

Version No. 025
Children's Services Act 1996
No. 53 of 1996

Version incorporating amendments as at
1 January 2012

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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—

approval of premises means an approval under section 11;

S. 3(1) def. of
approval of premises
inserted by
No. 22/2008
s. 3(1).

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S. 3(1) def. of *approved associated children's service* inserted by No. 80/2011 s. 4(1)(a).

approved associated children's service means an associated children's service that is included in a service approval for an approved education and care service under the National Law;

S. 3(1) def. of *approved education and care service* inserted by No. 80/2011 s. 4(1)(a).

approved education and care service means an education and care service for which a service approval exists under the National Law;

S. 3(1) def. of *approved provider* inserted by No. 80/2011 s. 4(1)(a).

approved provider means—

- (a) a person who holds a provider approval under the National Law; and
- (b) in relation to an approved associated children's service, the person who holds the service approval that includes the approved associated children's service;

S. 3(1) def. of *associated children's service* inserted by No. 80/2011 s. 4(1)(a).

associated children's service means a children's service that is operated or intended to be operated—

- (a) at the same place as an approved education and care service; and
- (b) by the person who is the approved provider for that education and care service;

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

S. 3(1) def. of *certified supervisor* inserted by No. 80/2011 s. 4(1)(a).

certified supervisor means a person who holds a supervisor certificate;

children's service means a service providing care or education for 4 or more children under the age of 13 years in the absence of their parents or guardians—

S. 3(1) def. of *children's service* amended by No. 22/2008 s. 3(2).

- (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;

Department means the Department of Education and Early Childhood Development;

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

education and care service means a service that is an education and care service within the meaning of section 5(1) of the National Law;

S. 3(1) def. of *education and care service* inserted by No. 80/2011 s. 4(1)(a).

* * * * *

S. 3(1) def. of *family day care service* inserted by No. 22/2008 s. 3(1), repealed by No. 80/2011 s. 4(1)(e).

* * * * *

S. 3(1) def. of *family day care venue* inserted by No. 22/2008 s. 3(1), repealed by No. 80/2011 s. 4(1)(e).

* * * * *

S. 3(1) def. of *family day carer* inserted by No. 22/2008 s. 3(1), repealed by No. 80/2011 s. 4(1)(e).

S. 3(1) def. of
*fit and proper
person check*
inserted by
No. 22/2008
s. 3(1).

fit and proper person check means a consideration by the Secretary under this Act as to whether a person is a fit and proper person;

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;

National Law means the Education and Care Services National Law (Victoria);

S. 3(1) def. of
National Law
inserted by
No. 80/2011
s. 4(1)(a).

national regulations means the regulations made under the National Law;

S. 3(1) def. of
*national
regulations*
inserted by
No. 80/2011
s. 4(1)(a).

nominated supervisor, in relation to an education and care service, means a person who is a nominated supervisor within the meaning of section 5(1) of the National Law;

S. 3(1) def. of
*nominated
supervisor*
inserted by
No. 80/2011
s. 4(1)(a).

nominee means—

S. 3(1) def. of
nominee
inserted by
No. 22/2008
s. 3(1),
substituted by
No. 80/2011
s. 4(1)(b).

- (a) in relation to a children's service other than an approved associated children's service, a person who is an approved nominee or an accepted nominee under Part 3 for that service;
- (b) in relation to an approved associated children's service, a person who is an approved nominee under Part 3A for that service;

primary nominee means—

- (a) in relation to a children's service other than an approved associated children's service—
 - (i) if there is one nominee for that service, that nominee;
 - (ii) if there is more than one nominee for that service, the nominee who is approved under Part 3 as the primary nominee for that service;
- (b) in relation to an approved associated children's service, a person who is the primary nominee for the service under Part 3A;

S. 3(1) def. of *primary nominee* inserted by No. 22/2008 s. 3(1), substituted by No. 80/2011 s. 4(1)(c).

proprietor includes—

- (a) in relation to a children's service—
 - (i) the owner of the service and the primary nominee for the service; and
 - (ii) any person who manages or controls the service or, in the case of an approved associated children's service, the responsible person for the service; and
- (b) in relation to any proposed children's service, includes the person who proposes to operate the service;

S. 3(1) def. of *proprietor* amended by No. 22/2008 s. 3(3), substituted by No. 80/2011 s. 4(1)(d).

provider approval means a provider approval within the meaning of section 5(1) of the National Law;

S. 3(1) def. of *provider approval* inserted by No. 80/2011 s. 4(1)(a).

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S. 3(1) def. of *registered medical practitioner* inserted by No. 22/2008 s. 3(1), substituted by No. 13/2010 s. 51(Sch. item 13).

registered medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

S. 3(1) def. of *Regulatory Authority* inserted by No. 80/2011 s. 4(1)(a).

Regulatory Authority means a person declared under section 8 of the **Education and Care Services National Law Act 2010**;

S. 3(1) def. of *relative* amended by No. 29/2011 s. 3(Sch. 1 item 10.1).

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 de facto marriage, and whether or not the relationship depends on adoption of the child;

S. 3(1) def. of *responsible person* inserted by No. 80/2011 s. 4(1)(a).

responsible person, in relation to an approved associated children's service, means—

- (a) the approved provider, if the approved provider is an individual; or
- (b) in any other case, a person with management or control of the approved associated children's service operated by the approved provider;

S. 3(1) def. of *school* inserted by No. 22/2008 s. 3(1).

school means Government school or non-Government school, within the meaning of the **Education and Training Reform Act 2006**;

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;

service approval means a service approval within the meaning of section 5(1) of the National Law;

S. 3(1) def. of *service approval* inserted by No. 80/2011 s. 4(1)(a).

* * * * *

S. 3(1) def. of *sibling* inserted by No. 22/2008 s. 3(1), repealed by No. 80/2011 s. 4(1)(e).

supervisor certificate means a supervisor certificate within the meaning of section 5(1) of the National Law;

S. 3(1) def. of *supervisor certificate* inserted by No. 80/2011 s. 4(1)(a).

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.

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).

(3) In this Act a reference to an absence in relation to an applicant, licensee, approved provider or proprietor that is a body corporate includes a reference to the absence of the directors of the body corporate.

S. 3(3) amended by No. 80/2011 s. 4(2).

(4) In this Act, a reference to a person with management or control of an approved associated children's service is a reference to a person with management or control of the relevant approved education and care service within the meaning of the National Law.

S. 3(4) inserted by No. 80/2011 s. 4(3).

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) patients of a medical or therapeutic care service;
 - (c) recipients of protection, care or accommodation being provided by a community service or secure welfare service established under section 44 of the **Children, Youth and Families Act 2005** or a community service registered under Division 3 of Part 3.3 of that Act;
 - (d) clients of a disability service provider within the meaning of the **Disability Act 2006**.

S. 5(1)(b)
substituted by
No. 24/2006
s. 6.1.2(Sch. 7
item 6),
repealed by
No. 22/2008
s. 4(1), new
s. 5(1)(b)
inserted by
No. 80/2011
s. 5(1)(a).

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

S. 5(1)(d)
substituted by
No. 80/2011
s. 5(1)(b).

-
- (1A) Nothing in this Act applies in circumstances where the education provided to a child is education at a preparatory level or above at a Government school, or non-Government school, within the meaning of the **Education and Training Reform Act 2006**.
- S. 5(1A) inserted by No. 22/2008 s. 4(2).
- (1B) Nothing in this Act applies—
- (a) to a service principally conducted to provide instruction in a particular activity or sport; or
- Example**
- Instruction in a particular activity could be instruction in dance, music or language or religious instruction.
- (b) to a playgroup registered with Playgroup Victoria Inc; or
- S. 5(1B)(b) amended by No. 80/2011 s. 5(2)(a).
- (c) to a service that is an education and care service; or
- S. 5(1B)(c) inserted by No. 80/2011 s. 5(2)(b).
- Example**
- Education and care services include long day care services, family day care services, outside school hours care services and preschools.
- (d) to an early childhood intervention service provided for the principal purpose of providing therapeutic intervention for children with a disability, additional needs or developmental delay; or
- S. 5(1B)(d) inserted by No. 80/2011 s. 5(2)(b).
- (e) to a short-term program provided by and at a school to children who will attend the school in the following year, for the purpose of orienting children to the school; or
- S. 5(1B)(e) inserted by No. 80/2011 s. 5(2)(b).

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S. 5(1B)(f)
inserted by
No. 80/2011
s. 5(2)(b).

(f) to a service provided by and at a hotel or resort to provide education and care to children who are temporary guests of the hotel or resort; or

Example

A ski resort that offers child-minding services for children staying at the resort.

S. 5(1B)(g)
inserted by
No. 80/2011
s. 5(2)(b).

(g) to a service provided on an ad hoc basis at the place of a meeting, convention, seminar or other short-term event attended by a parent of, or other person responsible for, the child.

S. 5(1C)
inserted by
No. 22/2008
s. 4(2).

(1C) To avoid doubt, it is declared that a service may be a children's service even though it is conducted—

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

S. 5(1D)
inserted by
No. 80/2011
s. 5(3).

(1D) To avoid doubt, it is declared that a service may be a children's service even though it is conducted—

- (a) by an entity that also operates an education and care service under the National Law; or
- (b) at a place at which an education and care service is operated under the National Law.

(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.

S. 5(3)
substituted by
No. 22/2008
s. 4(3).

(3) Nothing in this Act applies in circumstances where—

- (a) children are being cared for or educated under an informal arrangement between a parent or guardian of one or more of the

children and the individual (the *carer*)
providing the care and education; and

- (b) at least one of the children (other than a child of the carer) is being cared for or educated in his or her own home; and
- (c) not more than 4 children under the age of 6 who are not students enrolled at a preparatory level or above at a school are being cared for or educated by the carer.

Example

A group of parents arrange for their children to be cared for by a babysitter or nanny in one of the parent's homes.

- (4) Nothing in this Act applies in circumstances where children who are 6 years of age or over or who are students enrolled at a preparatory level or above at a school are being cared for or educated outside their own home under an informal arrangement between a parent or guardian of the children and the individual providing the care or education.

S. 5(4)
inserted by
No. 22/2008
s. 4(3).

Example

A parent arranges for a neighbour or friend to care for his or her children after school.

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 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.

S. 6(1)
amended by
No. 22/2008
s. 5.

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S. 6(4)
amended by
No. 22/2008
s. 5.

(4) A notice of revocation under subsection (3) does not apply to a children's service or a 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 or unapproved 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 or is not an approved associated children's service.

Penalty: 240 penalty units.

S. 7 (Heading) inserted by No. 80/2011 s. 6(1).
S. 7 amended by Nos 22/2008 s. 6, 80/2011 s. 6(2).

8 Offence to advertise unlicensed or unapproved etc. children's service

(1) A person must not publish or cause to be published an advertisement for a children's service unless—

- (a) the children's service is licensed to operate under this Act; or
- (b) the children's service is an approved associated children's service; or
- (c) an approval of premises 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 accused 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 of premises had been granted for the children's service under this Act or a service approval had been granted for the children's service under the National Law.

(3) Subsection (1) does not apply if—

- (a) an application for a licence to operate the children's service has been made but has not been decided; or

S. 8 (Heading) inserted by No. 80/2011 s. 7(1).

S. 8(1) amended by No. 22/2008 s. 7, substituted by No. 80/2011 s. 7(2).

S. 8(2) amended by Nos 22/2008 s. 7(1), 68/2009 s. 97(Sch. item 19), 80/2011 s. 7(3).

S. 8(3) inserted by No. 80/2011 s. 7(4).

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- (b) the children's service is to be an approved associated children's service and an application for a service approval including the children's service has been made under the National Law but has not been decided.
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PART 3—LICENSING OF CHILDREN'S SERVICES

Pt 3 (Heading and ss 9–25) substituted as Pt 3 (Heading and ss 9–25U) by No. 22/2008 s. 8.

Division 1AA—Application of Part

Pt 3 Div. 1AA (Heading and s. 8A) inserted by No. 80/2011 s. 8.

8A Part does not apply to approved associated children's services

S. 8A inserted by No. 80/2011 s. 8.

Except as otherwise provided in Part 3A, this Part does not apply to—

- (a) an application made under the National Law for a service approval that includes an associated children's service; or
- (b) an approved associated children's service.

Division 1—Approval of premises

9 Application for approval of premises

S. 9 substituted by No. 22/2008 s. 8.

(1) A person may apply to the Secretary for approval of—

- (a) the use of particular 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.

S. 9(1)(c) amended by No. 29/2011 s. 3(Sch. 1 item 10.2).

s. 10

- (2) An application must—
 - (a) be in writing; and
 - (b) contain the relevant prescribed information; and
 - (c) be accompanied by the relevant prescribed fee.
- (3) An applicant under this section must give the Secretary any further information relating to the application that the Secretary requests including design sketches, construction drawings, plans or specifications relating to the premises proposed to be used or constructed, altered or extended.

S. 10
substituted by
No. 22/2008
s. 8.

10 Criteria for grant of approval of premises

In deciding whether to grant, or to refuse to grant, an approval of premises, the Secretary must consider whether the design and the location of the premises are satisfactory for the operation of a children's service.

S. 11
substituted by
No. 22/2008
s. 8.

11 Decision on application

- (1) On receiving an application under section 9, the Secretary must decide whether to grant, or to refuse to grant, approval of—
 - (a) the use of particular 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.
- (2) The approval may be granted subject to conditions.

- (3) The Secretary must give notice in writing to the applicant of his or her decision within 30 days after receiving the application under section 9 or, if the Secretary requests further information from the applicant, within 30 days after receiving that information.

12 Certificate of approval of premises

If the Secretary grants an approval of premises, the Secretary must issue a certificate of approval of premises stating—

- (a) the address at which the premises are located; and
- (b) any conditions to which the approval is subject.

* * * * *

S. 12
substituted by
No. 22/2008
s. 8.

S. 13
substituted by
No. 22/2008
s. 8,
repealed by
No. 80/2011
s. 9.

14 Cancellation of approval of premises

The Secretary may cancel an approval of premises if—

- (a) the premises do not conform to any condition of the approval of premises; or
- (b) the premises are otherwise not satisfactory for the operation of a children's service.

S. 14
substituted by
No. 22/2008
s. 8.

s. 15

Division 2—Application for licence

15 Application for licence to operate children's service

S. 15
substituted by
No. 22/2008
s. 8.

- (1) A person may apply to the Secretary to obtain a licence of a prescribed type to operate a children's service at premises for which there is an approval of premises.

S. 15(1)
amended by
No. 80/2011
s. 10(1).

S. 15(2)
repealed by
No. 80/2011
s. 10(2).

* * * * *

S. 16
substituted by
No. 22/2008
s. 8,
repealed by
No. 80/2011
s. 11.

* * * * *

17 Types of licence

The regulations may prescribe other types of licence for the purposes of this Act.

S. 17
substituted by
No. 22/2008
s. 8.

18 Form of application

- (1) An application under section 15—
- (a) must—
 - (i) be in writing; and
 - (ii) specify the type of licence sought; and
 - (iii) contain the relevant prescribed information; and
 - (b) must be accompanied by—
 - (i) the relevant prescribed fee; and
 - (ii) 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

S. 18
substituted by
No. 22/2008
s. 8,
amended by
No. 80/2011
s. 12(1)(3) (ILA
s. 39B(1)).

-
- (iii) either—
- (A) a declaration by the applicant that the person nominated is a fit and proper person to manage or control a children's service; or
 - (B) evidence that the person nominated is an approved provider or a certified supervisor; and
- (iv) if more than one person is nominated, the name of the person who is to have primary responsibility for the management or control of the service in the absence of the licensee; and
- (v) if the applicant is a body corporate, the name and address of any director or officer of the body corporate who may exercise control over the operation of the children's service; and
- (vi) if the applicant is a body corporate, the name and address of the person appointed to represent the licensee in relation to the application and the operation of the children's service; and
- (vii) any other information required by this Division; and
- (viii) any other things or information that are prescribed.
- (2) An application under section 15 must also be accompanied by—
- (a) for each person nominated to manage or control the children's service in the absence of the licensee, the person's written consent to that nomination; and

S. 18(b)(iii)
substituted by
No. 80/2011
s. 12(2).

S. 18(2)
inserted by
No. 80/2011
s. 12(3).

s. 19

- (b) for the person who is to have primary responsibility for the management or control of the children's service in the absence of the licensee, that person's written consent to that responsibility.

S. 19 substituted by No. 22/2008 s. 8.

19 Further information about approval of premises

An application under section 15 must also be accompanied by—

S. 19(a) amended by No. 80/2011 s. 13.

- (a) a copy of the certificate of approval of premises; and

- (b) details of any circumstances that have changed with respect to the design or location of the premises where the service is to operate since the approval was granted.

S. 20 substituted by No. 22/2008 s. 8, repealed by No. 80/2011 s. 14.

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S. 21 substituted by No. 22/2008 s. 8.

21 Inspection of premises

S. 21(1) amended by No. 80/2011 s. 15(1).

- (1) An applicant for a licence to operate a children's service at premises for which there is an approval of premises must permit the Secretary or an authorised officer to inspect the premises to determine whether the premises are still satisfactory for the operation of a children's service.

S. 21(2) repealed by No. 80/2011 s. 15(2).

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Division 3—Determination of fit and proper person

22 Secretary to consider whether persons are fit and proper persons

S. 22
substituted by
No. 22/2008
s. 8,
amended by
No. 80/2011
s. 16.

In determining an application under section 15, the Secretary must consider whether—

- (a) the applicant for the licence is a fit and proper person to operate a children's service; and
- (b) if the applicant is a body corporate, any director or other officer of the body corporate who exercises or may exercise control over the operation of the children's service is a fit and proper person; and
- (c) any 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.

22A Exception for approved providers and certified supervisors

S. 22A
inserted by
No. 80/2011
s. 17.

- (1) The Secretary is not required to carry out a fit and proper person check in respect of the following persons—
 - (a) a person who is an approved provider or a certified supervisor;
 - (b) a person who is a person with management or control of an education and care service operated by an approved provider.
- (2) A person in respect of whom a fit and proper person check is not carried out because of subsection (1) is accepted as a fit and proper person for the purposes of this Part.

- (3) The Secretary may revoke a person's acceptance as a fit and proper person under this section if the Secretary is satisfied that the person has ceased to be a fit and proper person.

S. 23
substituted by
No. 22/2008
s. 8.

23 Exception for certain nominees

S. 23(1)
amended by
No. 80/2011
s. 18.

- (1) The Secretary is not required to carry out a fit and proper person check of a person who has been nominated by the applicant and in respect of whom the applicant has made a declaration under section 18(1)(b)(iii)(A) if the Secretary is satisfied that—
- (a) the applicant will be attending and managing or controlling the children's service on a daily basis; or
 - (b) if the applicant is a body corporate, at least one of the directors of the body corporate whom the Secretary has determined is a fit and proper person will be attending and managing or controlling the children's service on a daily basis; or
 - (c) more than one person has been nominated to manage or control the children's service and the person to whom the declaration relates will not have primary responsibility for managing or controlling the children's service.
- (2) A person in respect of whom a fit and proper person check is not carried out because of subsection (1) is an accepted nominee for the purposes of this Act.
- (3) The Secretary may revoke a person's acceptance as an accepted nominee under this Part if the Secretary is satisfied that the person has ceased to be a fit and proper person.

24 Secretary may require certain testing

The Secretary may require a person in respect of whom a fit and proper person check is being carried out under this Part—

- (a) to submit to any tests or provide any references or reports to determine the suitability of the person; and
- (b) to submit to any medical or psychiatric examination that the Secretary considers appropriate in order to determine the suitability of the person and, if required by the Secretary, provide any results or reports of the examination.

S. 24
substituted by
No. 22/2008
s. 8.

25 Matters to be taken into account

(1) Subject to subsection (2), in carrying out a fit and proper person check on a person, the Secretary may take into account all or any of the following matters—

- (a) whether 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 for which the maximum penalty exceeds 3 months imprisonment;
- (b) whether the person has been found guilty of an offence against this Act or any corresponding previous Act or regulations;
- (ba) whether the person has been found guilty of an offence against—
 - (i) the National Law or the national regulations; or

S. 25
substituted by
No. 22/2008
s. 8.

S. 25(1)(ba)
inserted by
No. 80/2011
s. 19(1).

s. 25A

- (ii) the National Law as applying in or enacted by another jurisdiction or the regulations made under that law in another jurisdiction;
 - (c) whether the person is not of sound financial reputation and stable financial background;
 - (d) whether the person is not of good repute having regard to character, honesty and integrity.
- (2) The Secretary may take into account all or any of the matters referred to in subsection (1)(a), (1)(b), (1)(ba) or (1)(d) in carrying out a fit and proper person check on a person who is nominated to manage or control a children's service in the absence of the licensee.
- (3) Nothing in this section limits the circumstances in which a person may be considered not to be a fit and proper person—
- (a) to operate a children's service; or
 - (b) 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 children's service; or
 - (c) to manage or control a children's service in the absence of the licensee.

S. 25(2)
amended by
No. 80/2011
s. 19(2).

S. 25A
inserted by
No. 22/2008
s. 8.

Note to
s. 25A(1)
amended by
No. 80/2011
s. 20.

25A Determination of fit and proper person

- (1) After carrying out a fit and proper person check in respect of a person, the Secretary must determine whether or not the person is a fit and proper person for the purposes of this Part.

Note

A fit and proper person check is not required to be carried out in certain circumstances (see sections 22A and 23).

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- (2) A determination under this section that a person is a fit and proper person—
- (a) remains in force for a period not exceeding 5 years specified in the determination unless it is sooner revoked; and
 - (b) may be relied on by the Secretary in relation to any other application under this Act while the determination remains in force.
- (3) If a determination under this section that a person is a fit and proper person to manage or control a children's service in the absence of the licensee is in force, that person is an approved nominee for the purposes of this Act.
- (4) The Secretary may revoke a determination under this section if the Secretary is satisfied that the person has ceased to be a fit and proper person.

Division 4—Decision on application

25B Grant or refusal of licence

The Secretary may grant or refuse to grant a licence.

S. 25B
inserted by
No. 22/2008
s. 8.

25C Grounds for refusal

The Secretary must refuse to grant a licence if—

- (a) the Secretary has determined under Division 3 that—
 - (i) the applicant for the licence is not a fit and proper person to operate a children's service; or
 - (ii) 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; or

S. 25C
inserted by
No. 22/2008
s. 8.

s. 25D

(iii) if the applicant is a body corporate, any director or other officer of the body corporate who exercises or may exercise control over the operation of the children's service is not a fit and proper person to do so; or

S. 25C(b)
substituted by
No. 80/2011
s. 21.

(b) there is no approval of premises for the premises proposed to be used for the children's service.

S. 25D
(Heading)
amended by
No. 80/2011
s. 22(1).
S. 25D
inserted by
No. 22/2008
s. 8,
amended by
No. 80/2011
s. 22(2).

25D Licence to apply to single premises

The Secretary must not grant a licence to operate a children's service in respect of more than one premises.

S. 25E
inserted by
No. 22/2008
s. 8.

25E Conditions on licence

- (1) A licence is granted subject to the condition that the children's service is operated in a way that—
- (a) ensures the safety of the children being cared for or educated; and
 - (b) ensures that the developmental needs of those children are met; and
 - (c) supports the health and wellbeing of those children.
- (2) A licence is granted subject to the condition that a person must not manage or control the operation of the children's service in the absence of the licensee unless the person is an approved nominee or an accepted nominee under this Part.

S. 25E(3)
repealed by
No. 80/2011
s. 23.

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- (4) A licence may be granted subject to any other conditions or restrictions set out in the licence that are prescribed or that the Secretary imposes.
- (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 about the following matters—
- (a) the premises or part of the premises from which the service can be provided;
 - (b) the maximum number of children that may be cared for or educated by the service;
 - (c) the ages of the children who may be cared for or educated by the service;
 - (d) any change to a person having the management or control of the service in the absence of the licensee;
- * * * * *
- (f) the minimum number of staff who must be in attendance at the service;
 - (g) the qualifications of the staff of the service.

S. 25E(5)(e)
repealed by
No. 80/2011
s. 23.

25F Notice of decision

The Secretary must give notice in writing to the applicant of the Secretary's decision within 30 days after receiving the application or, if the Secretary has required testing, examination or further information, within 30 days after receiving the results or report of the test or examination or that information.

S. 25F
inserted by
No. 22/2008
s. 8.

s. 25G

S. 25G
inserted by
No. 22/2008
s. 8.

25G Grant of licence

- (1) If the Secretary grants a licence under this Division, the Secretary must send a copy of the licence to the licensee stating—
- (a) the name of the person to whom it is issued; and
 - (b) the premises from which the service can operate; and

S. 25G(1)(b)
substituted by
No. 80/2011
s. 24(1).

S. 25G(1)(c)
repealed by
No. 80/2011
s. 24(2).

* * * * *

- (d) any conditions or restrictions to which it is subject.

S. 25G(2)
repealed by
No. 80/2011
s. 24(2).

* * * * *

S. 25H
inserted by
No. 22/2008
s. 8.

25H Term of licence

A licence remains in force for a period not exceeding 5 years determined by the Secretary and specified in the licence unless the licence is sooner cancelled.

Pt 3 Div. 5
(Heading)
amended by
No. 80/2011
s. 25.

Division 5—Nominees

S. 25I
inserted by
No. 22/2008
s. 8.

25I Notice of approved nominees and accepted nominees

If the Secretary grants a licence to operate a children's service, the Secretary must notify the licensee of the persons who are the approved nominees and the accepted nominees for the purpose of that service.

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S. 25J
inserted by
No. 22/2008
s. 8,
repealed by
No. 80/2011
s. 26.

S. 25K
inserted by
No. 22/2008
s. 8.

25K Approvals of new nominees

- (1) A licensee may apply to the Secretary for—
 - (a) approval of a person who is to have the management or control of the service in the absence of the licensee; or
 - (b) approval of a person who is to have primary responsibility for the management or control of the service in the absence of the licensee.
- (2) Division 3 applies (with any necessary changes) to an application under subsection (1).
- (3) The Secretary must notify the licensee of the persons who are approved nominees and accepted nominees for the service as a result of an application under this section.

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S. 25L
inserted by
No. 22/2008
s. 8,
repealed by
No. 80/2011
s. 27.

25M Form of application

- An application under section 25K must—
- (a) be in writing and contain the relevant prescribed information; and
 - (b) be accompanied by the relevant prescribed fee.

S. 25M
inserted by
No. 22/2008
s. 8,
amended by
No. 80/2011
s. 28.

s. 25N

Division 6—Renewal and variation of licence

S. 25N
inserted by
No. 22/2008
s. 8.

25N 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 and contain the relevant prescribed information; and
 - (b) be accompanied by the relevant 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.

S. 25O
inserted by
No. 22/2008
s. 8.

25O 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 or revoke 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.
- (4) A renewed licence remains in force for a period not exceeding 5 years determined by the Secretary and specified in the licence unless the licence is sooner cancelled.

25P Variation of a licence

S. 25P
inserted by
No. 22/2008
s. 8.

- (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 5 years.
- (3) The Secretary may act under subsection (1)—
 - (a) on the Secretary's own initiative after consultation with the licensee; or
 - (b) on the application of the licensee.
- (4) An application must—
 - (a) be in writing and contain the relevant prescribed information; and
 - (b) be accompanied by the relevant 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 30 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.

s. 25Q

S. 25Q
inserted by
No. 22/2008
s. 8.

25Q Criteria for renewal or variation 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 3 and 4 to be granted a licence for the children's service that the Secretary considers should be satisfied in the circumstances.
- (2) The Secretary must not vary a children's service licence on the application of a licensee unless the Secretary is satisfied that the licensee continues to be able to satisfy all or any of the requirements of Divisions 3 and 4 to be granted a licence for the children's service that the Secretary considers should be satisfied in the circumstances.
- (3) For the purposes of this section, the provisions of Divisions 3 and 4 determined by the Secretary under subsection (1) or (2) apply to the licensee as if the licensee were an applicant for a licence under Division 2.

S. 25R
inserted by
No. 22/2008
s. 8.

25R Transfer of licence prohibited

A licence is not transferable to another person.

S. 25S
inserted by
No. 22/2008
s. 8.

25S Voluntary suspension of a licence

- (1) A licensee may apply to the Secretary for a suspension of the licensee's licence.
- (2) An application must—
 - (a) be in writing and contain the relevant prescribed information; and
 - (b) be accompanied by the prescribed fee.
- (3) The Secretary may, by notice in writing, grant an application under subsection (1) if the Secretary is satisfied that—

-
- (a) the applicant proposes to resume the operation of the children's service at the premises at the end of the period of suspension; and
 - (b) any other prescribed conditions have been met.
- (4) A period of suspension under this section remains in force for the period of time specified in the notice.
 - (5) A period of suspension under this section must be added to the total period for which the licence was granted even if the new period of the licence exceeds 5 years.
 - (6) A licensee whose licence is suspended under this section is deemed not to be a licensee in respect of the premises to which the licence applies for the period of the suspension.

25T Cancellation of a licence at request of licensee

S. 25T
inserted by
No. 22/2008
s. 8.

- (1) The Secretary may cancel a licence if the Secretary is satisfied that—
 - (a) the licensee has requested that the licence be cancelled; or
 - (b) the licensee has ceased operating the service.
- (2) If the Secretary cancels a licence, the Secretary must give written notice of the cancellation to the licensee at least 7 days before the cancellation takes effect.

25U Death, bankruptcy or incapacity of licensee

S. 25U
inserted by
No. 22/2008
s. 8.

- (1) This section applies to a children's service in respect of which there is only one licensee and that licensee is a natural person.
- (2) If the Secretary is satisfied that the licensee of a children's service to which this section applies has died or has become bankrupt or incapacitated, the

Children's Services Act 1996
No. 53 of 1996
Part 3—Licensing of Children's Services

s. 25U

Secretary may appoint any person that the
Secretary considers appropriate as licensee of the
children's service for a period not exceeding
6 months.

**PART 3A—SERVICE APPROVALS FOR ASSOCIATED
CHILDREN'S SERVICES**

Pt 3A
(Heading and
ss 25V–25ZB)
inserted by
No. 80/2011
s. 29.

**25V Application for service approval—assessment of
associated children's service**

S. 25V
inserted by
No. 80/2011
s. 29.

For the purposes of section 47(3) of the National Law, the criteria for grant of a licence under this Act to which the Regulatory Authority must have regard are—

- (a) the children's service must not be operated at more than one premises; and
- (b) the design and the location of the premises must be satisfactory for the operation of a children's service; and
- (c) each person who is to be a nominee for the service must be an approved nominee.

**25W Nominees and primary nominees for an approved
associated children's service**

S. 25W
inserted by
No. 80/2011
s. 29.

- (1) The following persons are approved nominees for an approved associated children's service—
 - (a) a person who is a certified supervisor and is employed or engaged by the approved associated children's service or the associated education and care service;
 - (b) a person who is approved by the Secretary under section 25X to manage or control the service in the absence of the approved provider.

s. 25X

-
- (2) The primary nominee for an approved associated children's service is—
- (a) the person who is the nominated supervisor for the associated education and care service; or
 - (b) if the approved provider designates in writing a person referred to in subsection (1)(a) as the primary nominee for the approved associated children's service, that person; or
 - (c) a person who, on the application of the approved provider, is approved by the Secretary under section 25X to have primary responsibility for the management or control of the service in the absence of the approved provider.

- (3) In this section—

associated education and care service, in relation to an approved associated children's service, means an education and care service the service approval for which includes the associated children's service.

S. 25X
inserted by
No. 80/2011
s. 29.

25X Approval of new nominees and primary nominees

- (1) An approved provider of an approved associated children's service may apply to the Secretary for—
 - (a) approval of a person who is to have management and control of the service in the absence of the approved provider; or
 - (b) approval of a person who is to have primary responsibility for the management or control of the service in the absence of the approved provider.
- (2) Division 3 of Part 3, other than section 23, applies (with any necessary changes) to an application under subsection (1).

- (3) The Secretary must notify the approved provider of the persons who are approved nominees as a result of an application under this section.

25Y Form of application

S. 25Y
inserted by
No. 80/2011
s. 29.

An application under section 25X must—

- (a) be in writing and contain the relevant prescribed information; and
- (b) be accompanied by the relevant prescribed fee.

25Z Amendment of service approval for approved associated children's service

S. 25Z
inserted by
No. 80/2011
s. 29.

- (1) The Secretary may, at any time and on the Secretary's own initiative, decide to amend a service approval to the extent it relates to an approved associated children's service by—
 - (a) varying or revoking conditions on the service approval; or
 - (b) imposing new conditions or restrictions on the service approval; or
 - (c) amending the service approval in another way.
- (2) The Secretary must send a notice of the decision to amend the service approval and a copy of the amended service approval to the approved provider of the approved associated children's service within 7 days after making a decision under subsection (1).
- (3) The Secretary may direct the Regulatory Authority to amend the service approval under section 55(5) of the National Law 30 days after the Secretary sends a notice under subsection (2) unless—
 - (a) a shorter period is agreed by the Secretary and the approved provider; or

(b) within 30 days of the sending of the notice, the approved provider applies to VCAT for review of the decision.

(4) If the approved provider applies for review of the decision, the Secretary may direct the Regulatory Authority to amend the service approval under section 55(5) of the National Law after the amendment is confirmed by VCAT on review.

Note

A decision under subsection (1) does not have effect unless the Regulatory Authority makes the amendment to the service approval that includes the approved associated children's service—see section 55 of the National Law.

S. 25ZA
inserted by
No. 80/2011
s. 29.

25ZA Voluntary suspension of service approval for approved associated children's service

(1) The approved provider of an approved associated children's service may apply to the Secretary for a suspension of the service approval to the extent that it relates to the associated children's service.

(2) An application must—

(a) be in writing and contain the relevant prescribed information; and

(b) be accompanied by the prescribed fee.

(3) The Secretary, by notice in writing, may decide that the service approval should be suspended to the extent it relates to the approved associated children's service if the Secretary is satisfied that—

(a) the applicant proposes to resume the operation of the associated children's service at the premises at the end of the period of suspension; and

(b) any other prescribed conditions have been met.

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- (4) A notice under subsection (3) must specify—
- (a) the period of the suspension; and
 - (b) the date on which the suspension takes effect.
- (5) If the Secretary makes a decision under subsection (3)—
- (a) the decision is taken to be a final determination for the purposes of section 75(3) of the National Law; and
 - (b) the Secretary must advise the Regulatory Authority of that decision before the date on which the suspension takes effect, but not later than 30 days after sending a notice under subsection (3).

Note

A decision under subsection (3) does not have effect unless the Secretary notifies the Regulatory Authority of that decision—see section 75 of the National Law.

25ZB Cancellation of service approval for approved associated children's service at request of provider

S. 25ZB
inserted by
No. 80/2011
s. 29.

- (1) The Secretary may decide to cancel a service approval to the extent that it relates to an approved associated children's service if the Secretary is satisfied that—
- (a) the approved provider of the service has requested that the service approval be cancelled to the extent that it relates to an approved associated children's service; or
 - (b) the approved provider has ceased operating the approved associated children's service.
- (2) If the Secretary makes a decision under subsection (1), the Secretary must give written notice of the decision to the approved provider at least 7 days

before the date specified in the notice on which the cancellation will take effect.

- (3) If the Secretary makes a decision under subsection (1)—
- (a) the decision is taken to be a final determination for the purposes of section 80(3) of the National Law; and
 - (b) the Secretary must advise the Regulatory Authority of that decision before the date on which the cancellation takes effect, but not later than 7 days after giving the notice under subsection (2).

Note

A decision under subsection (1) does not have effect unless the Secretary notifies the Regulatory Authority of that decision—see section 80 of the National Law.

PART 4—OPERATION OF CHILDREN'S SERVICES

26 Protection of children from hazards

- (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.

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

Penalty: 120 penalty units.

- (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.

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

Penalty: 120 penalty units.

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S. 26(3)
inserted by
No. 22/2008
s. 9(5),
repealed by
No. 80/2011
s. 30.

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.

S. 26A
inserted by
No. 3/2008
s. 3,
amended by
No. 22/2008
s. 9(6).

Penalty: 60 penalty units.

26B Educational or recreational programs

- (1) The proprietor of a children's service must ensure that there is made available to all children cared for or educated by the children's service an educational or recreational program—
- (a) that is based on the developmental needs, interests and experiences of each child; and

S. 26B
inserted by
No. 22/2008
s. 10.

s. 27

- (b) that is designed to take into account the individual differences of those children; and
- (c) that enhances each child's development.

Penalty: 60 penalty units.

S. 26B(2)
repealed by
No. 80/2011
s. 31.

* * * * *

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.

S. 27(3)
inserted by
No. 22/2008
s. 11(3),
repealed by
No. 80/2011
s. 32.

* * * * *

28 Discipline of children

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

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

- (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.

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S. 28(3)
inserted by
No. 22/2008
s. 12(3),
repealed by
No. 80/2011
s. 33.

29 Premises to be kept clean and in good repair

S. 29
amended by
No. 22/2008
s. 13(1)(2)
(ILA s. 39B(1)).

(1) 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.

Penalty: 120 penalty units.

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S. 29(2)
inserted by
No. 22/2008
s. 13(2),
repealed by
No. 80/2011
s. 34.

29A Child/staff ratios

S. 29A
inserted by
No. 22/2008
s. 14.

(1) A proprietor of a children's service must ensure that, whenever children are being cared for or educated by the children's service, the number of staff members caring for or educating the children is no less than the number prescribed for this purpose.

Penalty: 120 penalty units.

s. 29B

- (2) Subsection (1) does not apply to any children's service or any type of children's service that the Secretary, by notice published in the Government Gazette, declares to be a children's service or type of children's service to which subsection (1) does not apply.

S. 29B
inserted by
No. 22/2008
s. 14.

29B Authorisation to administer medication

- (1) A proprietor of a children's service must ensure that medication is not administered to a child being cared for or educated by the children's service unless—
- (a) the prescribed authorisation has first been obtained; and
 - (b) the medication is administered in the prescribed manner.

Penalty: 120 penalty units.

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S. 29B(2)
repealed by
No. 80/2011
s. 35.

29C Secretary to be notified of a serious incident

A proprietor of a children's service must notify the Secretary in the prescribed manner—

- (a) of the death of a child while being cared for or educated by the service; or
- (b) of any incident involving injury or trauma to a child while being cared for or educated by the service requiring the attention of a registered medical practitioner or admission to a hospital; or
- (c) if a child being cared for or educated by the service appears to be missing or otherwise cannot be accounted for or appears to have

S. 29C(c)
amended by
No. 80/2011
s. 36.

been taken or removed from the service contrary to the regulations; or

- (d) if an incident of a kind that is prescribed as a serious incident occurs in relation to the children's service.

Penalty: 120 penalty units.

30 Licensee, responsible person or nominee to be present at children's service

S. 30
(Heading)
amended by
No. 80/2011
s. 37(1).

- (1) The licensee of a children's service must ensure that the licensee or a nominee 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.

S. 30
substituted by
No. 22/2008
s. 15.

Penalty: 120 penalty units.

- (2) The approved provider of an approved associated children's service must ensure that a responsible person or a nominee 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.

S. 30(2)
substituted by
No. 80/2011
s. 37(2).

Penalty: 120 penalty units.

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.

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

Penalty: 120 penalty units.

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

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

s. 32B

(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.

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S. 32A
inserted by
No. 22/2008
s. 18,
repealed by
No. 80/2011
s. 38.

32B Enrolment and other documents

(1) A proprietor of a children's service must keep the relevant prescribed documents available for inspection by an authorised officer in accordance with this section.

Penalty: 60 penalty units.

(2) Documents referred to in subsection (1)—

(a) must be kept at the premises from which the children's service operates, if they relate to—

(i) the operation of the service; or

(ii) any staff member employed by the service; or

(iii) any child cared for, or educated at, those premises—

in the previous 12 months; and

(b) in any other case, must be kept at a place, and in a manner, that they are readily accessible by an authorised officer.

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S. 32B(3)
repealed by
No. 80/2011
s. 39.

33 Licence or service approval must be displayed

- (1) 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: 60 penalty units.

- (2) An approved provider of an approved associated children's service must ensure that a copy of the service approval is displayed conspicuously at the entrance to the premises where the children's service operates at all times when the service is operating.

Penalty: 60 penalty units.

34 Licensee to notify clients of certain changes

- (1) A licensee whose licence has been varied under section 25P 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.

- (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.

Penalty: 60 penalty units.

S. 33
substituted by
Nos 22/2008
s. 19, 80/2011
s. 40.

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

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

S. 34A
inserted by
No. 80/2011
s. 41.

34A Approved provider to notify clients of certain changes

- (1) An approved provider of an approved associated children's service who has been notified under section 25Z of a decision to amend the service approval must notify the parents or guardians of children who are cared for or educated by the service of the amendment by notice posted conspicuously at the entrance to the premises where the service operates within 7 days after being notified.

Penalty: 60 penalty units.

- (2) An approved provider of an approved associated children's service who has applied to the Secretary under section 25ZB to have the service approval cancelled to the extent that it relates to the associated children's service must notify the parents or guardians of children who are cared for or educated by the service of the application by notice posted conspicuously at the entrance to the premises where the service operates within 24 hours after applying to the Secretary for the cancellation.

Penalty: 60 penalty units.

PART 5—MONITORING AND ENFORCEMENT

Pt 5 (Heading)
amended by
No. 22/2008
s. 21.

Division 1—Authorised officers

35 Authorisation of officers

- (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.

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

Penalty applying to this subsection: 10 penalty units.

36 Powers of entry

S. 36(1)
amended by
No. 22/2008
s. 22(1).

(1) An authorised officer may at any reasonable time, with such assistants as may reasonably be required, for the purpose of monitoring whether this Act is being or has been complied with—

S. 36(1)(a)
substituted by
No. 22/2008
s. 22(2).

(a) enter—

S. 36(1)(a)(i)
amended by
No. 80/2011
s. 42(1).

(i) 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; or

S. 36(1)(a)(ii)
substituted by
No. 80/2011
s. 42(2).

(ii) any premises where an approved associated children's service is operating or where the authorised officer believes on reasonable grounds that an approved associated 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;

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- (f) require a person at the premises—
- (i) to answer a question to the best of that person's knowledge, information and belief;
 - (ii) to take reasonable steps to provide information or produce a document.
- (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 or an approved associated children's service 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.

S. 36(1)(f)
amended by
No. 22/2008
s. 22(3)(a).

S. 36(1)(f)(ii)
amended by
No. 22/2008
s. 22(3)(b).

S. 36(3)
amended by
No. 22/2008
s. 22(4),
substituted by
No. 29/2011
s. 3(Sch. 1
item 10.3),
amended by
No. 80/2011
s. 42(3)(a).

S. 36(3)(a)
amended by
No. 80/2011
s. 42(3)(b).

s. 36A

- (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.

S. 36A
inserted by
No. 22/2008
s. 23,
substituted by
No. 80/2011
s. 43.

36A Power of authorised officers to obtain information, documents and evidence

- (1) This section applies to every person who is or has been—
- (a) a licensee of a children's service;
 - (b) an approved provider of an approved associated children's service;
 - (c) a nominee or a staff member of a children's service.
- (2) For the purpose of monitoring whether this Act is being or has been complied with, an authorised officer may, by notice in writing, require a person to whom this section applies—
- (a) to provide to the authorised officer, by writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, any relevant information that is specified in the notice; or
 - (b) to answer a question to the best of that person's knowledge, information or belief; or
 - (c) to produce to the authorised officer, in accordance with the notice, any relevant document referred to in the notice.

S. 37
(Heading)
inserted by
No. 80/2011
s. 44.

37 Entry to premises of unlicensed or unapproved 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.

- (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.

s. 38

S. 38
(Heading)
inserted by
No. 80/2011
s. 45(1).

38 Offence related search and seizure at licensed premises or premises of approved associated children's service

S. 38(1)
substituted by
No. 22/2008
s. 24.

- (1) If an authorised officer has reasonable grounds for suspecting that there is on any of the following premises 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—
- (a) a licensed premises where a children's service is operating;
 - (b) premises in respect of which an approval of premises has been granted;
 - (c) premises where an approved associated children's service is operating.

S. 38(1)(c)
substituted by
No. 80/2011
s. 45(2).

S. 38(1)(d)(e)
repealed by
No. 80/2011
s. 45(3).

* * * * *

- (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—
 - (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

s. 41

(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.

S. 41
amended by
No. 22/2008
s. 25.

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 inspection.

S. 42
amended by
No. 22/008
s. 26.

42 Protection against self-incrimination

It is a reasonable excuse for an individual 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 that individual 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

(1AA) This section applies to every person who is or has been—

- (a) a licensee of a children's service;
- (b) an approved provider of an approved associated children's service;
- (c) a nominee or a staff member of a children's service.

S. 42A(1)
amended by
Nos 22/2008
s. 28, 80/2011
s. 46(2).

(1) If the Secretary believes that a person to whom this section applies 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, within the time and in the manner specified in the notice, that information by writing—
- (i) signed by that person; or
 - (ii) in the case of a body corporate, signed 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; or
 - (iii) in the case of an approved provider that is not an individual, by a person who is a person with management or control of the approved associated children's service operated by the approved provider; 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.

S. 42A(1)(a)
substituted by
No. 80/2011
s. 46(3).

- (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 or any information obtained directly or indirectly because of that answer or the provision of that information, 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.

S. 42A(5)
amended by
No. 80/2011
s. 46(4).

43 Notice to enforce requirements

- (1) If the Secretary is satisfied that a children's service (other than an approved associated children's service) is not operating in accordance with any provision of this Act the Secretary, by notice in

S. 43(1)
amended by
No. 80/2011
s. 47(1).

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—

(aa) impose on the licence to operate the children's service any condition or restriction of a kind referred to in section 25E(5) or vary any such condition or restriction in the licence; and

S. 43(2)(aa) inserted by No. 22/2008 s. 29(1), amended by No. 80/2011 s. 47(2)(a).

(a) suspend the licence; and

S. 43(2)(a) amended by No. 80/2011 s. 47(2)(b).

* * * * *

S. 43(2)(ab) inserted by No. 22/2008 s. 29(2), repealed by No. 80/2011 s. 47(2)(c).

(b) direct the proprietor to cease operating the children's service and to suspend the care or education of children by the service—

S. 43(2)(b) amended by No. 80/2011 s. 47(2)(d).

from a date specified in the order.

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S. 43(2A) inserted by No. 22/2008 s. 29(3), repealed by No. 80/2011 s. 47(3).

s. 43AA

S. 43(3)
amended by
No. 22/2008
s. 29(4)(5),
substituted by
No. 80/2011
s. 47(4).

- (3) The Secretary—
- (a) must 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
 - (b) may consider any other submissions and any matters the Secretary considers appropriate.

S. 43(3A)
inserted by
No. 80/2011
s. 47(4).

- (3A) The Secretary must—
- (a) decide—
 - (i) in the case of a suspension, whether or not the suspension should be withdrawn or confirmed, and if confirmed, the period for which the suspension should operate; and
 - (ii) in any other case, whether to confirm or revoke the order; and
 - (b) give notice of his or her decision to the proprietor of the children's service.

S. 43(4)
amended by
Nos 22/2008
s. 29(6),
80/2011
s. 47(5).

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

Penalty: 120 penalty units.

S. 43AA
inserted by
No. 80/2011
s. 48.

43AA Notice to enforce requirements—approved associated children's services

- (1) If the Secretary is satisfied that an approved associated 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 of an approved associated children's service and has not been complied with within 14 days after that service or any further time that the Secretary allows, the Secretary may decide to—
- (a) vary, revoke or impose conditions on the service approval to the extent it relates to the associated children's service; or
 - (b) suspend the service approval to the extent it relates to the associated children's service.
- (3) If the Secretary makes a decision under subsection (2), he or she must notify the proprietor of the approved associated children's service in writing.
- (4) The Secretary—
- (a) must consider any submissions, whether oral or in writing, made to the Secretary by the proprietor of the approved associated children's service within 7 days after the giving of a notice under subsection (3); and
 - (b) may consider any other submissions and any matters the Secretary considers appropriate.
- (5) The Secretary must—
- (a) decide—
 - (i) whether or not the variation, revocation or imposition of conditions should be confirmed;
 - (ii) whether or not the suspension should be withdrawn or confirmed; and
 - (b) give notice of his or her decision to the proprietor of the approved associated children's service.

S. 43AB
inserted by
No. 80/2011
s. 48.

43AB Confirmation of conditions or suspension under section 43AA

- (1) If the Secretary confirms the variation, revocation or imposition of conditions on the service approval under section 43AA(5), he or she must direct the Regulatory Authority to amend the service approval under section 55(5) of the National Law—
 - (a) 30 days after the Secretary gives a notice under section 43AA(5)(b); or
 - (b) if, within 30 days of the giving of the notice, the approved provider applies to VCAT for review of the decision, after the variation, revocation or imposition of conditions is confirmed by VCAT on review.

Note

A decision under section 43AA(5) to confirm the variation, revocation or imposition of conditions does not have effect unless the Secretary notifies the Regulatory Authority of that decision—see section 55 of the National Law.

- (2) If the Secretary confirms the suspension of the service approval under section 43AA(5), he or she must advise the Regulatory Authority of that determination—
 - (a) 30 days after the Secretary gives a notice under section 43AA(5)(b); or
 - (b) if, within 30 days of the giving of the notice, the approved provider applies to VCAT for review of the decision, after the suspension is confirmed by VCAT on review.

Note

A decision under section 43AA(5) to confirm the suspension does not have effect unless the Secretary notifies the Regulatory Authority of that decision—see section 75 of the National Law.

43A Notice to take emergency action

- (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).

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

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 or an approved associated 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. 44(1)
amended by
No. 80/2011
s. 49.

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

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

- (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.

S. 45A
inserted by
No. 80/2011
s. 50.

45A Cancellation of service approval for approved associated children's service

- (1) The Secretary may decide to cancel a service approval to the extent it relates to an approved associated children's service if the Secretary is satisfied—

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- (a) that the approved provider of the service has been found guilty of an offence against this Act; or
- (b) that the approved provider has failed to operate the service in a way which ensures the safety of the children being cared for or educated by the service; or
- (c) that the premises at which the service is operated are not satisfactory for the operation of a children's service.
- (2) The Secretary must not make a decision under subsection (1) unless—
- (a) the Secretary has sent to the approved provider, by post or electronic transmission, notice in writing of his or her intention to decide to cancel the service approval to the extent it relates to the approved associated children's service and the grounds on which the intention is based; and
- (b) the Secretary has given the approved provider at least 21 days to make submissions to the Secretary and has considered any submission received within that period.
- (3) If the Secretary decides under subsection (1) to cancel a service approval to the extent it relates to an approved associated children's service, he or she must give written notice of the cancellation to the provider specifying the date on which the cancellation will take effect.
- (4) The Secretary must advise the Regulatory Authority of a decision under subsection (1)—
- (a) 30 days after the Secretary gives a notice under subsection (3); or
-

- (b) if, within 30 days of the giving of the notice, the approved provider applies to VCAT for review of the decision, after the cancellation is confirmed by VCAT on review.

Note

A decision under subsection (1) does not have effect unless the Secretary notifies the Regulatory Authority of that decision—see section 80 of the National Law.

Division 3—Offences and legal proceedings

46 Offences relating to enforcement

S. 46
amended by
No. 22/2008
s. 31(3).

A person must not—

S. 46(b)
amended by
No. 22/2008
s. 31(1).

- (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 provide information or 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 29C or 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.

S. 46(c)
amended by
No. 22/2008
s. 31(2).

Penalty: 120 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.

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 and the power under section 29A(2).

S. 52A
inserted by
No. 58/2007
s. 52(3),
amended by
No. 22/2008
s. 32.

53 Register

- (1) The Secretary must keep a register of licensed children's services and approved associated children's services.
- (2) The register must contain the prescribed information about licensed children's services and approved associated 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.

S. 53(1)
substituted by
No. 80/2011
s. 51.

S. 53(2)
substituted by
No. 80/2011
s. 51.

* * * * *

S. 53A
inserted by
No. 22/2008
s. 33,
repealed by
No. 80/2011
s. 52.

53B Publication of information

S. 53B
inserted by
No. 22/2008
s. 33.

- (1) The Secretary may publish on the Department's Internet site the following information about a children's service—
 - (a) the name of the service;
 - (b) the address of—
 - (i) the premises approved under section 11; or

S. 53B(1)
substituted by
No. 80/2011
s. 53(1).

s. 53C

- (ii) in the case of an approved associated children's service, the premises where the service operates;
- (c) the name of the licensee or, in the case of an approved associated children's service, the approved provider;
- (d) information about the performance of the children's service in complying with its obligations under this Act;
- (e) actions taken and the results of actions taken under this Act in respect of the children's service.

S. 53B(2)
amended by
No. 80/2011
s. 53(2).

- (2) If the Secretary proposes to publish under subsection (1) any information of a kind referred to in subsection 1(d) or (1)(e), the Secretary must notify the licensee or approved provider of the children's service in respect of which the information relates—
 - (a) of that proposal; and
 - (b) that the person may seek review of that proposal under section 54A.

S. 53B(3)
amended by
No. 80/2011
s. 53(3).

- (3) Information published under this section must not include information that could identify or lead to the identification of a person other than a licensee or an approved provider of an approved associated children's service.

S. 53C
inserted by
No. 22/2008
s. 33.

53C Disclosure of information to other authorities

- (1) The Secretary may provide the following information relating to a children's service to a Government Department or public authority or municipal council or equivalent body in another jurisdiction for a purpose relating to the health, safety and wellbeing of children or the operation of children's services—

- (a) statistical information in relation to licences;
 - (ab) statistical information in relation to service approvals to the extent that they relate to approved associated children's services; S. 53C(1)(ab) inserted by No. 80/2011 s. 54(1).
 - (b) information about the performance of children's services in complying with their obligations under this Act;
 - (c) actions taken and the results of actions taken under this Act in respect of children's services.
- (2) The Secretary may, for a purpose relating to the health, safety and wellbeing of children, provide any information that the Secretary reasonably believes shows a contravention of any other Act or regulations made under any other Act by a children's service to a Government Department or public authority or municipal council or equivalent body in another jurisdiction.
- (3) Information provided under this section must not include information that could identify or lead to the identification of a person other than a licensee or an approved provider of an approved associated children's service. S. 53C(3) amended by No. 80/2011 s. 54(2).

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.

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- (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;

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

- (b) in any other case, it is satisfied that the interests of justice require that the evidence be given.
- (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.

54A Internal review

S. 54A
inserted by
No. 22/2008
s. 34.

- (1) The licensee of a children's service or the approved provider of an approved associated children's service may apply to the Secretary in writing for review of a proposal by the Secretary to publish information relating to the children's service under section 53B(1).
- (2) An application under subsection (1) must be made within 30 days after the day on which the licensee or approved provider is notified of the proposal, or within such longer period as the Secretary, either before or after the end of that period, allows.

S. 54A(1)
amended by
No. 80/2011
s. 55(1).

S. 54A(2)
amended by
No. 80/2011
s. 55(2).

s. 55

(3) The Secretary may, in relation to an application under subsection (1)—

- (a) affirm the decision to publish the information; or
- (b) make such other decision as the Secretary thinks appropriate.

55 Application to VCAT for review

Any person aggrieved by a decision of the Secretary—

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).

S. 55(a)
amended by
No. 22/2008
s. 35(a).

- (a) to refuse to grant an approval of premises or a licence; or

S. 55(b)
amended by
No. 22/2008
s. 35(b).

- (b) to refuse to renew or vary a licence; or

S. 55(c)
amended by
No. 80/2011
s. 56(1).

- (c) to suspend or cancel a licence; or

S. 55(d)
inserted by
No. 80/2011
s. 56(2).

- (d) to amend a service approval to the extent it relates to an approved associated children's service under section 25Z; or

S. 55(e)
inserted by
No. 80/2011
s. 56(2).

- (e) to vary, revoke or impose conditions on a service approval to the extent it relates to an approved associated children's service under section 43AA(5); or

S. 55(f)
inserted by
No. 80/2011
s. 56(2).

- (f) to suspend a service approval to the extent it relates to an approved associated children's service under section 43AA(5); or

- (g) to cancel a service approval to the extent it relates to an approved associated children's service under section 45A(1)—

S. 55(g)
inserted by
No. 80/2011
s. 56(2).

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;
 - (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 recruitment (including the conduct of police or other security checks), 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;

S. 56(1)(d)
amended by
No. 22/2008
s. 36(1).

S. 56(1)(f)
amended by
Nos 22/2008
s. 36(2),
80/2011 s. 57.

Children's Services Act 1996
No. 53 of 1996
Part 6—Funding, Administration and Regulations

s. 56

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

- (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;
- (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
- (ba) may differ according to the type of children's service; and

S. 56(2)(ba)
inserted by
No. 22/2008
s. 36(3).

S. 56(2)(c)
amended by
No. 22/2008
s. 5.

- (c) may exempt any children's service or any type of children's service from complying with all or any of the regulations; and

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- (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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Pt 7 (Heading
and ss 57–62)
amended by
Nos 74/2000
s. 3(Sch. 1
item 19),
22/2008
ss 37–39,
substituted by
No. 80/2011
s. 58.

**PART 7—TRANSITIONAL AND SAVING PROVISIONS—
CHILDREN'S SERVICES AMENDMENT ACT 2011**

New s. 57
inserted by
No. 80/2011
s. 58.

57 Definitions

In this Part—

commencement day means the day on which
Part 2 of the **Children's Services
Amendment Act 2011** comes into operation;

declared approved service means a service
declared to be a declared approved service
under section 16(4) of the **Education and
Care Services National Law Act 2010**;

residual service means—

- (a) a standard service that is—
 - (i) not an education and care service to which the National Law applies; and
 - (ii) prescribed by regulations made under Part 3 of the **Education and Care Services National Law Act 2010**; or
- (b) a service that provides education and care for no more than 4 weeks per calendar year during school holidays;
or
- (c) a limited hours Type 1 or Type 2 service; or
- (d) a short term Type 1 or Type 2 service.

58 Act ceases to apply to declared approved services

On and from the commencement day, this Act ceases to apply to a children's service that is a declared approved service which is taken to be an approved education and care service under section 307(4) of the National Law.

New s. 58
inserted by
No. 80/2011
s. 58.

59 Certain residual services continue as licensed children's services

- (1) This section does not apply in respect of a licensed children's service that is included in a service approval as an associated children's service.
- (2) On and from the commencement day this Act continues to apply in respect of a licensed children's service that is, or to the extent that it is, a residual service as if the licence to operate the children's service had been granted solely to operate the residual service.

New s. 59
inserted by
No. 80/2011
s. 58.

60 Children's service that becomes approved associated children's service

If, after the commencement day—

- (a) a person applies under the National Law for a service approval that includes an associated children's service; and
- (b) at the time of making the application the associated children's service is a licensed children's service—

on grant of the service approval that includes the associated children's service, the associated children's service ceases to be a licensed children's service.

New s. 60
inserted by
No. 80/2011
s. 58.

s. 61

S. 61
substituted by
No. 80/2011
s. 58.

61 Sections 36A and 42A continue to apply

- (1) On and from the commencement day, section 36A continues to apply in respect of a person who, before that day, was a licensee, nominee or a staff member of a children's service or a family day carer within the meaning of this Act, as if that section had not been amended.
- (2) On and from the commencement day, section 42A continues to apply in respect of a person who, before that day, was a licensee, nominee or a staff member of a children's service or a family day carer within the meaning of this Act, as if section 42A(5) had been amended but section 42A had not otherwise been amended.

S. 62
substituted by
No. 80/2011
s. 58.

62 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings and transitional nature consequent on the coming into operation of Part 2 of the **Children's Services Amendment Act 2011**.
- (2) Regulations under this section may have retrospective effect to a day on or after the day on which the **Children's Services Amendment Act 2011** receives the Royal Assent.
- (3) Regulations under this section have effect despite anything to the contrary in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**) or in any subordinate instrument.

Children's Services Act 1996
No. 53 of 1996

Sch.

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Sch.
inserted by
No. 22/2008
s. 40,
repealed by
No. 80/2011
s. 59.

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); ss 3–5, 7(1),
8, 9(5)(6), 10, 11(3), 12(3), 13(2), 14, 15, 18, 19,
20(1), 21–26, 28, 29(1)–(5), 31–40 on 25.5.09: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Children's Services Act 1996**

**Criminal Procedure Amendment (Consequential and Transitional Provisions)
Act 2009, No. 68/2009**

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 19) on 1.1.10: Government Gazette
10.12.09 p. 3215
Current State: This information relates only to the provision/s
amending the **Children's Services Act 1996**

**Statute Law Amendment (National Health Practitioner Regulation) Act 2010,
No. 13/2010**

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 13) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Children's Services Act 1996**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 item 10.3) on 25.5.09: s. 2(2)(a);
s. 3(Sch. 1 items 10.1, 10.2) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Children's Services Act 1996**

Children's Services Amendment Act 2011, No. 80/2011

Assent Date: 21.12.11
Commencement Date: Ss 4–59 on 1.1.12: Special Gazette (No. 423) 21.12.11
p. 2
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.