

Passed by both Houses



New South Wales

# Children and Young Persons (Care and Protection) Amendment (Children's Services) Bill 2010

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157	3
Schedule 2 Amendment of other Acts	33

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2010*



New South Wales

## **Children and Young Persons (Care and Protection) Amendment (Children's Services) Bill 2010**

Act No , 2010

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An Act to amend the *Children and Young Persons (Care and Protection) Act 1998* to make further provision with respect to the regulation of children's services, and to make consequential amendments to other legislation.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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Clause 1 Children and Young Persons (Care and Protection) Amendment (Children's Services) Bill 2010

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Children and Young Persons (Care and Protection) Amendment (Children's Services) Act 2010*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

## **Schedule 1      Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157**

### **[1] Section 3 Definitions**

Insert in alphabetical order:

*children's service approval*—see section 199.

*service provider licence*—see section 199.

*supervisor approval*—see section 199.

### **[2] Section 199 Definitions**

Omit the definitions of *authorised supervisor*, *licence* and *licensee* from section 199 (1).

Insert in alphabetical order:

*approval* means a children's service approval or a supervisor approval.

*approved children's service* means a children's service the operation of which is authorised by a children's service approval.

*authorised supervisor* means a person who holds a supervisor approval.

*children's service approval* means a children's service approval granted under this Chapter and which is in force.

*children's services register* means the children's services register kept under Part 7.

*compliance notice*—see Division 1 of Part 5.

*licensed service provider* means a licensee under a service provider licence.

*licensee* under a service provider licence means a person or persons specified in the service provider licence as the licensee or any person appointed as licensee by variation of the licence.

*service provider licence* or *licence* means a service provider licence granted under this Chapter and which is in force.

*supervisor approval* means a supervisor approval granted under this Chapter and which is in force.

**[3] Section 199 (3)**

Insert after section 199 (2):

- (3) In this Chapter, a reference to the licensee of a children's service, or of an approved children's service, is a reference to the licensed service provider that provides the children's service.

**[4] Section 202**

Omit the section. Insert instead:

**202 Principles underlying the provision of children's services**

The provision of children's services should be based on the following principles:

- (a) the paramount consideration in the provision of children's services is the best interests of children,
- (b) children should receive services that meet their individual needs (including the needs of children with a disability) and enhance their physical, emotional, cognitive, social and cultural development,
- (c) children's services should assist the development and education of the children who attend them,
- (d) children's services should be planned and operated in a manner that recognises the diversity of the children who attend them and of the communities that they serve,
- (e) parents have a right to information about the children's services which their children attend,
- (f) parents have both a right and a responsibility to be involved in the making of decisions by a children's service in so far as those decisions affect their children.

**Note.** Children's services must also be operated in accordance with any relevant provisions of the *Anti-Discrimination Act 1977*.

[5] **Chapter 12, Parts 3–8**

Omit Parts 3–5. Insert instead:

## **Part 3 Regulation of children's services**

### **Division 1 Service provider licences**

**204 Prescribed children's services to be provided only by licensed service providers**

A prescribed children's service may be provided only by a person who is authorised to provide the type of service concerned by a service provider licence.

**Note.** For offences see Division 4.

**205 Service provider licences**

- (1) The Director-General may, on application, grant a licence (a *service provider licence*) that authorises a person or persons to provide a specified type or types of prescribed children's service.
- (2) A service provider licence is to specify the person or persons to whom the licence is granted.
- (3) Any person so specified is a licensee under the service provider licence.

**Note.** The regulations may provide for information and evidence to accompany an application for a licence and the probity checks to be conducted in respect of the application.

**206 Refusal to grant licence**

- (1) The Director-General may refuse to grant a service provider licence:
  - (a) if the Director-General is of the opinion that a person proposed as licensee or any relevant person in relation to the application is not a suitable person to be involved in the provision of children's services, or
  - (b) on any other grounds prescribed by the regulations.
- (2) Each of the following persons is a *relevant person* in relation to an application:
  - (a) if the proposed licensee is not a natural person—any person involved in the control or management of the proposed licensee (such as a chief executive officer, director or majority shareholder of a corporation),

- (b) if the proposed licensee applies for the licence for or on behalf of an association, partnership or trust—a member of the management committee or other office holder of the association, a member of the partnership or a trustee of the trust (as the case requires),
- (c) any other person prescribed by the regulations.

**207 Duration of licence**

- (1) A service provider licence may be granted for a fixed term or for no fixed term.
- (2) If a service provider licence is granted for a fixed term, the licence remains in force for the term specified in the licence, unless sooner revoked.
- (3) If a service provider licence is granted for no fixed term, it remains in force until it is revoked.
- (4) In any case, a service provider licence ceases to have effect during any period in which it is suspended.

**208 Conditions of licences**

- (1) A service provider licence is subject to the following conditions:
  - (a) any conditions imposed by this Act or prescribed by the regulations,
  - (b) any conditions imposed by the Director-General.
- (2) The Director-General may impose conditions on a licence:
  - (a) at the time of the grant of the licence, or
  - (b) subsequent to the grant of the licence by variation of the licence.
- (3) A licensee under a service provider licence must not contravene a condition of the licence.  
Maximum penalty: 200 penalty units.

**209 Variation of licence**

- (1) The Director-General may, by notice in writing, vary a service provider licence (including any conditions of the licence imposed by the Director-General).



- (2) A variation includes the imposition of new conditions on a licence, the substitution of a condition, or the omission or amendment of a condition.

**Note.** The regulations may make provision for the grounds on which a licence may be varied, and the manner in which the variation is to be notified.

**210 Appointment of additional or substitute licensee**

- (1) The Director-General may vary a service provider licence to appoint a person as licensee under the service provider licence in place of, or in addition to, the existing licensee.
- (2) Any such variation may be made only:
- (a) if the licence was granted to authorise the provision of children's services by a person for or on behalf of an association, partnership or trust and, as a result of a change in circumstances, it is no longer appropriate for the person to be the licensee for or on behalf of that association, partnership or trust, or
  - (b) if the existing licensee has died, or
  - (c) in other circumstances prescribed by the regulations.
- (3) A person appointed by the Director-General as licensee is taken to be a licensee under the licence for the period (if any) specified by the Director-General in the appointment.

**211 Revocation or suspension of licences**

- (1) The Director-General may revoke or suspend a service provider licence:
- (a) if the Director-General is of the opinion that a licensee under the licence or any relevant person in relation to the licence is no longer a suitable person to be involved in the provision of children's services, or
  - (b) if the Director-General is of the opinion that the continued provision of children's services by a licensee under the licence would constitute an unacceptable risk to the safety, welfare or well-being of any child or class of children attending the service, or
  - (c) on any other grounds specified in the regulations.
- (2) Each of the following persons is a *relevant person* in relation to a licence:
- (a) if the licensee is not a natural person—any person involved in the control or management of the licensee (such as a

chief executive officer, director or majority shareholder of a corporation),

- (b) if the licence authorises the provision of children's services by a person for or on behalf of an association, partnership or trust—a member of the management committee, or other office holder, of the association, a member of the partnership or a trustee of the trust (as the case requires),
- (c) any other person prescribed by the regulations.

**212 Special condition—home based children's service**

It is a condition of a service provider licence for a home based children's service that the licensee under the licence provide that children's service only at the licensee's home.

**Division 2 Approval of operation of children's services**

**213 Prescribed children's service to be operated only with approval**

- (1) A prescribed children's service may be provided only if the operation of the particular children's service is authorised by a children's service approval.
- (2) An approved children's service (other than a home based children's service) may be provided by any licensed service provider authorised by its service provider licence to provide the type of children's service concerned.
- (3) A home based children's service may be provided only by a licensed service provider authorised by a service provider licence to provide that particular home based children's service.

**Note.** For offences see Division 4.

**214 Children's service approval**

The Director-General may, on application, grant an approval (a *children's service approval*) that authorises the operation of a particular prescribed children's service.

**215 Refusal to grant approval**

The Director-General may refuse to grant a children's service approval:

- (a) if the Director-General is of the opinion that the operation of the children's service would constitute an unacceptable

risk to the safety, welfare or well-being of children who would attend the service, or

(b) on any grounds prescribed by the regulations.

**216 Duration of approval**

- (1) A children's service approval may be granted for a fixed term or for no fixed term.
- (2) If a children's service approval is granted for a fixed term, the approval remains in force for the term specified in the approval, unless sooner revoked.
- (3) If a children's service approval is granted for no fixed term, the approval remains in force until it is revoked.
- (4) In any case, a children's service approval ceases to have effect during any period in which it is suspended.

**217 Conditions of approvals**

- (1) A children's service approval is subject to the following conditions:
  - (a) any conditions imposed by this Act or prescribed by the regulations,
  - (b) any conditions imposed by the Director-General.
- (2) The Director-General may impose conditions on a children's service approval:
  - (a) at the time of the grant of the approval, or
  - (b) subsequent to the grant of the approval by varying the children's service approval.
- (3) A licensee of a children's service must not contravene a condition of the children's service approval relating to the children's service.

Maximum penalty: 200 penalty units.

**218 Variation to approval**

- (1) The Director-General may, by notice in writing, vary a children's service approval (including any conditions of the approval imposed by the Director-General).
- (2) A variation includes the imposition of new conditions on an approval, the substitution of a condition, or the omission or amendment of a condition.

**Note.** The regulations may make provision for the grounds on which an approval may be varied, and the manner in which the variation is to be notified.

### **219    Revocation and suspension of approvals**

The Director-General may revoke or suspend a children's service approval:

- (a) if the Director-General is of the opinion that the continued operation of the children's service would constitute an unacceptable risk to the safety, welfare or well-being of any child or class of children attending the service, or
- (b) if exceptional circumstances arise as a result of which the Director-General considers it contrary to the best interests of the children attending the service for the service to continue, or
- (c) if the Director-General revokes or suspends the licence of the licensed service provider that is providing the children's service, or
- (d) on any other grounds specified in the regulations.

### **Division 3      Approval of supervisors**

#### **219A    Children's services to be operated under supervision of authorised supervisor**

- (1) A licensee of an approved children's service must ensure that at least one authorised supervisor is appointed by the licensee as authorised supervisor of the approved children's service.
- (2) The person appointed must be a person authorised by his or her supervisor approval to supervise the operation of the approved children's service or type of approved children's service concerned.
- (3) A contravention of this section is a contravention of a provision of this Chapter.

**Note.** Under Part 5, the Director-General may serve a compliance notice on a person requiring the person to remedy a contravention of a provision of this Chapter.

- (4) In this Chapter, a reference to the authorised supervisor of a children's service, or of an approved children's service, is a reference to the authorised supervisor appointed for the time being as authorised supervisor of the approved children's service, in accordance with any requirements of the regulations.

- (5) An authorised supervisor is not required in respect of a home based children's service.

**219B Supervisor approvals**

The Director-General may, on application, grant an approval (a *supervisor approval*) that authorises a person to supervise the operation of a specified children's service or a specified type or types of children's services.

**219C Refusal to grant approval**

The Director-General may refuse to grant a supervisor approval:

- (a) if the Director-General is of the opinion that the applicant is not a suitable person to be involved in the supervision or operation of children's services, or
- (b) on any grounds prescribed by the regulations.

**219D Duration of approval**

- (1) A supervisor approval may be granted for a fixed term or for no fixed term.
- (2) If a supervisor approval is granted for a fixed term, the approval remains in force for the term specified in the approval, unless sooner revoked.
- (3) If a supervisor approval is granted for no fixed term, the approval remains in force until it is revoked.
- (4) In any case, a supervisor approval ceases to have effect during any period in which it is suspended.

**219E Conditions of approvals**

- (1) A supervisor approval is subject to the following conditions:
  - (a) any conditions imposed by this Act or prescribed by the regulations,
  - (b) any conditions imposed by the Director-General.
- (2) The Director-General may impose conditions on an approval:
  - (a) at the time of the grant of the approval, or
  - (b) subsequent to the grant of the approval by variation to the approval.
- (3) A person who is an authorised supervisor must not contravene a condition of the person's supervisor approval.  
Maximum penalty: 200 penalty units.

**219F    Variation to approval**

- (1) The Director-General may, by notice in writing, vary a supervisor approval (including any conditions of the approval imposed by the Director-General).
- (2) A variation includes the imposition of new conditions on an approval, the substitution of a condition, or the omission or amendment of a condition.

**Note.** The regulations may make provision for the grounds on which an approval may be varied, and the manner in which the variation is to be notified.

**219G    Revocation and suspension of approval**

The Director-General may revoke or suspend a supervisor approval:

- (a) if the Director-General is of the opinion that the authorised supervisor is no longer a suitable person to be involved in the supervision or operation of a children's service, or
- (b) on any other grounds specified in the regulations.

**219H    Special provision for school-based children's services**

- (1) For an approved children's service that is provided by a government school or registered non-government school, the principal of the school for the time being, or a person acting in the position of principal:
  - (a) is taken to hold a supervisor approval that authorises the principal or acting principal to supervise the operation of the children's service, and
  - (b) is taken to have been appointed to supervise the operation of the approved children's service.

- (2) In this section:

**government school** has the same meaning as it has in the *Education Act 1990*.

**registered non-government school** has the same meaning as it has in the *Education Act 1990*.

## **Division 4      Offences**

### **219I    Unauthorised provision of children's service**

- (1) A person must not provide a prescribed children's service unless:
  - (a) the person is a licensee under a service provider licence that authorises the person to provide the children's service or type of children's service, and
  - (b) the children's service is an approved children's service.Maximum penalty: 200 penalty units.
- (2) An authorised supervisor of a children's service who is not the licensee of the children's service does not commit an offence against this section in respect of anything done in the course of supervising that service in accordance with the person's supervisor approval.
- (3) An employee or other person who provides or assists in providing a children's service (other than an authorised supervisor of the children's service) does not commit an offence against this section if the employee or other person is acting in accordance with directions given by the licensee of the children's service or an authorised supervisor of the children's service.

### **219J    Advertising of unauthorised children's services**

- (1) A person must not advertise or hold out that the person is willing to provide a prescribed children's service unless:
  - (a) the person is a licensee under a service provider licence that authorises the person to provide the type of children's service concerned, and
  - (b) the particular children's service being advertised is an approved children's service.Maximum penalty: 5 penalty units.
- (2) A person must not knowingly publish any advertisement inviting the attendance of children at a prescribed children's service that is not an approved children's service.  
Maximum penalty: 5 penalty units.
- (3) A person is not guilty of an offence under this section if:
  - (a) the prescribed children's service is a service that is proposed to be provided in the future, and

- (b) the person has duly applied for any service provider licence or children's service approval required to authorise the person to provide the proposed children's service, and
- (c) the application has not been finally determined.

## Part 4 Investigation powers

### 219K Definition—person involved in provision of children's services

- (1) In this Part, a *person involved in the provision of children's services* means:
  - (a) a person who is, or was formerly, a licensed service provider, or
  - (b) a person who is, or was formerly, an authorised supervisor of a children's service, or
  - (c) a person who is, or was formerly, an employee of a licensed service provider or otherwise engaged to provide or assist in providing a prescribed children's service, or
  - (d) a person who, under the regulations, is, or was formerly, a family day care carer, or
  - (e) a person who is, or was formerly, involved in the control or management of a licensed service provider (such as a director, chief executive officer or majority shareholder), or
  - (f) a person who is, or was formerly, a member of a management committee or other office holder of an association, or a member of a partnership, involved in the provision of children's services, or
  - (g) a person who is, or was formerly, a trustee of a trust involved in the provision of children's services, or
  - (h) any other person the Director-General has reasonable cause to believe is involved, or has formerly been involved, in the provision, management or operation of a prescribed children's service.
- (2) In this section:  
*employee* includes a person engaged under a contract for services.

### 219L Power to require provision of documents

- (1) The Director-General may, by notice in writing served on a person involved in the provision of children's services, require



the person to provide to the Director-General such relevant documents as the Director-General specifies in the notice.

- (2) The following documents are *relevant documents*:
  - (a) any record that a person is required to keep by or under this Chapter (including under the regulations),
  - (b) such other documents as the Director-General reasonably requires for the purposes of the administration or enforcement of this Chapter.
- (3) A notice under this section must specify the manner in which the documents are required to be provided and a reasonable time by which the documents are required to be provided.
- (4) A notice under this section may only require a person to provide existing documents that are in the person's possession or that are within the person's power to obtain lawfully.
- (5) If any document required to be provided under this section is in electronic, mechanical or other form, the notice requires the document to be provided in written form, unless the notice otherwise provides.
- (6) If any document required to be provided under this section is not in the English language, the notice requires a written translation of its content to be provided with the document, unless the notice otherwise provides.
- (7) The Director-General may take copies of any documents provided under this section.
- (8) If the Director-General has reason to believe that any documents provided under this section are evidence of an offence against this Act or the regulations, the Director-General may retain the documents until proceedings for the offence have been heard and determined.

**219M Power to require answers to questions**

- (1) The Director-General may, by notice in writing served on a person involved in the provision of children's services, require the person to answer questions about any matters in respect of which information is required for the administration or enforcement of this Chapter.
- (2) The Director-General may, by notice in writing, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the

corporation's representative for the purpose of answering questions under this section.

- (3) Answers given by a person nominated by the corporation bind the corporation.
- (4) The Director-General may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (5) The place and time at which a person may be required to attend to answer questions under this section is to be:
  - (a) a place or time nominated by the person, or
  - (b) if the place or time nominated is not reasonable in the circumstances or a place or time is not nominated by the person, a place and time nominated by the Director-General that is reasonable in the circumstances.

**219N      Functions may be exercised outside this State**

- (1) A notice may be given under this Part to a person involved in the provision of children's services even though the person is outside the State, as long as the children's services concerned are or were provided in this State.
- (2) The Director-General, or a delegate of the Director-General, may attend at a place outside this State for the purpose of obtaining answers to questions asked of a person under this Part.

**219O      Revocation or variation of notices**

- (1) A notice given under this Part may be revoked or varied by the Director-General by further notice in writing served on the person to whom the notice was issued.
- (2) A notice may be varied by modification of, or addition to, its terms and specifications.
- (3) The revocation or variation has effect when notice of the revocation or variation is given to the person to whom the notice was issued.
- (4) Without limiting the above, a notice may be varied by extending the time for complying with the notice.
- (5) The revocation of a notice does not prevent the issue of another notice.

**219P Failure to comply with requirement to provide documents or information or answer questions**

A person who, without reasonable excuse, fails to comply with a requirement made of the person under this Part is guilty of an offence.

Maximum penalty: 200 penalty units.

**219Q False and misleading information**

- (1) A person who provides any document or information or does any other thing in purported compliance with a requirement made under this Part, knowing that it is false or misleading in a material particular, is guilty of an offence.

Maximum penalty: 200 penalty units.

- (2) A person cannot be found guilty of both an offence against this section and an offence against section 253 in respect of the same act or omission.

**219R Provisions relating to requirements to provide documents or information or answer questions**

- (1) **Warning to be given on each occasion**

A person is not guilty of an offence of failing to comply with a requirement under this Part to provide documents or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.

- (2) **Self-incrimination not an excuse**

A person is not excused from a requirement under this Part to provide documents or information or to answer a question on the ground that the document, information or answer might incriminate the person or make the person liable to a penalty.

- (3) **Information or answer not admissible if objection made**

However, any information provided or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if:

- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
- (b) the person was not warned on that occasion that the person may object to providing the information or giving the answer on the ground that it might incriminate the person.

(4) **Documents admissible**

Any document provided by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the document might incriminate the person.

(5) **Further information**

Further information obtained as a result of a document or information provided or an answer given in compliance with a requirement under this Part is not inadmissible on the ground:

- (a) that the document or information had to be provided or the answer had to be given, or
- (b) that the document or information provided or answer given might incriminate the person.

**219S Effect on other functions**

- (1) This Part does not affect any functions conferred by any other provision of this Act or by any other Act.
- (2) In particular, this Part does not affect the functions conferred by Chapter 15.
- (3) This Part does not limit the conditions that can be attached to a licence or approval.

## **Part 5 Enforcement and compliance**

### **Division 1 Compliance notices**

**219T Issue of compliance notices by Director-General**

- (1) If the Director-General is of the opinion that a person is contravening a provision of this Chapter or the regulations under this Chapter, the Director-General may serve on the person a notice (a **compliance notice**) requiring the person to remedy the contravention within the period specified in the notice.
- (2) A compliance notice must:
  - (a) give particulars of the alleged contravention, and
  - (b) include information about rights to seek a review of the Director-General's decision to issue the notice.
- (3) A compliance notice may include directions as to the measures to be taken to remedy any contravention to which the notice relates or to otherwise comply with the notice.

- (4) A compliance notice may offer the person to whom it is issued a choice of ways in which to remedy the contravention or to comply with the notice.
- (5) A compliance notice is to be in a form approved by the Director-General.

**219U Revocation and variation of compliance notices**

- (1) A compliance notice may be revoked or varied by the Director-General by further notice in writing given to the person to whom the compliance notice was issued.
- (2) The revocation or variation has effect when notice of the revocation or variation is given to the person to whom the notice was issued.
- (3) A notice may be varied by modification of, or addition to, its terms and specifications.
- (4) Without limiting the above, a notice may be varied by extending the time for complying with the notice.
- (5) The revocation of a compliance notice does not prevent the issue of another compliance notice.

**219V Failure to comply with compliance notice**

A person who, without reasonable excuse, fails to comply with a requirement imposed by a compliance notice issued to the person is guilty of an offence.

Maximum penalty: 100 penalty units.

**219W Proceedings for offences not affected by compliance notices**

- (1) The issue, variation or revocation of a compliance notice does not affect any proceedings for an offence against this Act or the regulations in connection with any matter in respect of which the notice was issued.
- (2) However, a person cannot be convicted of both an offence of failing to comply with a compliance notice and another offence against this Act or the regulations in respect of the same act or omission.

**Division 2 Enforceable undertakings**

**219X Enforceable undertakings**

- (1) The Director-General may accept a written undertaking given by a person for the purposes of this section in connection with a

matter in relation to which the Director-General has a function under this Chapter.

- (2) The person may withdraw or vary the undertaking at any time, but only with the consent in writing of the Director-General. The consent of the Director-General is required even if the undertaking purports to authorise withdrawal or variation of the undertaking without that consent.
- (3) The Director-General may apply to the District Court for an order under this section if the Director-General considers that the person who gave the undertaking has contravened any of its terms.
- (4) The District Court may make all or any of the following orders if it is satisfied that the person has contravened a term of the undertaking:
  - (a) an order directing the person to comply with that term of the undertaking,
  - (b) an order suspending or revoking any licence or approval that authorises the person to provide or supervise a children's service,
  - (c) an order directing the person to pay to the State an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the contravention,
  - (d) any order that the Court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the contravention,
  - (e) any other order the Court considers appropriate.
- (5) Proceedings in the District Court under this section are to be heard in its civil jurisdiction.
- (6) The maximum total amount that the District Court may direct a person to pay to the State or as compensation is the jurisdictional limit of the Court (within the meaning of the *District Court Act 1973*).

### **Division 3      Other enforcement powers**

#### **219Y    Advice to parents using illegal children's services**

If the Director-General has reason to believe that a children's service is being provided or operated in contravention of this Chapter or the regulations under this Chapter, the Director-General may inform the parent of a child enrolled in the

children's service that it is inadvisable for the child to continue to attend the service.

**219Z Exclusion of persons from premises of children's service**

- (1) The Director-General may, by notice in writing (an *exclusion notice*) served on a person involved in, or connected with, the provision of an approved children's service (whether as an owner, manager, licensee, authorised supervisor, employee, contractor, volunteer, parent or otherwise) direct the person to refrain from entering the premises on which the service is provided.
  - (2) The Director-General may give a person an exclusion notice only if the Director-General is of the opinion that the continued presence of the person on those premises would constitute an unacceptable risk to the safety, welfare or well-being of a child or class of children enrolled with the service.
  - (3) The exclusion notice must specify the reasons for the Director-General's opinion.
  - (4) An exclusion notice has effect for a period not exceeding 28 days.
  - (5) A person must not enter any premises in contravention of an exclusion notice.
- Maximum penalty: 200 penalty units.

**219ZA Information to licensee concerning exclusion notice**

- (1) The Director-General is to give a copy of any exclusion notice to the licensee of the children's service to which the notice relates.
- (2) The Director-General may impose a condition on a licence or approval, or revoke a licence or approval, following the issue of an exclusion notice.

## **Part 6 Rights and responsibilities of parents**

**219ZB Information to be provided by licensee**

- (1) The licensee of an approved children's service must provide parents of children enrolled in the service with ready access to the following information (*service information*):
  - (a) all written policies required to be provided by the regulations and other policies and procedures relating to the conduct of the service developed by the licensee,
  - (b) details of procedures for dealing with parents' concerns and complaints about the service,

- (c) such other information relating to the service, or to the safety, welfare or well-being of children who attend the service, as the Director-General, by notice in writing to the licensee, requires the licensee to provide.
- (2) Service information is to be provided in a language and manner that can be understood by the parents of the children enrolled in the service.
- (3) The licensee of an approved children's service must inform parents of the availability of service information.  
Maximum penalty: 2 penalty units.

**219ZC Parental contact with children**

- (1) A licensee of an approved children's service must afford any parent contact with his or her child at any time that the service is being provided to the child.
- (2) However, a licensee of an approved children's service may deny a parent contact with his or her child (until the parent's right to contact has been established):
  - (a) if the licensee has reason to believe that a court has denied the parent that contact, or
  - (b) if the licensee is requested to do so by the Director-General, an officer of the Department of Health, a police officer, or any other appropriate authority.
- (3) This section applies to an authorised supervisor of an approved children's service in the same way as it applies to the licensee of the children's service.

**Note.** The regulations may require, as a condition of a children's service approval, the development of policies and procedures relating to parental contact with children enrolled with the service.

## **Part 7 Children's services register**

**219ZD Register of children's services**

- (1) The Director-General is to keep a register of information about children's services (the *children's services register*).
- (2) The children's services register may be kept in such form as the Director-General considers appropriate.
- (3) The Director-General must ensure that information on the children's services register is kept accurate and up-to-date.



**219ZE Information to be recorded on register**

- (1) The Director-General may record any of the following information in the children's services register in relation to each approved children's service:
  - (a) particulars of the children's service approval applying to the children's service,
  - (b) the name and address of the place of business of the licensee of the approved children's service,
  - (c) particulars of the service provider licence under which the licensee is authorised to provide children's services,
  - (d) the name of any person who is an authorised supervisor of the children's service and particulars of that person's supervisor approval,
  - (e) particulars of any compliance notices issued against the licensee or authorised supervisor of the approved children's service (whether in connection with the children's service to which the entry relates or in connection with another children's service),
  - (f) particulars of any other power exercised by the Director-General under this Chapter in relation to the approved children's service, or in relation to the licensee of the approved children's service or an authorised supervisor of the approved children's service (whether in connection with the children's service to which the entry relates or in connection with another children's service),
  - (g) if the licensee or authorised supervisor of the approved children's service has been convicted of an offence under this Chapter or the regulations under this Chapter, particulars of that offence,
  - (h) such other matters as may be prescribed by the regulations.
- (2) The children's services register may also contain such information of a general nature as the Director-General considers appropriate in relation to licensing and approval of children's services, compliance with this Chapter and the enforcement of this Chapter.
- (3) Information relating to a conviction for a particular offence is not to be published on the children's services register until after the last day on which an appeal may be made against the conviction.

- (4) If an appeal is made against the conviction, information relating to the conviction is not to be published on the children's services register unless a final order has been made on appeal affirming the conviction.
- (5) The Director-General must remove information about a conviction for a particular offence from the children's services register as soon as practicable if the Director-General becomes aware that the conviction has been quashed or annulled or has become spent (within the meaning of the *Criminal Records Act 1991*).
- (6) For the purposes of this section:
  - (a) a conviction for an offence includes a finding that an offence has been proved, or that a person is guilty of an offence, without proceeding to a conviction, and
  - (b) section 8 (2) and (4) of the *Criminal Records Act 1991* do not apply.

**219ZF Publication of information on register**

- (1) The children's services register is to be made available for public inspection on the Internet.
- (2) Information recorded in the children's services register may also be provided to members of the public in any other manner approved by the Director-General.

## **Part 8 Miscellaneous**

**219ZG Special condition—family day care and home based children's services**

- (1) It is a condition of a children's service approval for a family day care children's service or a home based children's service that the licensee of the children's service must notify the Director-General if any person (other than the relevant children's service provider) who is of or above the age of 18 years is residing at the children's service provider's home on a regular basis and has been doing so for a period of at least 3 months.

**Note.** See section 45 of the *Commission for Children and Young People Act 1998* which provides for background checks to be carried out in relation to adult household members of children's service providers.
- (2) Without limiting the above, any such requirement to notify the Director-General applies even though the adult person who is residing at the children's service provider's home was at any time residing at that home as a minor.

- (3) In this section, *children's service provider* means:
- (a) in the case of a family day care children's service—the person who, under the regulations, is the family day care carer for the service, or
  - (b) in the case of a home based children's service—the licensee of the children's service.

**219ZH Records**

- (1) A licensee of an approved children's service must keep such records as the regulations require in relation to the approved children's service.
- (2) The licensee must keep the records in such a manner that they are readily accessible if the licensed service provider is required to produce them to the Director-General, or to any other person who is authorised to inspect them, under this Act.
- (3) It is a condition of a service provider licence that the licensee comply with this section.

**219ZI Application of State Records Act 1998 to certain children's services**

- (1) The *State Records Act 1998* does not apply to a private children's service and such a service is not a public office for the purposes of that Act.
- (2) In this section:  
*private children's service* means a person or body providing a children's service to the community, being a person or body other than:
  - (a) a department, office, commission, board, corporation, agency, service or instrumentality exercising any function of any branch of the Government of the State, or
  - (b) a council or county council under the *Local Government Act 1993*.

**220 Regulations relating to children's services**

**General**

- (1) The regulations may make provision for or with respect to the matters set out in this section.
- (2) This section does not limit the generality of section 264 (Regulations).

**Licences and approvals**

- (3) Classes of licences and approvals.
- (4) The matters to be specified in a licence or approval.
- (5) Prescribed conditions of licences and approvals.

**Applications for licences and approvals**

- (6) The persons who may apply for licences and approvals.
- (7) The form and manner in which, and the time within which, an application for a licence or approval may be made.
- (8) The information and evidence required to be provided in connection with an application (which may include, without limitation, personal information about the applicant and proposed staff and any relevant person in relation to the application).
- (9) Requiring that an application (and its supporting documents and information) be lodged in stages as specified in the regulations.
- (10) The consideration and determination of applications, including (but not limited to) the following:
  - (a) the time within which an application (or a particular stage of an application) is to be dealt with,
  - (b) the grounds on which an application (or a particular stage of an application) may be rejected,
  - (c) the grounds on which the Director-General may refuse to grant a licence or approval,
  - (d) the way in which the rejection or determination of the application (or a particular stage of an application) is to be communicated to the applicant.

**Probity checks**

- (11) The probity checks that may be made on all persons who are, or who are proposed to be, engaged in the operation or management of a children's service (or a proposed children's service), other than those persons who are employed in child-related employment within the meaning of section 33 of the *Commission for Children and Young People Act 1998*.

**Variation, suspension and revocation of licences and approvals**

- (12) The grounds on which a licence or approval may be varied, suspended or revoked.
- (13) Requiring the giving of notice of an intention to vary, suspend or revoke a licence or approval.

- (14) Allowing a licensed service provider or an authorised supervisor time to make submissions in relation to any such intention.
- (15) The effect of a variation, suspension or revocation of a licence or approval.
- (16) The restoration of a licence or approval that has been suspended or revoked.
- (17) The manner in which the variation, suspension or revocation of a licence or approval is to be notified.

**Licensed service providers**

- (18) Functions of licensed service providers.
- (19) Requiring a licensed service provider to notify the Director-General of the particular approved children's service or services that the licensed service provider provides or intends to provide.
- (20) The appointment by the Director-General of a person as licensee under a service provider licence in addition to, or in substitution for, an existing licensee.

**Authorised supervisors**

- (21) The appointment and functions of authorised supervisors.
- (22) The maximum number of approved children's services in respect of which the same authorised supervisor may be appointed as authorised supervisor.
- (23) The maximum number of persons who may be appointed as authorised supervisor of an approved children's service.
- (24) The authorisation by the Director-General of another person to act as the authorised supervisor of an approved children's service during the absence (because of illness or otherwise) of the authorised supervisor of the approved children's service.

**Compliance notices**

- (25) The internal review of a decision to issue a compliance notice.
- (26) The stay of a decision to issue a compliance notice pending the determination of such an internal review.

**Records**

- (27) The records that are to be kept by licensed service providers, including (but not limited to) the following:
  - (a) the information that the records are to contain,

- (b) the form in which they are to be made,
- (c) the person responsible for making and maintaining them,
- (d) the persons who may inspect them,
- (e) the period for which they are to be retained.

**Children's services register**

- (28) The particulars to be recorded in the children's services register.
- (29) Providing for applications to the Director-General for the correction of information recorded on the children's services register.

**Exemptions**

- (30) Exempting specified centre based children's services, or centre based children's services of a specified class, from the requirement that they be provided by a licensed service provider or the subject of a children's service approval (or both).
- (31) Regulating the services so exempted (including, without limitation, establishing standards to be met by those services).

**Fees**

- (32) The charging of fees in connection with the administration of this Chapter.
- (33) The waiver, reduction, deferral or refund of fees charged in connection with the administration of this Chapter.

**[6] Section 245 Decisions that are reviewable by Administrative Decisions Tribunal**

Insert after section 245 (1) (k):

- (l) a decision of the Director-General to refuse to grant a service provider licence, children's service approval or supervisor approval,
- (m) a decision of the Director-General to impose a condition on the grant of a service provider licence, children's service approval or supervisor approval (not being a condition imposed by this Act or the regulations),
- (n) a decision of the Director-General to vary, refuse to vary, suspend or revoke a service provider licence, children's service approval or supervisor approval.

**[7] Section 259A**

Insert after section 259:

**259A Penalty notices**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (8) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

- (10) In this section, *authorised officer* means:
- (a) an employee of the Department authorised in writing by the Director-General as an authorised officer for the purposes of this section, or
  - (b) a police officer.

**[8] Schedule 3 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Children and Young Persons (Care and Protection) Amendment (Children's Services) Act 2010*

**[9] Schedule 3, Part 7**

Insert after Part 6:

**Part 7 Provisions consequent on enactment of Children and Young Persons (Care and Protection) Amendment (Children's Services) Act 2010**

**23 Definitions**

In this Part:

*amending Act* means the *Children and Young Persons (Care and Protection) Amendment (Children's Services) Act 2010*.

*existing licence* means a licence for a children's service granted under Part 3 of Chapter 12 before the commencement of the new licensing scheme, and which was in force immediately before the commencement of the new licensing scheme.

*new licensing scheme* means Part 3 of Chapter 12, as substituted by the amending Act.

**24 Pending licence applications**

An application for a licence that was made under Chapter 12 before the commencement of the new licensing scheme, and which has not been granted or refused by that commencement, is to be treated as:

- (a) an application for a service provider licence by the applicant in respect of the type of children's service to which the application relates, and



- (b) an application for a children's service approval in respect of the children's service to which the application relates, and
- (c) an application for a supervisor approval in respect of any person nominated in the application as the proposed supervisor for the service.

## **25 Conversion of existing licences**

- (1) An existing licence is taken, on the commencement of the new licensing scheme:
  - (a) to be a service provider licence that authorises the licensee under the licence to provide the children's services to which the existing licence relates (a *corresponding service provider licence*), and
  - (b) to be a children's service approval that authorises the operation of the children's service to which the existing licence relates (a *corresponding children's service approval*), and
  - (c) to be a supervisor approval that authorises any person specified in the existing licence as an authorised supervisor to supervise the children's service to which the existing licence relates (a *corresponding supervisor approval*).
- (2) A licensee under an existing licence is taken to be the licensee under a corresponding service provider licence.
- (3) A person specified in an existing licence as an authorised supervisor for a children's service is taken:
  - (a) to be the holder of a corresponding supervisor approval, and
  - (b) to have been appointed as the authorised supervisor of the children's service to which the existing licence relates.
- (4) If an existing licence was granted for a specified period of 5 years, a corresponding service provider licence, children's service approval or supervisor approval remains in force until it is revoked by the Director-General under the new licensing scheme.
- (5) If an existing licence was granted for a specified period of less than 5 years, a corresponding service provider licence, children's service approval or supervisor approval remains in force for the balance of that period, unless sooner revoked by the Director-General under the new licensing scheme.

- (6) A corresponding service provider licence, children's service approval or supervisor approval has effect subject to any conditions that applied to the existing licence immediately before the commencement of the new licensing scheme. This subclause does not prevent the imposition of new conditions or the variation of conditions.
- (7) Chapter 12, as amended by the amending Act, applies to a corresponding service provider licence, children's service approval or supervisor approval, subject to this Part and to any modifications prescribed by the regulations.
- (8) This clause does not prevent the Director-General from issuing a new service provider licence, children's service approval or supervisor approval for the purpose of replacing a corresponding service provider licence, children's service approval or supervisor approval.

**26 Suspended licences**

- (1) A licence for a children's service granted under Part 3 of Chapter 12 before the commencement of the new licensing scheme that was the subject of a suspension on that commencement is taken to be an existing licence for the purposes of this Part.
- (2) However, the suspension continues to apply in respect of a corresponding service provider licence, children's service approval or supervisor approval.

**27 Other applications**

An application to vary an existing licence that was made before the commencement of the new licensing scheme, and which has not been granted or refused by that commencement, may be dealt with by the Director-General as an application or notification under the new licensing scheme, as the Director-General considers appropriate.

**28 References to former licence or approval holders**

In Chapter 12, a reference to a person who was formerly a licensed service provider or authorised supervisor of a children's service includes a reference to a person who was formerly a licensee or authorised supervisor under Chapter 12 as in force before the commencement of the new licensing scheme.

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## **Schedule 2    Amendment of other Acts**

### **2.1 Children and Young Persons Legislation (Repeal and Amendment) Act 1998 No 158**

**[1] Schedule 2 Amendment of other Acts**

Omit Schedule 2.9.

**[2] Schedule 2.13**

Omit the subschedule.

**[3] Schedule 2.26**

Omit the subschedule.

### **2.2 Commission for Children and Young People Act 1998 No 146**

**[1] Section 45 Application of background checking provisions to adult persons residing with authorised carers or children's service providers**

Omit "licensed" wherever occurring in the definition of *children's service provider* in section 45 (1).

Insert instead "approved".

**[2] Section 45 (3) (a)**

Insert "provider" after "licensed service".

### **2.3 Companion Animals Act 1998 No 87**

**Section 14 Dogs prohibited in some public places**

Omit "a child care service as defined in the *Children (Care and Protection) Act 1987*" from section 14 (1) (f).

Insert instead "an approved children's service within the meaning of Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998*".

### **2.4 Criminal Records Act 1991 No 8**

**Section 15 Employment in certain occupations**

Omit ", teachers aide or a provider of child care services under Part 3 of the *Children (Care and Protection) Act 1987*" from section 15 (1).

Insert instead "or teachers aide".

## **2.5 Ombudsman Act 1974 No 68**

### **Section 25A Definitions**

Omit “a licensed children’s service within the meaning of” from paragraph (b) of the definition of *designated non-government agency*.

Insert instead “an approved children’s service within the meaning of Chapter 12 of”.

## **2.6 Young Offenders Act 1997 No 54**

### **Section 68 Interventions not to be disclosed as criminal history**

Omit “, teachers aide or a provider of child care services under Part 3 of the *Children (Care and Protection) Act 1987*” from section 68 (2) (a).

Insert “or teachers aide”.