1), the Secretary cannot revoke a certificate of approval in principle.

15 Term of approval

- (1) An approval in principle remains in force for 3 years unless it is sooner cancelled.

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- (2) An approval in principle is—
- (a) personal to the person to whom it was granted; and
 - (b) not transferable to any other person.

Division 2—Licensing

16 Application for a licence

- (1) A person who has obtained approval in principle to operate a children's service may apply to the Secretary to obtain a licence to operate the children's service.
 - (2) An application—
 - (a) must be in writing and contain the prescribed information; and
 - (b) must be accompanied by—
 - (i) the prescribed fee; and
 - (ii) a copy of the approval in principle with details of any circumstances which have changed with respect to the management or operation of the children's service or the design or location of the premises where the service is to operate since the approval was granted; and
 - (iii) the name and address of any person nominated by the applicant to manage or control the children's service in the absence of the licensee and a declaration by the applicant that the person is a fit and proper person to manage or control a children's service; and
 - (iv) any other things that are prescribed.
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17 Matters to be determined

- (1) The Secretary must refuse to grant a licence if he or she is satisfied—
 - (a) that the applicant for the licence—
 - (i) has not obtained approval in principle to obtain a licence; or
 - (ii) is not or is no longer a fit and proper person to operate a children's service; or
 - (b) that any person nominated to manage or control the children's service in the absence of the licensee is not a fit and proper person to do so.
- (2) In considering an application the Secretary may require the applicant and any person nominated by the applicant to manage or control the service in the absence of the licensee to—
 - (a) submit to any tests or provide any references or reports to determine the suitability of the applicant or the nominated person; or
 - (b) submit to any medical or psychiatric examination that the Secretary considers appropriate and, if required by the Secretary, provide any results or reports of the examination.
- (3) The Secretary is not obliged to consider whether or not a person nominated by the applicant to manage or control the children's service in the absence of the licensee is a fit and proper person to do so in circumstances where the Secretary is satisfied—

(a) that—

- (i) the applicant; or
- (ii) if the applicant is a body corporate, at least one of the directors of the body corporate—

will be attending and managing or controlling the children's service on a daily basis; or

- (b) that more than one person has been nominated to manage or control the children's service and the particular person being considered will not have primary responsibility for managing or controlling the children's service—

if the applicant has made a declaration that the person nominated by the applicant is a fit and proper person to manage or control a children's service.

18 Grant or refusal of licence

- (1) The Secretary may grant or refuse to grant a licence.
- (2) If the Secretary grants a licence, he or she must specify the premises where the children's service can operate from.
- (3) The Secretary must not grant a licence in respect of more than one premises.
- (4) A licence is granted subject to the condition that the children's service is operated in a way which ensures the safety of the children being cared for or educated and that their developmental needs are met and may be granted subject to any other conditions or restrictions set out in the licence that are prescribed or that the Secretary imposes.

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- (5) Without limiting the power of the Secretary to impose any other conditions or restrictions on a licence, the Secretary may impose conditions or restrictions—
- (a) about the premises or parts of the premises from which the service can be provided;
 - (b) about the maximum number of children that may be cared for or educated by the service;
 - (c) about the ages of the children who may be cared for or educated by the service;
 - (d) about any change to a person having the management or control of the service in the absence of the licensee;
 - (e) about the minimum number of staff who must be in attendance at the service;
 - (f) about the qualifications of the staff of the service.
- (6) The Secretary must give notice in writing to the applicant of his or her decision within 60 days after receiving the application or, if the Secretary has required testing, examination or further information, within 60 days after receiving the results or report of the test or examination or that information.

19 Licence conditions

If the Secretary grants a licence under section 18, he or she must send a copy of licence to the licensee stating—

- (a) the name of the person to whom it is issued;
and
 - (b) the premises where the service can operate;
and
 - (c) any conditions or restrictions to which it is subject.
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20 Term of licence

A licence remains in force for a period not exceeding 3 years unless it is sooner cancelled.

Division 3—Renewal, transfer or variation of a licence

21 Application for renewal of a licence

- (1) A licensee may apply to the Secretary for the renewal of the licensee's licence.
- (2) An application must—
 - (a) be in writing in the prescribed form; and
 - (b) specify the prescribed information; and
 - (c) be accompanied by the prescribed renewal fee.
- (3) A renewal application must be made at least 2 months before the expiry of the licence but not more than 3 months before that expiry.
- (4) The Secretary may, on receipt of the prescribed late application fee, consider an application for renewal of a licence that is received within the 2 month period referred to in subsection (3) but before the expiry of the licence.

22 Renewal of a licence

- (1) The Secretary may renew a licence or refuse to renew a licence.
 - (2) On renewing a licence the Secretary may—
 - (a) renew the licence as then in force; or
 - (b) vary any of the conditions or restrictions to which the licence is subject; or
 - (c) impose new conditions or restrictions on the licence.
 - (3) The conditions or restrictions to which a licence is subject must be set out in the licence.
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- (4) A renewed licence remains in force for the period not exceeding 3 years determined by the Secretary and specified in the licence.

23 Variation of a licence

- (1) The Secretary may at any time—
- (a) vary or revoke a condition or restriction of a licence; or
 - (b) impose a new condition or restriction on a licence; or
 - (c) vary the period of a licence.
- (2) The Secretary must not vary the period of a licence so that it exceeds 3 years.
- (3) The Secretary may act under subsection (1)—
- (a) of his or her own initiative after consultation with the licensee; or
 - (b) on the application of the licensee.
- (4) An application must—
- (a) be in writing in the prescribed form; and
 - (b) specify the prescribed information; and
 - (c) be accompanied by the prescribed fee.
- (5) The Secretary must send a notice of the variation of the licence and a copy of the varied licence to the licensee within 7 days after determining that the licence should be varied.
- (6) A variation of the period of a licence or a condition or restriction of a licence does not take effect until 60 days after the Secretary gives the licensee notice in writing of the variation unless the Secretary, with the consent of the licensee, determines that the variation takes effect earlier.

24 Transfer of licence

- (1) The Secretary, on the application of a licensee, may approve the transfer of the licence to another person.
- (2) An application must—
 - (a) be in writing in the prescribed form; and
 - (b) specify the prescribed information; and
 - (c) be accompanied by the prescribed fee.

25 Criteria for transfer etc. of licence

- (1) The Secretary must not renew a children's service licence unless the Secretary is satisfied that the licensee continues to be able to satisfy all or any of the requirements of Divisions 1 and 2 to be granted approval in principle and a licence for the children's service that the Secretary determines should be satisfied in the circumstances of the application.
- (2) The Secretary must not transfer a children's service licence to another person unless the Secretary is satisfied that the other person is able to satisfy all or any of the requirements of Divisions 1 and 2 to be granted approval in principle and a licence for the children's service that the Secretary determines should be satisfied in the circumstances of the application.
- (3) The Secretary must not vary a children's service licence on the application of the licensee unless the Secretary is satisfied that the licensee is able to satisfy all or any of the requirements of Divisions 1 and 2 to be granted approval in principle and a licence for the children's service that the Secretary determines should be satisfied in the circumstances of the application.

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- (4) For the purposes of this section, the provisions of Divisions 1 and 2 determined by the Secretary under subsection (1), (2) or (3) apply to the licensee or, in the case of an application for the transfer of a licence, the person to whom the licence is to be transferred as if the licensee or that person were an applicant for approval in principle under Division 1 or an applicant for a licence under Division 2.
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PART 4—OPERATION OF CHILDREN'S SERVICES

26 Protection of children from hazards

S. 26(1)
amended by
No. 22/2008
s. 9(1)(2).

- (1) The proprietor of a children's service must ensure that every reasonable precaution is taken to protect children being cared for or educated by the service from harm and from any hazard likely to cause injury.

Penalty: 120 penalty units.

S. 26(2)
amended by
No. 22/2008
s. 9(3)(4).

- (2) A staff member of a children's service must ensure that every reasonable precaution is taken to protect a child in the care of that staff member from harm and from any hazard likely to cause injury.

Penalty: 120 penalty units.

S. 26A
inserted by
No. 3/2008
s. 3.

26A Children's service to have anaphylaxis management policy

The proprietor of a children's service must ensure that the service has in place an anaphylaxis management policy containing the prescribed matters.

Penalty: 30 penalty units.

27 Inadequate supervision of children

S. 27(1)
amended by
No. 22/2008
s. 11(1).

- (1) The proprietor of a children's service must ensure that all children being cared for or educated by the service are adequately supervised at all times that children are on the premises where the service operates or in the care of that service.

Penalty: 120 penalty units.

S. 27(2)
amended by
No. 22/2008
s. 11(2).

- (2) A staff member of a children's service must ensure that any child in the care of that staff member is adequately supervised.

Penalty: 120 penalty units.

28 Discipline of children

(1) The proprietor of a children's service must ensure that no child being cared for or educated by the service is subjected to—

S. 28(1)
amended by
No. 22/2008
s. 12(1).

- (a) any form of corporal punishment; or
- (b) any discipline which is unreasonable in the circumstances.

Penalty: 120 penalty units.

(2) A staff member of a children's service must not subject any child being cared for or educated by the service to—

S. 28(2)
amended by
No. 22/2008
s. 12(2).

- (a) any form of corporal punishment; or
- (b) any discipline which is unreasonable in the circumstances.

Penalty: 120 penalty units.

29 Premises to be kept clean and in good repair

A proprietor of a children's service must take reasonable steps to ensure that the buildings, the grounds and all equipment and furnishings used in operating the service are maintained in a safe, clean and hygienic condition and in good repair.

S. 29
amended by
No. 22/2008
s. 13(1).

Penalty: 120 penalty units.

30 Nominated person to be in charge of children's service

The licensee of a children's service must ensure that the licensee or any person nominated by the licensee and notified to the Secretary as the person having management or control of the service in the absence of the licensee is present at the premises where the children's service is operating at all times when any child is being cared for or educated by the service at the premises.

Penalty: 50 penalty units.

s. 31

S. 31
amended by
No. 22/2008
s. 16.

31 Offence to contravene condition etc. of licence

A person who holds a children's services licence must not contravene a condition or restriction to which the licence is subject.

Penalty: 120 penalty units.

S. 32
amended by
No. 22/2008
s. 17.

32 Change of directors etc.

If a person ceases to be, or is appointed as—

- (a) a director of a body corporate which is a licensee; or
- (b) an officer of a body corporate which is a licensee who may exercise control over the operation of the children's service—

the licensee must, within 30 days after the change occurs, give the Secretary notice of the change.

Penalty: 60 penalty units.

33 Licence must be displayed

A licensee must ensure that a copy of the licence is displayed conspicuously at the entrance to the premises where the children's service operates at all times when the service is operating.

Penalty: 30 penalty units.

34 Licensee to notify clients of certain changes

S. 34(1)
amended by
No. 22/2008
s. 20(2).

- (1) A licensee whose licence has been varied under section 23 must notify the parents or guardians of children who are cared for or educated by the service of the variation by notice posted conspicuously at the entrance to the premises where the service operates within 7 days after the licensee has been notified of the variation by the Secretary.

Penalty: 60 penalty units.

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s. 34

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- (2) A licensee who has applied to the Secretary to have the licensee's licence cancelled must notify the parents or guardians of children who are cared for or educated by the service of the application by notice in writing posted conspicuously at the entrance to the premises where the service operates within 24 hours after applying to the Secretary for the cancellation.

S. 34(2)
amended by
No. 22/2008
s. 20(3).

Penalty: 60 penalty units.

PART 5—ENFORCEMENT

Division 1—Authorised officers

35 Authorisation of officers

S. 35(1)
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 30).

- (1) The Secretary, by instrument, may authorise any person employed under Part 3 of the **Public Administration Act 2004** to be an authorised officer for the purposes of this Act.
- (2) The Secretary may determine the terms and conditions of authorisation of officers.
- (3) The Secretary, by instrument, may revoke the authorisation of an officer at any time.
- (4) The Secretary must issue an identity card to each authorised officer.
- (5) The identity card issued to an officer must—
 - (a) contain a photograph of the officer; and
 - (b) contain the signature of the officer; and
 - (c) be signed by the Secretary; and
 - (d) state that the officer is authorised to exercise powers under this Act.
- (6) An authorised officer must—
 - (a) carry the identity card whenever the officer is exercising his or her functions under this Act; and
 - (b) show the identity card upon being requested to do so.

Penalty applying to this subsection: 10 penalty units.

36 Powers of entry

- (1) An authorised officer may at any reasonable time, with such assistants as may reasonably be required, for the purpose of ascertaining whether this Act is being complied with—
- (a) enter any premises where a licensed children's service is operating or where the authorised officer believes on reasonable grounds that a licensed children's service is operating;
 - (b) inspect the premises and any plant, equipment, vehicle or other thing used or suspected of being used in the provision of a children's service;
 - (c) take photographs or video recordings, or make sketches, of the premises or anything at the premises;
 - (d) inspect and make copies of, or take extracts from, any document kept at the premises;
 - (e) seize any document, record or any other thing at the premises used or suspected of being used in the provision of a children's service;
 - (f) require a person—
 - (i) to answer a question to the best of that person's knowledge, information and belief;
 - (ii) to take reasonable steps to provide information.

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- (2) If the authorised officer seizes any document, record or thing under subsection (1), he or she must—
- (a) give notice of the seizure to the person apparently in charge of it or to an occupier of the premises; and
 - (b) return the document or thing to that person or the premises within 48 hours after seizing it.
- (3) An authorised officer may not, under this section, enter a residence unless—
- (a) a children's service licensed to operate under this Act is operating at the premises of the residence; or
 - (b) the occupier of the residence has consented in writing to the entry and the inspection.
- (4) An occupier who consents in writing to the entry and search of his or her premises or residence under this section must be given a copy of the signed consent immediately.
- (5) If, in any proceeding, a written consent is not produced to the court, it must be presumed until the contrary is proved, that the occupier did not consent to the entry and search.

37 Entry to premises of unlicensed service—search warrant

- (1) An authorised officer may apply to a magistrate for the issue of a search warrant in relation to particular premises if the officer believes on reasonable grounds that a person is carrying on or operating a children's service at those premises in contravention of section 7.

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- (2) If the magistrate to whom the application is made is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that a person is carrying on or operating a children's service at the premises in contravention of section 7, the magistrate may issue a search warrant.
 - (3) A search warrant issued under this section must be directed to the applicant for it and must authorise him or her, and any assistants he or she reasonably requires, to enter the premises, or the part of the premises, named or described in the warrant to search for any article, thing or material of a kind named or described in the warrant which there is reasonable ground to believe will afford evidence as to the commission of an offence against section 7.
 - (4) In addition to any other requirement, a search warrant issued under this section must state—
 - (a) any conditions to which the warrant is subject; and
 - (b) whether entry is authorised to be made any time of the day or night or during stated hours of the day or night; and
 - (c) a date, not being later than 7 days after the date of issue of the warrant, on which the warrant ceases to have effect.
 - (5) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and be in the form prescribed under that Act.
 - (6) Subdivisions 1 and 5 of Division 3 of Part 4 of the **Magistrates' Court Act 1989** extend and apply to warrants under this section.
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38 Offence related search and seizure at licensed premises

- (1) If an authorised officer has reasonable grounds for suspecting that there is on any licensed premises where a children's service is operating a particular thing that may be evidence of a commission of an offence against this Act, the authorised officer may exercise powers under this section.
- (2) The authorised officer, with any necessary assistants, may with or without the consent in writing of the occupier of the premises, enter the premises and search for the thing without applying for a search warrant.
- (3) If the thing is found during a search under subsection (2), the Secretary or authorised officer may—
 - (a) inspect and take photographs or video recordings, or make sketches, of the premises or thing;
 - (b) seize the thing if the authorised officer believes on reasonable grounds that it is necessary to seize it in order to prevent its concealment, loss or destruction.

39 Return of seized things

- (1) If an authorised officer seizes a thing under section 37 or 38, the authorised officer must take reasonable steps to return the thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the thing has not been returned within 60 days after it was seized, the authorised officer must take reasonable steps to return it unless—

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- (a) proceedings have been commenced within the period of 60 days and those proceedings (including any appeal) have not been completed; or
 - (b) a court makes an order under section 40 extending the period the thing can be retained.
- (3) Nothing in this section limits the powers of the Court under section 78(6) of the **Magistrates' Court Act 1989**.

40 Magistrates' Court may extend period

- (1) An authorised officer may apply to the Magistrates' Court within the period of 60 days referred to in section 39 or within a period extended by the Court under this section for an extension of the period for which the thing can be held.
- (2) The Magistrates' Court may order such an extension if satisfied that retention of the thing is necessary—
 - (a) for the purposes of an investigation into whether an offence has been committed; or
 - (b) to enable evidence of an offence to be obtained for the purposes of a prosecution.
- (3) The Court may adjourn an application to enable notice of the application to be given to any person.

41 Identity card must be shown

An authorised officer may not exercise any powers under this Division if he or she fails to produce, on request, his or her identity card for the inspection by the occupier of the premises.

42 Protection against self-incrimination

It is a reasonable excuse for a person to refuse to answer an authorised officer's question or produce information to an authorised officer if the requirement is made by the authorised officer for the purpose of determining whether the first-mentioned person has committed an offence.

Division 2—Non-complying services

S. 42A
inserted by
No. 22/2008
s. 27.

42A Power of Secretary to obtain information, documents and evidence

- (1) If the Secretary believes that a person who is or has been a licensee, a nominee or a staff member of a children's service is capable of providing information, producing documents or giving evidence relating to a matter that constitutes, or may constitute, a contravention of section 26, 27 or 28, the Secretary may, by notice in writing, require that person—
 - (a) to provide to the Secretary, by writing signed by that person or, in the case of a body corporate, by the person who is or was nominated by the licensee to represent the licensee in relation to the application and the operation of the children's service, within the time and in the manner specified in the notice, that information; or
 - (b) to produce to the Secretary, or to a person specified in the notice acting on the Secretary's behalf, in accordance with the notice, those documents; or
 - (c) to appear before the Secretary, or a person specified in the notice acting on the Secretary's behalf, at a time and place specified in the notice to give that evidence,

either orally or in writing, and produce those documents.

- (2) The Secretary or the person specified in the notice acting on the Secretary's behalf may require the evidence referred to in subsection (1)(c) to be given on oath or affirmation and for that purpose may administer an oath or affirmation.
- (3) A person must not—
- (a) refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it; or
 - (b) in purported compliance with a notice under this section, knowingly provide information or give evidence that is false or misleading; or
 - (c) obstruct or hinder the Secretary in exercising a power under this section.

Penalty: 120 penalty units.

- (4) Subject to subsection (5), a person is not excused from answering a question, providing information or producing, or permitting the inspection of, a document on the ground that the answer, information or document may tend to incriminate the person.
- (5) Despite subsection (4), the answer by a person to any question asked in a notice under this section or the provision by a person of any information in compliance with a notice under this section, is not admissible in evidence against the person—
- (a) in the case of a person not being a body corporate—in any criminal proceedings other than proceedings under this section; or
 - (b) in the case of a body corporate—in any criminal proceedings other than proceedings under this Act.
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43 Notice to enforce requirements

- (1) If the Secretary is satisfied that a children's service is not operating in accordance with any provision of this Act the Secretary, by notice in writing, may direct the proprietor of the service to take the steps specified in the notice to comply with that provision.
- (2) If a notice under subsection (1) has been served on a proprietor and has not been complied with within 14 days after that service or any further time that the Secretary allows, the Secretary, by order in writing served on the proprietor, may—
 - (a) in the case of a licensed children's service, suspend the licence; and
 - (b) in all cases, direct the proprietor to cease operating the children's service and to suspend the care or education of children by the service—

from a date specified in the order.
- (3) The Secretary must—
 - (a) consider any submissions, whether oral or in writing, made to the Secretary by the proprietor of the children's service within 7 days after the service of an order under subsection (2) and may consider any other submissions and any matters the Secretary considers appropriate; and
 - (b) decide whether or not the suspension should be withdrawn or confirmed and, if confirmed, the period for which the suspension should operate; and
 - (c) give notice of his or her decision to the proprietor of the children's service.

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- (4) A person must not contravene an order under subsection (2) which has been confirmed under subsection (3).

S. 43(4)
amended by
No. 22/2008
s. 29(6).

Penalty: 120 penalty units.

43A Notice to take emergency action

S. 43A
inserted by
No. 22/2008
s. 30.

- (1) If the Secretary is satisfied that a children's service is operating in a manner that poses, or is likely to pose, a risk to the health, welfare or safety of a child being cared for or educated by the service, the Secretary may, by written notice, direct the proprietor of the children's service to take the steps specified in the notice to remove or reduce the risk within the time specified in the notice.
- (2) A proprietor of a children's service must comply with a direction given under subsection (1).

Penalty: 120 penalty units.

44 Removal of children in emergency

- (1) If the Secretary is satisfied that there is an immediate danger to the health, welfare or safety of any child or children being cared for or educated by a children's service, the Secretary may remove or cause the removal of any child or children from the premises where the children's service is operating and arrange for them to be returned to their parent's or guardian's care or to be placed temporarily in the care of another licensed children's service.
- (2) The Secretary must take all reasonable steps to inform the parents or guardians of a child removed from premises under subsection (1) of that removal, the circumstances of the removal and the present location of the child.

S. 45
amended by
No. 72/1997
s. 15.

45 Cancellation of a licence

- (1) The Secretary may cancel a licence if the Secretary is satisfied—
 - (a) that the licence was obtained improperly; or
 - (b) that the licensee has contravened or failed to comply with a condition of the licence; or
 - (c) that the licensee has been found guilty of an offence against this Act; or
 - (d) that the licensee or, if the licensee is a body corporate, any director or other officer of the body corporate who exercises or may exercise control over the operation of the service has ceased to be a fit and proper person to operate a children's service or to exercise such control; or
 - (e) that the licensee has failed to operate the children's service in a way which ensures the safety of the children being cared for or educated by the service.
- (2) The Secretary must not cancel a licence under subsection (1) unless—
 - (a) the Secretary has sent to the licensee, by post or electronic transmission, notice in writing of his or her intention to cancel the licence and the grounds on which the intention is based; and
 - (b) the Secretary has given the licensee at least 21 days to make submissions to the Secretary and has considered any submission received within that period.
- (3) If the Secretary cancels a licence he or she must give written notice of the cancellation to the licensee at least 7 days before the cancellation takes effect.

Division 3—Offences and legal proceedings

46 Offences relating to enforcement

A person must not—

- (a) without reasonable excuse, obstruct an authorised officer in exercising his or her powers under this Act; or
- (b) refuse to answer a question lawfully asked by an authorised officer or to produce a document lawfully required by an authorised officer; or
- (c) knowingly make any false or misleading statement in any application or request to the Secretary under this Act or in any notification referred to in section 54; or
- (d) without lawful authority, destroy or damage any notice or document given or prepared or kept under or in accordance with this Act; or
- (e) impersonate the Secretary or an authorised officer in the performance of his or her powers or duties under this Act.

Penalty: 50 penalty units.

47 Power to file charges under this Act

A charge for an offence against this Act may only be filed by—

- (a) a member of the police force; or
- (b) an officer authorised under section 35.

48 Offences by bodies corporate

If a body corporate is guilty of an offence against this Act, any person who is concerned in or takes part in the management of that body corporate who knowingly authorised or permitted the contravention is also guilty of that offence and liable to the penalty for that offence.

49 Service of documents

A notice, order or other document under this Act authorised or required by this Act to be served on or given to a person is to be taken to be served on or given to that person—

- (a) if a true copy of the document is delivered to him or her personally; or
 - (b) if a true copy of the document is left at his or her last known or usual place of residence or of business with a person who apparently resides or works there and who apparently is over the age of 16 years; or
 - (c) by sending by post a true copy of the document addressed to that person at that person's last known place of residence or business.
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**PART 6—FUNDING, ADMINISTRATION AND
REGULATIONS**

50 Power to fund children's services

The Secretary may provide grants, payments, subsidies or other financial assistance to any person or body of persons—

- (a) providing or operating a children's service;
or
- (b) responsible for administering children's services or arranging for the provision of children's services—

from funds administered by the Secretary for that purpose on terms and conditions that the Secretary considers appropriate.

51 Guidelines

- (1) The Secretary, by notice published in the Government Gazette, may issue guidelines about the establishment, management and operation of children's services.
- (2) The Secretary, by notice published in the Government Gazette, may revoke or amend any guidelines.

52 Ministerial delegation

The Minister, by instrument, may delegate to the Secretary or any employee in the Department any power of the Minister under this Act other than this power of delegation and the powers under section 6.

S. 52
amended by
No. 46/1998
s. 7(Sch. 1).

52A Delegation by Secretary

The Secretary, by instrument, may delegate to any employee in the Department any power or function of the Secretary under this Act other than this power of delegation.

S. 52A
inserted by
No. 58/2007
s. 52(3).

53 Register

- (1) The Secretary must keep a register of licensed children's services under this Act.
- (2) The register must contain the prescribed information about licensed children's services.
- (3) The register may be inspected during normal office hours without charge.
- (4) A person may obtain a copy of, or extract from, the register on payment of the prescribed fee.

54 Immunity

- (1) Any person who believes on reasonable grounds that any provisions of this Act are being contravened and notifies the Secretary or an authorised officer of that belief and the reasonable grounds for it—
 - (a) is not liable to any action or proceedings for unprofessional conduct or a breach of professional ethics; or
 - (b) if it is made in good faith, is not subject to any liability—

with respect to that notification.

- (2) In any legal proceedings evidence as to the grounds contained in a notification under subsection (1) for the belief that this Act is being contravened may be given but evidence that a particular matter is contained in such a notification or evidence that identifies the person who made the notification as the notifier or is likely to lead to the identification of that person as the notifier is only admissible in the proceedings if the court or tribunal grants leave for the evidence to be given or if the notifier consents in writing to the admission of that evidence.

(3) A witness in a proceeding referred to in subsection (2) must not be asked and, if asked, is entitled to refuse to answer—

- (a) any question to which the answer would or might identify the person who made a notification under subsection (1) as the notifier or might lead to the identification of that person as the notifier; or
- (b) any question as to whether any matter is contained in a notification made under subsection (1)—

unless the court or tribunal grants leave for the question to be asked or the notifier has consented in writing to the question being asked.

(4) A court or tribunal may only grant leave under subsection (2) or (3) if—

- (a) in the case of a proceeding in the court or in any other court arising out of a proceeding in the court or in the Victorian Civil and Administrative Tribunal on a review under section 55 it is satisfied that it is necessary for the evidence to be given to ensure the safety and well-being of any child being cared for or educated by a children's service;
- (b) in any other case, it is satisfied that the interests of justice require that the evidence be given.

S. 54(4)(a)
amended by
No. 10/2005
s. 3(Sch. 1
item 4.1).

(5) If a notification is made under subsection (1), a person (other than the person who made it or a person acting with the written consent of the person who made it) must not disclose to any person other than the Secretary, a member of the police force or an officer of the Department or any other person or class of persons authorised by the Secretary—

- (a) the name of the person who made the notification; or
- (b) any information that is likely to lead to the identification of the person who made the notification.

Penalty applying to this subsection: 10 penalty units.

- (6) Subsection (5) does not apply to a disclosure made to a court or tribunal in accordance with this section.

55 Application to VCAT for review

Any person aggrieved by a decision of the Secretary—

- (a) to refuse to grant an approval in principle or a licence; or
- (b) to refuse to renew, vary or transfer a licence; or
- (c) to suspend or cancel a licence—

may apply to the Victorian Civil and Administrative Tribunal for a review of that decision.

56 Regulations

- (1) The Governor in Council may make regulations for or with respect to prescribing—
 - (a) requirements about the siting, design, layout, space and security of premises used for providing children's services;
 - (b) requirements to be complied with for safety, security, cleanliness, hygiene and repair of premises, grounds, fencing, gates and equipment used for providing children's services;

S. 55
(Heading)
inserted by
No. 10/2005
s. 3(Sch. 1
item 4.2).
S. 55
amended by
No. 10/2005
s. 3(Sch. 1
item 4.3).

- (c) requirements to be complied with for the security, safety, health and welfare of children being cared for or educated by a children's service;
- (d) requirements for the staffing of children's services including, but not limited to, the appointment, numbers and qualifications of staff and staffing arrangements;
- (e) requirements as to the provision of recreational and educational programs by children's services and the quality of those programs;
- (f) the records to be kept by proprietors of children's services;
- (fa) requirements about anaphylaxis management including—
 - (i) matters (including plans and procedures) to be included in an anaphylaxis management policy; and
 - (ii) the development, implementation, maintenance and availability of an anaphylaxis management policy, including the plans and procedures required to be included in a policy; and
 - (iii) the training of staff; and
 - (iv) the storage and availability of anaphylaxis medication;
- (g) forms for the purposes of this Act;
- (h) fees for the purposes of this Act;
- (i) requirements for the provision and display of information by the proprietor of a children's service;

S. 56(1)(fa)
inserted by
No. 3/2008
s. 4.

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- (j) any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
- (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstances; and
 - (c) may exempt any children's service or any class or type of children's service from complying with all or any of the regulations; and
 - (d) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by the Secretary or an authorised officer; and
 - (e) may apply, adopt or incorporate by reference any document either—
 - (i) as in force at the date the regulations come into operation or at any date before then; or
 - (ii) wholly or in part or as amended by the regulations; and
 - (f) may impose penalties not exceeding 10 penalty units for any contravention of the regulations.
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PART 7—REPEAL, AMENDMENT AND TRANSITIONALS

57 Repeal

Part XIA of the **Health Act 1958** is repealed.

58 Amendment of Children and Young Persons Act 1989

S. 58
amended by
No. 74/2000
s. 3(Sch. 1
item 19).

In section 64(1C)(f) of the **Children and Young Persons Act 1989**—

- (a) for "in, a children's services centre to which Part XIA of the **Health Act 1958**" substitute "by, a children's service to which the **Children's Services Act 1996**";
- (b) for "section 208C(4)(c)" substitute "section 16(2)(b)(iii)".

59 Amendment of Community Services Act 1970

After section 6(2) of the **Community Services Act 1970** insert—

- "(3) Nothing in subsection (2) applies to a children's service within the meaning of the **Children's Services Act 1996**."

60 Amendment of Prostitution Control Act 1994

In section 3 of the **Prostitution Control Act 1994**, for the definition of *children's services centre* substitute—

"children's services centre means any premises or place where a children's service within the meaning of the **Children's Services Act 1996** operates".

61 Transitional and saving provisions

- (1) A children's services centre which was—
 - (a) registered under section 208C of the **Health Act 1958**; or

(b) exempted from being registered under that Act—

immediately before the commencement of this section is deemed to be a children's service licensed to operate under this Act at the premises which, at that commencement, were the premises of the registered children's services centre for the remainder of the period for which that centre was registered under section 208C or exempted from being registered under that Act and for a further 3 months after the end of that period.

- (2) A person who was nominated under section 208C(4)(c) of the **Health Act 1958** to manage a centre referred to in subsection (1) immediately before the commencement of this section continues to be a person who can manage or operate a children's service at the premises which, at that commencement, were the premises of the registered children's services centre in the absence from the premises of the licensee of the service for the remainder of the period for which that centre was registered under section 208C and for a further 3 months after the end of that period.
- (3) If a children's service was operating from a children's services centre or child minding centre which was—
- (a) a relevant centre within the meaning of regulation 118 of the Children's Services Centres Regulations 1988; and
 - (b) registered under section 208C of the **Health Act 1958**—

immediately before the commencement of this section—

- (c) the children's service is exempted from any requirements under this Act relating to the maximum number of places for children

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- corresponding with regulation 8 of the Children's Services Centres Regulations 1988 for the remainder of the period for which that centre was registered under section 208C;
- (d) the proprietor of the children's service is exempted from any requirements under this Act relating to the approval of that person as a proprietor of a children's service corresponding with regulation 13 of the Children's Services Centres Regulations 1988 for the remainder of the period for which that centre was registered under section 208C;
- (e) the children's service is exempted from complying with any requirements under this Act relating to space, lighting, junior toilets, fencing and gates and power outlets corresponding with the requirements of the Children's Services Centres Regulations 1988 referred to in regulation 118 for 5 years after the commencement of this section in respect of the premises where the children's service was operating immediately before that commencement if the requirements of the Child Minding Centres Regulations 1984 and the Health (Pre-School Centres Building) Regulations 1984 referred to in regulation 118 are complied with during that period.
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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 30 May 1996

Legislative Council: 8 October 1996

The long title for the Bill for this Act was "to provide for the licensing and regulation of children's services, to repeal Part XIA of the **Health Act 1958** and to make consequential amendments to other Acts."

The **Children's Services Act 1996** was assented to on 3 December 1996 and came into operation as follows:

Sections 1 and 2 on 3 December 1996: section 2(1); rest of Act on 1 June 1998: Government Gazette 28 May 1998 page 1189.

2. Table of Amendments

This Version incorporates amendments made to the **Children's Services Act 1996** by Acts and subordinate instruments.

Disability Services and Other Acts (Amendment) Act 1997, No. 72/1997

Assent Date: 25.11.97
Commencement Date: Ss 14, 15 on 25.11.97: s. 2(1)
Current State: This information relates only to the provision/s amending the **Children's Services Act 1996**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Children's Services Act 1996**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 19) on 3.12.96: s. 2(2)(d)
Current State: This information relates only to the provision/s amending the **Children's Services Act 1996**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 30) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Children's Services Act 1996**

Statute Law Revision Act 2005, No. 10/2005

Assent Date: 27.4.05
Commencement Date: S. 3(Sch. 1 item 4) on 28.4.05: s. 2
Current State: This information relates only to the provision/s amending the **Children's Services Act 1996**

Education and Training Reform Act 2006, No. 24/2006

Assent Date: 16.5.06
Commencement Date: S. 6.1.2(Sch. 7 item 6) on 1.7.07: Government Gazette 28.6.07 p. 1304
Current State: This information relates only to the provision/s amending the **Children's Services Act 1996**

Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006

Assent Date: 15.8.06
Commencement Date: S. 42(Sch. item 6) on 23.4.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Children's Services Act 1996**

Children's Services Act 1996
No. 53 of 1996

Endnotes

**Education and Training Reform Miscellaneous Amendments Act 2007,
No. 58/2007**

Assent Date: 27.11.07
Commencement Date: S. 52 on 28.11.07: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Children's Services Act 1996**

**Children's Services and Education Legislation Amendment (Anaphylaxis
Management) Act 2008, No. 3/2008**

Assent Date: 4.3.08
Commencement Date: Ss 3, 4 on 14.7.08: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Children's Services Act 1996**

Children's Legislation Amendment Act 2008, No. 22/2008

Assent Date: 3.6.08
Commencement Date: Ss 6, 7(2), 9(1)–(4), 11(1)(2), 12(1)(2), 13(1), 16, 17,
20(2)(3), 27, 29(6), 30 on 4.6.08: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Children's Services Act 1996**

3. Explanatory Details

No entries at date of publication.