



New South Wales

Children's Services Amendment (Child-minding in Retail Shopping Centres) Regulation 2005

under the

Children and Young Persons (Care and Protection) Act 1998

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Children and Young Persons (Care and Protection) Act 1998*.

REBA MEAGHER, M.P.,
Minister for Community Services

Explanatory note

The object of this Regulation is to amend the *Children's Services Regulation 2004*:

- (a) to make provision for child minding services located in retail shopping centres (including transitional provision relating to the operation of existing services), and
- (b) to make a number of consequential amendments (including updating references to certain standards and making transitional provision in that regard).

This Regulation is made under the *Children and Young Persons (Care and Protection) Act 1998*, including sections 220 and 264 (the general regulation-making power).

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Clause 1

Children's Services Amendment (Child-minding in Retail Shopping Centres)
Regulation 2005

**Children's Services Amendment (Child-minding in
Retail Shopping Centres) Regulation 2005**

under the

Children and Young Persons (Care and Protection) Act 1998

1 Name of Regulation

This Regulation is the *Children's Services Amendment (Child-minding in Retail Shopping Centres) Regulation 2005*.

2 Commencement

This Regulation commences on 31 December 2005.

3 Amendment of Children's Services Regulation 2004

The *Children's Services Regulation 2004* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Part 3, heading

Omit “**Facilities**”. Insert instead “**Licence conditions—facilities**”.

[2] Clause 34 Toilets and washing facilities

Omit the note to clause 34 (2).

[3] Clause 36 Sleeping facilities

Omit clause 36 (6). Insert instead:

- (6) Cots must comply with the requirements of Australian/New Zealand Standard AS/NZS 2172:2003: *Cots for household use—Safety requirements*.

[4] Clause 42 Fire safety equipment

Omit clause 42 (2) and (3). Insert instead:

- (2) All fire protection equipment with which the premises of a centre based or mobile children's service is equipped must:
 - (a) be tested in accordance with the requirements of sections 15 and 16 of AS 1851–2005, *Maintenance of fire protection systems and equipment*, and
 - (b) be kept in proper working condition.

[5] Part 4, heading

Omit “**Staffing**”. Insert instead “**Licence conditions—staffing**”.

[6] Part 5, heading

Omit “**Child**”. Insert instead “**Licence conditions—child**”.

[7] Part 6, heading

Omit “**Operational**”. Insert instead “**Licence conditions—operational**”.

[8] Part 7, heading

Omit “**Administrative**”. Insert instead “**Licence conditions—administrative**”.

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[9] Part 8A

Insert after Part 8:

Part 8A Approved child-minding services in retail shopping centres

122A Application of Part

This Part applies to a centre based children's service that is a child-minding service provided at premises forming part of a retail shopping centre for the use of customers of the shopping centre.

122B Definitions

In this Part:

approval means an approval granted under clause 122E (1).

approved child-minding service means a children's service that is the subject of an approval.

retail shopping centre has the same meaning as in the *Retail Leases Act 1994*.

Standards means the provisions set out in Schedule 1A.

122C Child-minding services to which this Part applies to comply with the Standards

- (1) A person who provides an approved child-minding service must ensure that the Standards are complied with in relation to the child-minding service.

Maximum penalty: 10 penalty units.

- (2) This clause does not apply to a person acting in his or her capacity as an employee of a person who provides an approved child-minding service.

122D Application for approval

- (1) Subject to this clause, a person or body may make an application for an approval to provide a specified children's service to which this Part applies without the need to hold a licence.
- (2) Clause 7 (2) and (3) apply to an application for an approval in the same way as they apply to an application for a licence.
- (3) An application for an approval is to be made in the approved form.

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- (4) The Director-General may require an applicant for an approval to furnish such information as is necessary to enable the Director-General to determine the application.

122E Approvals

- (1) The Director-General may, by notice in writing served on the applicant, approve an application made under clause 122D (1) or refuse the application.
- (2) Without limiting the grounds on which the Director-General may refuse an application, the Director-General must refuse an application unless satisfied that the premises on which the children's service concerned will be provided are capable of complying with the relevant Standards.
- (3) An approval is subject to such conditions as may be specified in the notice referred to in subclause (1) and to such further conditions as the Director-General may from time to time notify in writing to the holder of the approval.
- (4) The Director-General may from time to time vary or revoke any condition of an approval by notice in writing served on the holder of the approval.
- (5) An approval remains in force until:
- (a) the expiry date specified in the approval, or
 - (b) it is surrendered or revoked,
- whichever occurs first.
- (6) The Director-General may, if the Director-General sees fit, suspend or cancel an approval by notice in writing served on the holder of the approval.
- (7) Without limiting the grounds on which the Director-General may suspend or cancel an approval under subclause (6), the Director-General may suspend or cancel an approval:
- (a) if clause 122C has been contravened in relation to the children's service the subject of the approval, or
 - (b) for breach of a condition to which the approval is subject.
- (8) Before the Director-General makes a final decision:
- (a) to vary or revoke a condition, or
 - (b) to suspend or revoke an approval,
- the Director-General must allow the holder of the approval 28 days within which to show cause why the condition should not

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be varied or revoked or the approval not be suspended or revoked.

- (9) Subclause (8) does not apply in relation to a variation or revocation of a condition or a revocation of an approval requested by the holder of the approval concerned.
- (10) An approval has no effect during any period of suspension.
- (11) The holder of an approval who fails to comply with a condition to which the approval is subject is guilty of an offence.
Maximum penalty: 10 penalty units.
- (12) If there is an inconsistency between a condition referred to in subclause (3) and the Standards, the Standards prevail to the extent of the inconsistency.

122F Probity checks

Part 8 (Probity checks) applies:

- (a) in relation to an applicant for an approval, as if references in Part 8 to an applicant for a licence or an applicant were references to an applicant for an approval, and
- (b) in relation to a person or body granted an approval, as if references in Part 8 to the licensee of a children's service or the licensee were references to the holder of an approval.

122G Director-General may require information or documents

A person who provides an approved child-minding service must provide the Director-General with such information in relation to the child-minding service as the Director-General may from time to time reasonably require.

Maximum penalty: 10 penalty units.

122H Effect of approval

A person is not required to hold a licence in relation to a children's service to which this Part applies if it is an approved child-minding service.

[10] Schedule 1, heading

Omit "**Records**" from the heading to Schedule 1.

Insert instead "**Licence conditions—records**".

[11] **Schedule 1A**

Insert after Schedule 1:

**Schedule 1A Standards applying to approved
child-minding services in retail
shopping centres**

(Clause 122B)

Part 1 Preliminary

1 Definitions

In this Schedule:

approval means an approval that has been granted under Part 8A and that is in force.

premises of the child-minding service means the premises at which the child-minding service is provided as specified in the approval granted for the service, and includes any part of those premises.

primary contact staff, in relation to the child-minding service, has the same meaning as in the dictionary at the end of this Regulation except that references in paragraph (b) of that definition to the licensee of the service and the licensee are to be read as references to the holder of an approval for the child-minding service and the holder, respectively.

staff of the child-minding service means those persons employed for remuneration by the holder of the approval for the service who are engaged in the provision of the service.

the child-minding service means the children's service to which an approval relates.

Part 2 Staffing standards

2 Employment of staff

- (1) The holder of an approval must not employ any person who has been convicted of a child care related offence within the previous 5 years as a member of the primary contact staff for the child-minding service.
- (2) The holder of an approval must not employ any person who is under the age of 18 years as a member of the primary contact staff for the child-minding service.

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(3) In this clause:

child care related offence means any of the following offences:

- (a) an offence under section 31 or 33 (1) of the *Children (Care and Protection) Act 1987* (as formerly in force),
- (b) an offence under section 27 (to the extent it relates to persons who deliver, or who directly supervise or are directly responsible for the provision of, children's services), 204, 205, 210, 214, 216, 218, 227, 228, 229, 230, 231, 251, 252, 253 or 254 of the *Children and Young Persons (Care and Protection) Act 1998*,
- (c) an offence under this Regulation.

Note. Part 7 of the *Commission for Children and Young People Act 1998* requires an employer to conduct employment screening of a preferred applicant for certain child-related employment, including employment in child care centres.

The *Child Protection (Prohibited Employment) Act 1998* prohibits a person convicted of a serious sex offence from applying for, undertaking or remaining in child-related employment.

3 Qualified staff

- (1) At all times while children are being provided with the child-minding service:
 - (a) at least one primary contact staff member must be in attendance who has obtained:
 - (i) a Child Care Certificate, a Certificate of Child Care Studies or an Associate Diploma of Social Science (Child Studies) from a TAFE establishment, or
 - (ii) a Diploma of Community Services (Children's Services) from a registered training organisation, and
 - (b) the majority of the remainder of the primary contact staff members in attendance must be persons who have had training or work experience in providing children's services (or assisting with providing children's services).
- (2) The holder of an approval must ensure that staff members with mandatory reporting obligations under section 27 of the Act are aware of those obligations.
- (3) All primary contact staff members must hold a current approved first aid qualification.

4 Staff to child ratios

- (1) A ratio of primary contact staff to children being provided with the child-minding service must be maintained that, in the opinion of the Director-General, is adequate.
- (2) At least 2 members of the primary contact staff must be present on the premises of the child-minding service whenever children are being provided with the service at the premises.
- (3) A sufficient number of adult persons must be available to assist in the effective evacuation of children from the premises of the child-minding service in the case of an emergency.

Part 3 Operational standards**5 Hours of operation of service**

The child-minding service must not operate outside the hours of operation of the retail shopping centre in which it is located.

6 Time limits on attendance of children

A child must not be allowed to attend the child-minding service for more than 3 hours in any one day or 9 hours in any one week.

7 Arrival and departure of children

- (1) A child may only be allowed to be collected from the child-minding service by the person who delivered the child to the service or a person nominated by that person to collect the child (as referred to in clause 9 (3) (e) of this Schedule).
- (2) A form of identification (which includes the name of the child and the names and contact details of the child's parent or other person who delivered the child to the service, and the person who is to be contacted in an emergency) must be attached to each child attending the child-minding service on the child's arrival at the premises of the service.
- (3) A parent or other person who delivers a child to the child-minding service must be required:
 - (a) to give the time at which the child will be collected, and
 - (b) not to leave the retail shopping centre in which the premises of the service are located during the period of the child's attendance at the service.

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- (4) Appropriate arrangements must be made with the parent or other person who delivers a child to the child-minding service to ensure that the parent or other person will be contactable at all times during the period of the child's attendance at the service.

8 Qualification relating to standards in clauses 5, 6 and 7 (1)

A failure to comply with clause 5, 6 or 7 (1) of this Schedule is not to be treated as a contravention of these Standards if the failure is due only to:

- (a) a parent or other person failing to collect, or being late in collecting, a child from the child-minding service, or
- (b) some other circumstance that is beyond the control of the holder of the approval and the staff of the service.

9 Enrolment of children

- (1) The child-minding service may only be provided to a child who is enrolled in the service in accordance with this clause.
- (2) A child must be enrolled on each attendance at the child-minding service.
- (3) The parent or other person who delivers a child to the premises of the child-minding service must be required to provide the following details for the purpose of the child's enrolment:
 - (a) the child's full name and any other names by which the child is known,
 - (b) the child's date of birth,
 - (c) the full name of each parent of the child, and any other name by which each parent is known, and the contact details for each parent,
 - (d) the full name of the person who delivers the child to the service (if not the parent), and the contact details for that person,
 - (e) the full name and contact details of a person who is authorised to collect the child from the service in the absence of the person who delivers the child to the service,
 - (f) the full name and contact details for each person who may be contacted in an emergency if a parent of the child is not available,
 - (g) any relevant medical details concerning the child (for example, the child's immunisation status and details of any allergies or other medical condition the child has),

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- (h) any special requirements concerning the child (such as requirements relating to the child's needs in relation to any disability or medical condition the child has).

10 Excursions

A child who has been delivered to the child-minding service must not be allowed to leave the service to participate in any excursion unless:

- (a) the parent or other person who delivered the child to the service has authorised the child's participation in that excursion in writing, and
- (b) the child is accompanied on the excursion by a primary contact staff member.

11 Illness, accident and emergency treatment

A child must not be enrolled in the child-minding service unless a parent of the child:

- (a) has given written authorisation for the service to seek urgent medical, dental or hospital treatment or ambulance service, and
- (b) has given written consent to the carrying out of appropriate medical, dental or hospital treatment,

in the event that such action appears to be necessary because the child has been injured, or is ill, at the premises of the service.

12 Drinking water for children

Drinking water must be provided and available to children attending the child-minding service at all times while the service is being provided.

13 Activities for children

Activities must be provided that meet the developmental and physical needs of the children attending the service.

14 Storage of medicines and dangerous substances

All medications and poisonous and other dangerous substances must be kept in secure storage facilities that are inaccessible to children.

15 Emergency and evacuation procedures

- (1) A written emergency plan for fire and other emergencies (including evacuation procedures) must be developed and kept up to date.
- (2) A copy of each plan must be prominently displayed in each playroom on the premises of the child-minding service and at each main exit from the premises.
- (3) Primary contact staff must practise emergency procedures (including evacuation procedures) at least once every 3 months so that they are prepared for emergencies.
- (4) A record of each practice must be taken that includes an evaluation of the procedures followed and must be kept at the premises of the child-minding service (or the offices of the service) for a period of 2 years after the practice.
- (5) Equipment that can be used to transport babies during an evacuation (for example, baby pouches) must be kept easily accessible at all times and must be used in evacuation practice.

Part 4 Facilities and equipment standards**16 Space requirements**

The premises of the child-minding service must have at least 3.25 square metres of unencumbered floor space per child that is exclusively for the use of children while in attendance at the service.

17 Food preparation facilities

- (1) The premises of the child-minding service must have a designated area, that is both safe and hygienic, for food preparation and storage.
- (2) Facilities for the preparation and storage of food must be designed, located and maintained so as to prevent children from gaining access to any harmful substance, equipment or amenity.

18 Toilets and washing facilities

- (1) The premises of the child-minding service must have toilet, hand washing and bathing facilities that are safe and appropriate to the ages of the children attending the service and must have products and equipment for cleaning those facilities whenever necessary.

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- (2) The sanitary facilities of the child-minding service must comply with the requirements for class 9b buildings (Early childhood centres) of clause F2.3 of the *Building Code of Australia*.
 - (3) Staff toilets must be located within, or in immediate proximity to, the premises of the child-minding service.

19 Nappy change facilities

- (1) The following facilities must be provided at the premises of the child-minding service if any child provided with the service wears nappies:
 - (a) a stable surface for changing nappies, together with a mat that has an impervious washable surface,
 - (b) hand washing facilities for adults in the immediate vicinity of the nappy changing area,
 - (c) sanitary facilities for the storage of soiled nappies pending laundering or disposal of the nappies,
 - (d) if the children's soiled clothing is laundered by staff, adequate facilities for laundering the clothing or otherwise dealing hygienically with waste,
 - (e) facilities for the storage of clean nappies.
- (2) Any nappy changing bench or mat must be cleaned after each use.
- (3) The nappy changing facilities must be designed, located and maintained so as to prevent unsupervised access by children.
- (4) The nappy changing facilities must be separated from food preparation facilities and craft preparation facilities.

20 Sleeping facilities

- (1) The premises of the child-minding service must have adequate, hygienic and safe sleeping facilities for all children who sleep while at the premises. (This may include cots, beds, stretchers, sleeping mats (together with waterproof covers), prams or strollers.)
- (2) Cots must comply with the requirements of Australian/New Zealand Standard AS/NZS 2172:2003: *Cots for household use—Safety requirements*.

21 Child-proof gates at entry and exit points

- (1) Child-proof gates must be installed at each point of entry to or exit from the premises of the child-minding service.

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- (2) The child-proof gates must:
 - (a) be secured by means of child-proof locks, and
 - (b) be designed:
 - (i) to prevent children from entering or leaving the premises unsupervised, and
 - (ii) to inhibit or impede intruders from entering the premises.

22 Play equipment

- (1) The premises of the child-minding service must be equipped with equipment that meets the developmental and physical needs of the children attending the service.
- (2) Play equipment (whether fixed or not) used on the premises of the child-minding service must not constitute a hazard to children at the service because of:
 - (a) the height from which a child can fall, or
 - (b) the likelihood that a child can be trapped, pinched or crushed in the equipment or struck by it, or
 - (c) sharp or rough edges and projections or rust, or
 - (d) lack of stability.
- (3) Play equipment used on the premises of the child-minding service must be safe and in good repair.
- (4) All broken equipment and broken toys must immediately be removed from play areas.
- (5) The surfacing used underneath or around play equipment on the premises of the child-minding service must comply with the requirements of Australian and New Zealand Standard AS/NZS 4422:1996 *Playground surfacing—Specifications, requirements and test method*.

23 Fire safety equipment

- (1) The premises of the child-minding service must be provided with:
 - (a) appropriately located smoke detectors, and
 - (b) a fire blanket that is kept adjacent to the cooking facilities at the premises, and
 - (c) appropriately located fire extinguishers.

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- (2) All fire protection equipment with which the premises of the child-minding service is equipped must:
- (a) be tested in accordance with the requirements of sections 15 and 16 of AS 1851–2005, *Maintenance of fire protection systems and equipment*, and
 - (b) be kept in proper working condition.

24 Cleanliness, maintenance and repairs

The premises of the child-minding service, and all equipment and furnishing used in providing the service, must be maintained in a safe, clean and hygienic condition and in good repair at all times.

25 Safe environment

The holder of an approval must comply with the requirements of the *Occupational Health and Safety Act 2000* that apply to the holder.

Note. The *Occupational Health and Safety Act 2000* requires employers to ensure the health, safety and welfare at work of all employees of the employer.

Part 5 Administrative standards

26 Public liability insurance

Clause 89 (1) applies in relation to the holder of an approval as if references in that clause:

- (a) to the licensee of any class of children's service (other than a family day care children's service) and the licensee were references to the holder of the approval, and
- (b) to children's services and the service were references to the child-minding service to which the approval relates.

27 Records relating to child's attendance

- (1) Written records must be kept of the enrolment details (referred to in clause 9 (3) of this Schedule) of each child who attends the child-minding service.
- (2) The following written records must be kept of a child's attendance at the child-minding service:
 - (a) for each day the child attends the service, the day of attendance and the arrival and departure times on that day,

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- (b) the signature of the person who delivers the child to the service each time the child arrives at the service, and the signature of the person who collects the child each time the child departs from the service.
- (3) Written records must be kept of each occasion that a parent or other person who delivers a child to the child-minding service:
 - (a) is uncontactable, or
 - (b) is late in collecting the child, or
 - (c) fails to collect the child.
- (4) A record referred to in this clause must be kept in a safe and secure area at the premises of the child-minding service (or the offices of the service) for a period of not less than 2 years after the making of the record.
- (5) Clause 97 applies in relation to the inspection of records referred to in this clause as if references in that clause:
 - (a) to the licensee of a children's service and the licensee were references to the holder of an approval, and
 - (b) to the authorised supervisor of the service were references to the authorised supervisor of the child-minding service (being the person specified as such in the approval for the service).

28 Policies of service

- (1) Policies must be developed and maintained concerning the following matters in relation to the child-minding service:
 - (a) the conditions of service applying to the parents and other persons who deliver a child to the service (including the requirements referred to in clauses 6, 7 (1), (3) and (4) and 9 (3) of this Schedule) and the procedures that are to apply if a condition is contravened or persistently contravened,
 - (b) child health and safety,
 - (c) infectious diseases,
 - (d) procedures for making complaints (including how complaints may be made to the Department) and for handling complaints,
 - (e) confidentiality of records,
 - (f) emergency (including evacuation) procedures.

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- (2) Copies of the policies must be available at the premises of the child-minding service for inspection by parents of a child attending the service or other persons delivering a child to the service.
 - (3) A parent or other person who delivers a child to the child-minding service is to be provided with a written summary of the policies of the service.

[12] Schedule 2 Savings and transitional provisions

Insert after clause 13:

14 Continuity of exempting order

The Order made on the 28 September 2004 by the Minister for Community Services under section 48 (1) of the 1987 Act exempting a person from the operation of section 31 (1), (2), (3) and (4) of that Act (as in force immediately before its repeal by the *Children and Young Persons Legislation (Repeal and Amendment) Act 1998*) is taken to have continued in force despite its expiry, and to remain in force until 30 June 2006, unless sooner revoked by the Director-General.

15 Transitional provision relating to updated standards

Until and including 30 June 2006:

- (a) compliance with clause 36 (6), as in force immediately before its substitution by Schedule 1 [3] to the *Children's Services Amendment (Child-minding in Retail Shopping Centres) Regulation 2005*, is taken to be compliance with clause 36 (6) as substituted by that item, and
- (b) compliance with clause 42 (2), as in force immediately before its substitution by Schedule 1 [4] to that Regulation, is taken to be compliance with clause 42 (2) as substituted by that item.