

# Family Day Care and Home Based Child Care Services Regulation 1996

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New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

The Regulation was repealed by the *Children (Care and Protection) Repeal Regulation 2004*, cl 3 with effect from 30.9.2004.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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# Family Day Care and Home Based Child Care Services Regulation 1996



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Family Day Care and Home Based Child Care Services Regulation 1996*.

### 2 Commencement

This Regulation commences on 1 September 1996.

### 3 Child care services to which this Regulation applies

(1) This Regulation applies to the following child care services:

- (a) family day care services,
- (b) home based child care services,

that are provided for fee, gain or reward.

(2) However, this Regulation does not apply to:

- (a) a babysitting, playgroup or child-minding service that is organised on an informal basis by the parents of the children involved for no fee, gain or reward, or
- (b) a child-minding service provided by a person for one or more children (disregarding any children who are related to the person) at premises at which at least one of the children resides.

#### Note—

This provision makes it clear that the Regulation does not, for example, apply to care provided by a nanny at one child's home, for the children of several families.

### 4 Prescribed classes of child care service

For the purposes of Division 1 of Part 3 of the Act each of the child care services to which

this Regulation applies is prescribed as a class of child care service.

## 5 Definitions

In this Regulation:

**approved** means approved for the time being by the Minister.

**authorised officer** means:

- (a) the Director-General, or
- (b) any officer authorised by the Director-General for the purposes of this Regulation.

**authorised supervisor** has the same meaning as it has in the Act.

**carer** means:

- (a) in relation to a family day care service—a person actually involved in educating, minding or caring for children at his or her home and whose name is on the family day care register for the service, or
- (b) in relation to a home based child care service—the licensee of the service.

**carer's home** means the premises where a carer resides.

**child care record** means a record required to be kept under clause 27.

**child numbers** means the child numbers standards set out in Part 5.

**Code of Conduct** means the code of conduct set out in Schedule 2.

**excursion** means an activity carried out for a recreational or educational purpose under the supervision of one or more carers at a place other than the carers' homes.

**family day care register** is a register for a family day care service required to be kept under clause 30.

**family day care service** means a child care service that organises or arranges for a service to be provided by a carer at the home of the carer for the purpose of educating, minding or caring for (but without providing residential care for) one or more children (disregarding any children who are related to the carer).

**home based child care service** means a child care service that is provided at the home of the licensee of the service for the purpose of educating, minding or caring for (but without providing residential care for) one or more children (disregarding any children who are related to the person providing the service).

**licensee** means the holder of a licence for a family day care service or home based child care service.

**licensing standards** means the licensing standards set out in Schedule 1.

**parent** has the same meaning as it has in the Act.

**Note—**

**Parent** of a child is defined in the Act to include:

- (a) a guardian of the child, and
- (b) a person who has the custody of the child,

but not to include the Minister or the Director-General, or the father or mother of the child if the father or mother has neither guardianship nor custody of the child.

**service** means a family day care service or home based child care service.

**the Act** means the *Children (Care and Protection) Act 1987*.

## 6 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

## 7 Operation of other legislation not affected

This Regulation does not affect the operation of any Act or law in its application to any matter with respect to which this Regulation makes provision.

## Part 2 Licences

### 8 Application for licence for service

- (1) An applicant for a licence for a service must be 21 or more years of age.
- (2) An application for a licence is to be made in the approved form.
- (3) The application is to include the following:
  - (a) the applicant's full name and all known former names,
  - (b) the applicant's postal address and telephone number,
  - (c) the applicant's residential address (if different to the postal address),
  - (d) details of the experience and training of the applicant,
  - (e) details of any child care services previously operated by the applicant,
  - (f) the address of the premises where the child care service is to be provided by the licensee,
  - (g) an authority to obtain details of any record of criminal conviction,

- (h) details of any criminal conviction of the applicant relating to neglect or assault (including sexual assault) of a child,
  - (i) such other information as the Minister may reasonably require to assist in the determination of the application.
- (4) The Director-General may require an applicant for a licence for a service to furnish such further particulars with respect to the application as the Director-General may require.
- (5) The applicant must advertise notice of the making of the application in a daily newspaper circulating generally throughout New South Wales within 10 working days of the making of the application.

#### **9 Information to accompany application for licence for service**

- (1) An application for a licence for a service must be accompanied by information to demonstrate that the applicant is a fit and proper person to be concerned in the provision of the service to which the licence relates.
- (2) An application for a licence for a family day care service must also be accompanied by information to demonstrate that the applicant intends to make adequate provision for the training and development of carers and staff of the service.

#### **10 Proposed authorised supervisor of family day care service**

- (1) An applicant for a licence for a family day care service must nominate the person that the applicant proposes to be authorised by the licence to have the overall supervision of the provision of the service.
- (2) An application for a licence for a family day care service must be accompanied by information to demonstrate that the proposed authorised supervisor:
  - (a) is sympathetic to the welfare of children, and
  - (b) has adequate training, knowledge, understanding and experience of children and families so as to be capable of meeting their needs, and
  - (c) is able adequately to care for and supervise children, and
  - (d) has sufficient experience in the provision of child care services, and
  - (e) has demonstrated a capacity to exercise overall supervision of the provision of a child care service, and
  - (f) is of suitable maturity, health and personality to care for children, and
  - (g) is a fit and proper person to be concerned in the provision of the service to which the licence relates.

(3) The authorised supervisor for a family day care service:

(a) must have:

(i) completed a 3 year tertiary course in early childhood care or education approved by the Minister, or

(ii) completed a 2 year post secondary course in child care approved by the Minister, or

(iii) other qualifications approved by the Minister, and

(b) must have management training and a minimum of 12 months post qualification experience in a child care service.

**Note—**

Under section 32 (1) (c) of the Act, the licence for a service must specify the authorised supervisor of the service. In the case of a home based child care service, the licensee of the service (that is, the carer) is the person so specified.

**11 Inquiries about proposed licensee and authorised supervisor**

For the purposes of establishing whether or not an applicant for a licence for a service, or a proposed authorised supervisor of a service, is a fit and proper person, an officer:

(a) must, subject to the *Criminal Records Act 1991*, make such inquiries as the officer considers appropriate as to the person's criminal record, if any, and

(b) may make such other inquiries as the officer considers appropriate.

**12 Service policies**

(1) An application for a licence for a service is to be accompanied by a written statement and implementation plan for the service setting out the policies, practices and procedures to be implemented by the service with respect to the operation of the service.

(2) The statement is to include descriptions of the following:

(a) the philosophy and aim of the service,

(b) the level of parent, carer and staff participation in the development of the program of activities of the service,

(c) the ways in which the service ensures that individual developmental needs of children are taken into account,

(d) the way the carer and staff of the service interact with children at the service,

(e) the ways in which the carer and staff of the service ensure that programs are



culturally relevant,

- (f) the ways in which self-reliance and self-esteem of children enrolled for the service is fostered,
- (g) the ways in which the needs of children with a disability are met,
- (h) the ways of ensuring that children of both sexes and children with disabilities are treated without bias,
- (i) the procedures to be followed for excursions,
- (j) the procedures for reporting of suspected abuse of any child enrolled for the service,

**Note—**

**Abuse** of a child is defined in the Act to mean:

- (a) to assault (including sexual assault) the child, or
  - (b) to ill-treat the child, or
  - (c) to expose or subject the child to behaviour that psychologically harms the child, whether or not with the consent of the child.
- (k) the procedures to be followed in dealing with complaints,
  - (l) training to be provided for carers and staff of the service,
  - (m) the ways in which the behaviour of children at the service is to be managed,
  - (n) the procedures to be followed to ensure the health (including nutritional needs) and safety of children,
  - (o) the procedures for caring for sick children at the service,
  - (p) the procedure to be followed in excluding children from the service.

### **13 Report on application for licence**

In making a report on an application for a licence for a service to the Minister under clause 3 of Schedule 1 to the Act, an officer is to state whether, in the officer's opinion:

- (a) in the case of a home based child care service—the grounds and buildings of the premises of the carer's home and any equipment and amenities to be used at the proposed service comply with the applicable requirements of this Regulation, and
- (b) the applicant has taken or will take any measures necessary to comply with the staffing standards, licensing standards and other applicable requirements of this Regulation.

#### **14 Form of licence for service**

- (1) A licence for a service is to be in the approved form.
- (2) A licence is to be endorsed with any condition imposed on it by the Minister under clause 6 (b) or 7 of Schedule 1 to the Act.

#### **15 Conditions of licence**

- (1) **Prescribed conditions** For the purposes of clause 6 of Schedule 1 to the Act, subclauses (2)–(8) are prescribed as conditions for licences for services.
- (2) **Inspection of home and records of licensee of home based child care service** The licensee of a home based child care service must permit an authorised officer:
  - (a) to enter, during the normal business hours during which the service is provided, any part of the home of the licensee, and
  - (b) to inspect any child care record kept at the home, and
  - (c) to take and copy any child care record kept at the home.
- (3) **Inspection of premises and records of licensee of family day care service** The licensee of a family day care service must permit an authorised officer:
  - (a) to enter, during the normal business hours during which the service is provided, any part of the premises of the licensee on which the service is organised and arranged, and
  - (b) to inspect any child care record or family day care register kept at the premises, and
  - (c) to take and copy any child care record or family day care register kept at the premises.
- (4) **Child numbers standards** The licensee of a service must comply with the child numbers standards set out in Part 5.
- (5) **Licensing standards** The licensee of a home based child care service must ensure that the grounds and buildings of his or her home and any equipment and amenities used at the home in providing the service comply with the licensing standards set out in Schedule 1.

**Note—**

The licensee of a home based child care service is the carer of the service.

- (6) The licensee of a family day care service must use the licensee's best endeavours to ensure that the grounds and buildings of the home of any carer of the service and any equipment and amenities used at the home in providing the service comply with the

licensing standards set out in Schedule 1.

- (7) The carer of a family day care service must ensure that the grounds and buildings of his or her home and any equipment and amenities used at the home in providing the service comply with the licensing standards set out in Schedule 1.

**Note—**

Under clause 31, the Minister may direct the licensee to remove the name of a carer who fails to comply with this provision from the family day care register for the service.

- (8) **Code of conduct** The licensee and authorised supervisor of a service are to use their best endeavours to ensure that carers of the service comply with the provisions of the code of conduct set out in Schedule 2.

**16 Inspection of home and records of family day care service carer**

- (1) The carer of a family day care service must permit an authorised officer:
- (a) to enter, during the normal business hours during which the service is provided at the carer's home, any part of the home of the carer, and
  - (b) to inspect any child care record or family day care register kept at the home, and
  - (c) to take and copy any child care record or family day care register kept at the home.

Maximum penalty: 5 penalty units.

**17 Notice of changes relating to carer's home**

- (1) The licensee of a home based child care service must cause notice in writing to be given to the Director-General of any proposed structural alteration to, or demolition of, any building or other structure at his or her home:
- (a) at least 6 weeks before the alteration or demolition commences, or
  - (b) before the consent or approval of any public or local authority is sought for the alteration or demolition,
- whichever is earlier.
- (2) The carer of a family day care service must cause notice in writing to be given to the authorised supervisor of the service of any proposed structural alteration to, or demolition of, any building or other structure at his or her home:
- (a) at least 6 weeks before the alteration or demolition commences, or
  - (b) before the consent or approval of any public or local authority is sought for the alteration or demolition,

whichever is earlier.

- (3) If a service ceases to operate, the licensee of the service must give the Director-General notice in writing that the service has ceased to operate within 7 days of the cessation of the service.

Maximum penalty (subclauses (1)–(3)): 5 penalty units.

### **Part 3 Administrative procedures**

#### **18 Authority for emergency medical and other treatment**

- (1) The licensee of a service must ensure that a child is not enrolled for the service unless a parent of the child has given written authorisation for any carer or member of the staff of the service to seek:
  - (a) urgent medical or dental treatment (from either a doctor or dentist nominated by the parent or another doctor or dentist) or hospital treatment or ambulance service, or
  - (b) urgent assistance from some other person or body nominated by the parent, if the carer or member of staff is of the opinion that it is necessary to do so because the child has been injured, or is ill, while being provided with the service.
- (2) The authorised supervisor of a service must ensure that the carer of the service notifies a parent of a child enrolled for the service as soon as possible after any treatment or service referred to in subclause (1) is obtained for the child.

Maximum penalty (subclause (1) and (2)): 5 penalty units.

**Note—**

Nothing in this clause affects the ability of a doctor or dentist to carry out emergency medical or dental treatment on a child without the consent of the child's parent as referred to in section 20A of the Act.

#### **19 Confidentiality guidelines**

- (1) The licensee of a family day care service is to prepare or cause to be prepared written guidelines setting out the policies and practices to be observed by carers and staff of the service to ensure confidentiality about records of the service, and information obtained by carers and staff, concerning:
  - (a) carers and their families, and
  - (b) the families of children enrolled for the service.
- (2) The licensee of a home based child care service is to ensure confidentiality about records of the service, or information obtained by the licensee concerning:

- (a) children enrolled for the service, and
- (b) the families of children enrolled for the service.

Maximum penalty (subclause (1) and (2)): 5 penalty units.

## **20 Authority for excursions**

- (1) The licensee of a service must ensure that no child enrolled for the service leaves the carer's home to participate in an excursion without the appropriate authorisation referred to in subclause (2) or (3).
- (2) The licensee of a service must not permit a child enrolled for the service to participate in any routine excursions unless the licensee has obtained written authorisation for the child to participate in excursions of that kind from a parent of the child.

### **Note—**

An example of a routine excursion is a daily walk to a nearby park or to a nearby library to borrow books.

- (3) The licensee of a service must ensure that no child leaves the carer's home to participate in an excursion other than a routine excursion specified in an authorisation referred to in subclause (2) unless the licensee has obtained written authorisation for the child to participate in the excursion from a parent of the child.

### **Note—**

An example of a non-routine excursion is a visit to a zoo or museum.

- (4) Such an authorisation must state the following:
  - (a) the date of the excursion,
  - (b) the proposed destination,
  - (c) the method of transport,
  - (d) the activities to be carried out during the excursion,
  - (e) the number of adults to accompany and supervise the children.

Maximum penalty (subclauses (1)–(3)): 5 penalty units.

## **21 Conduct of excursions**

- (1) The carer of a service must conduct all excursions in a safe manner.

### **Note—**

The carer of a home based child care service is the licensee of the service.

- (2) The carer of a service must ensure that any vehicles used to transport children on excursions are fitted with suitable child restraints within the meaning of Regulation 110G of the *Motor Traffic Regulations 1935*.

**Note—**

Regulation 110G defines a suitable child restraint to mean any of the following restraints fitted to a motor vehicle:

- (a) a child restraint that conforms to standard AS 1754 of the Standards Association of Australia and which is referred to in that standard as suitable for use by the child concerned,
  - (b) a seat belt, but only if the child concerned is not under the age of 1 year,
  - (c) a child restraint of a type approved by the Roads and Traffic Authority for use by a child of the age, weight or height of the child concerned.
- (3) The carer of a service must ensure that children are not taken on any excursion to swim or to a beach, river, lake or other place where there is a significant water hazard unless the minimum adult to child ratio of persons participating in the excursion is:
- (a) one adult for each child under 3 years of age, and
  - (b) one adult for each two children 3 or more years of age.
- (4) The carer of a service must ensure that the person in charge of any excursion on which children are taken to swim or to a beach, river, lake or other place where there is a significant water hazard has a current approved first aid qualification and the knowledge and ability to implement water safety procedures.
- (5) The carer of a service must ensure that a suitable and fully stocked first-aid kit is taken on all excursions.

Maximum penalty (subclauses (1)–(5)): 5 penalty units.

## **22 Swimming pools**

- (1) The licensee of a service must ensure that no child enrolled for the service swims in a swimming pool at the home of the carer for the service unless the licensee has obtained written authorisation for the child to do so from a parent of the child.
- (2) The authorised supervisor of a service must ensure that if children enrolled for the service are to swim at any pool situated at a carer's home, a minimum of 2 adults are present and that the minimum adult to child ratios are:
- (a) one adult for each child under 3 years of age,
  - (b) one adult for each two children 3 or more years of age.

Maximum penalty (subclauses (1) and (2)): 5 penalty units.

## **23 Provision for first aid and emergencies**

- (1) The authorised supervisor of a service must ensure that at least one person who holds a current approved first aid qualification is at the carer's home at all times when

children are provided with the service at the home.

- (2) The authorised supervisor and carer of a service must develop, and keep up to date, a written emergency plan for fire and other emergencies at the carer's home. A copy of the plan must be displayed at the carer's home.
- (3) The authorised supervisor of a service must ensure that the carer practices emergency procedures with children provided with the service at the carer's home a minimum of once in every 6 months so that the carer and the children are prepared for emergencies.
- (4) The authorised supervisor of a service must ensure that a record of each practice is taken and is kept at the service for a period of 2 years after the practice.
- (5) In this clause:

**approved first aid qualification** means completion of any of the following:

- (a) any first aid course, at senior first aid level, accredited by the WorkCover Authority and that specifically relates to first aid and emergency care of children,
- (b) any first aid course, at senior first aid level, accredited by the Vocational Education Training Accreditation Board and that specifically relates to first aid and emergency care of children,
- (c) any other first aid course approved by the Minister.

## **24 Information for parents**

- (1) The licensee of a service must provide parents of each child enrolled for the service with access to the following information:
  - (a) copies of all written policies required by this Regulation or other policies and procedures relating to the conduct of the service developed by the service,
  - (b) procedures for dealing with parents' concerns and complaints about the service,
  - (c) if the service is registered as a provider with the Health Insurance Commission of the Commonwealth, the service provider number,
  - (d) details of emergency evacuation procedures and other emergency procedures,
  - (e) the telephone number, address and other relevant information concerning the nearest appropriate office of the Department of Community Services,
  - (f) procedures adopted by the service for the arrival and departure of children,
  - (g) hours and days of operation of the service,
  - (h) details of parent participation in service programming,

- (i) fees,
  - (j) details of staffing, including support and relief staff,
  - (k) training undertaken by staff and carers,
  - (l) developmental records concerning the child,
  - (m) a copy of the "Guidelines for the control of infectious diseases in child care" prepared on behalf of the Working Party on Infectious Diseases in Child Care, NSW Department of Health, 1993.
- (2) The licensee of a home based child care service must ensure that the licence for the service is displayed at all times at the licensee's home in a prominent place that is accessible to parents of children to whom services are provided.
- (3) The licensee of a family day care service must ensure that:
- (a) the licence of the service is displayed at all times in a prominent place that is accessible to parents of children for whom services are provided at the premises of the licensee, and
  - (b) the certificate of registration of each carer is displayed at all times in a prominent place that is accessible to parents of children for whom services are provided at the carer's home.
- (4) The licensee of a service must inform parents of the availability of the information referred to in subclause (1).

Maximum penalty (subclauses (1)-(4)): 5 penalty units.

## **25 Provision of information to the Director-General**

- (1) The carer of a service must:
- (a) immediately notify the Director-General if the carer is charged with or convicted of an offence for which a penalty of imprisonment for 12 months or more may be imposed, and
  - (b) immediately notify the Director-General if the carer becomes aware that:
    - (i) a member of staff of the service has been charged with or convicted of such an offence, or
    - (ii) in the case of a home based child care service, any person who is normally resident at the home of the carer has been charged with or convicted of such an offence, or
    - (iii) in the case of a family day care service, a carer or any person who is normally



resident at the home of the carer has been charged with or convicted of such an offence, and

(c) provide the Director-General with such information in relation to the service as the Director-General may from time to time reasonably require.

(2) The licensee of a family day care service must, within 10 days of the end of each quarter of each calendar year during which the service is provided, cause a list of the names of the carers on the register for the service as at the end of that quarter to be given to the Director-General.

Maximum penalty (subclauses (1) and (2)): 5 penalty units.

## **26 Public liability insurance**

(1) The licensee and each carer of a service must obtain and keep current a policy of insurance that adequately meets the licensee's or carer's respective public liability in respect of the provision of child care. The cover provided must not be less than \$10,000,000.

(2) The licensee of a service must not require or request a parent of any child enrolled for the service to release or indemnify the licensee against any liability in proceedings against the licensee involving injury caused to the child while being provided with a service.

Maximum penalty (subclauses (1) and (2)): 5 penalty units.

## **Part 4 Records and registers**

### **Division 1 Records of services**

#### **27 Records**

(1) The licensee of a home based child care service must maintain and keep up to date, and the licensee of a family day care service must ensure that the authorised supervisor of the service maintains and keeps up to date, the following records in relation to each child enrolled for the service:

(a) the child's full name, date of birth, residential address and sex,

(b) details of any allergies suffered by the child or other relevant medical history or details of the child,

(c) the full name, residential address, place of employment and contact telephone number of a parent of the child,

(d) any special requirements concerning the child notified by the parent,

**Note—**

Special requirements notified by a parent may relate to the child's culture or religion or, if the child has a disability or other special need, the needs of the child.

- (e) the ethnic group to which the child belongs and the primary language spoken by the child, or if the child has not learned to speak, the primary language or languages of the child's parents,
- (f) any court orders affecting the custody or residence of or access to the child of which the licensee or authorised supervisor is aware,
- (g) the full name, address and telephone number of any person authorised by a parent to collect the child from the carer's home,
- (h) the full name, address and telephone number of a person who may be contacted in an emergency if the parent is not available,
- (i) the name, address and telephone number of the child's doctor (if any),
- (j) if any medication is administered to the child by a carer or member of staff of the service:
  - (i) the name of the medication, and
  - (ii) the date, time and dosage administered, and
  - (iii) the name of the person who checked the dosage and administered the medication, and
  - (iv) the parent's written permission for and any doctor's instructions relating to its administration,
- (k) a parent's permission for emergency medical, hospital and ambulance service,
- (l) a parent's permission for a child to be taken on an excursion or escorted to or from a specified place,
- (m) the nature and circumstances of any injury to the child while being provided with the service,
- (n) particulars of treatment given to a child who is injured or becomes ill while being cared for by the service,
- (o) if a child dies while at the service, the details surrounding the death,
- (p) the actual times during which the child is being provided with the service,
- (q) a program of development for the child,
- (r) details of any complaint made by a parent of a child enrolled for the service concerning the operations of the service and the action taken to resolve the

complaint.

**Note—**

Section 42C of the *Public Health Act 1991* also requires the person in charge of a service to record in a register the immunisation status of each child enrolled with a service.

- (2) The licensee of a home based child care service or the authorised supervisor of a family day care service must maintain and cause to be kept up to date the following records in relation to each member of staff and carer of the service:
- (a) a certified copy of any relevant qualification held by the member or carer,
  - (b) a certified copy of any first aid certificate held by the member or carer,
  - (c) staff rosters,
  - (d) the day to day attendance including arrival and departure time of the member of staff on duty,
  - (e) any other authorities approved by the Director-General.

**Note—**

The licensee of a home based service is the carer for the service.

- (3) The licensee of a home based child care service must maintain and keep up to date, and the authorised supervisor of a family day care service must ensure that each carer of the service maintains and keeps up to date, the following written records in relation to the service:
- (a) the day to day attendances including arrival and departure times of children at the premises of the service,
  - (b) the daily routine of the child care service,
  - (c) a weekly program of the service.
- (4) The authorised supervisor of a family day care service must cause a record to be kept in relation to each child of the name, address and home telephone number of each of the carers who provides a child care service in respect of the child.
- (5) The licensee or authorised supervisor of a service must keep the records referred to in this clause in a safe and secure area.

Maximum penalty (subclauses (1)–(5)): 5 penalty units.

## **28 Retention of records**

- (1) The licensee of a home based child care service must keep, and the licensee of a family day care service must ensure that the authorised supervisor of the service

keeps, the records for the following period:

- (a) the records referred to in clause 27 (1) (m) and (n) are to be retained until the child is 24 years of age (or, if the child dies after leaving the service, until the licensee or authorised supervisor is notified of the death),
  - (b) the records referred to in clause 27 (1) (o) are to be retained for a period of 4 years from the date of the child's death,
  - (c) the records referred to in clause 27 (1) (j), (i), (ii) and (iii) are to be retained for a period of 2 years after the carer or member of staff leaves the service,
  - (d) the record referred to in clause 27 (1) (j) (iv) is to be retained for a period of 2 years from the date the record is made.
- (2) The licensee or authorised supervisor of a service must keep the records referred to in subclause (1) up to date and in a safe and secure area.
- (3) The authorised supervisor of a family day care service must ensure that:
- (a) the child care records of the service, and
  - (b) the family day care register for the service,
- in respect of a child are retained at the office of the Family Day Care Co-Ordination Unit of the Department.
- (4) The licensee of a home based child care service or the authorised supervisor of a family day care service must, if requested to do so by a parent of a child who was formerly enrolled for the service, provide the parent with copies of the developmental records concerning the child kept by the service.

Maximum penalty (subclauses (1)-(4)): 5 penalty units.

## **29 Inspection of records or registers**

The licensee of a service must ensure that the records or registers relating to a child remain confidential and are made available only to the following persons:

- (a) the licensee,
- (b) the authorised supervisor of the service,
- (c) a member of staff of the service authorised to access the records or registers by the licensee or the authorised supervisor of the service,
- (d) the carer of the service,
- (e) an authorised officer,

- (f) a person otherwise authorised by law to inspect the records or registers,
- (g) a parent of the child,
- (h) any person authorised in writing to inspect the records or registers by a parent of the child.

Maximum penalty: 5 penalty units.

## **Division 2 Family Day Care Register**

### **30 Register of carers**

- (1) The authorised supervisor of a family day care service is to cause a register of the following particulars to be kept in relation to each carer of the service:
  - (a) the name, address and home telephone number of the carer,
  - (b) the maximum number of children as determined by the authorised supervisor who may be placed with the carer at any one time,
  - (c) the number of children who have been placed with the carer at any one time.
- (2) The authorised supervisor of a family day care service is not to enter the name of a person as a carer on the register for the service unless the person is an adult who, in the assessment of the authorised supervisor:
  - (a) has an appropriate understanding of children's needs and development, including:
    - (i) the individual differences between children, and
    - (ii) activities that stimulate a child's growth and development, and
    - (iii) nutrition, health, hygiene and safety, and
    - (iv) behaviour management, and
  - (b) is responsive to children, and
  - (c) is physically and emotionally able to care for young children, and
  - (d) is the holder of a current first-aid certificate or is otherwise appropriately qualified to provide first-aid in a medical or other emergency, and
  - (e) is able to communicate effectively with adults, and
  - (f) is aware of and sensitive to the needs of children and their families, including children from a range of cultures and religions and children with disabilities, and
  - (g) is a fit and proper person to be concerned in the provision of the service.

- (3) Before entering the name of a person on the register for the service as a carer the authorised supervisor:
  - (a) is to cause an inspection to be carried out of the prospective carer's home, and
  - (b) is to cause an assessment to be made as to whether it is adequate for provision of the service.
- (4) The authorised supervisor is not to enter the name of a person on the register for the service as a carer unless the person agrees in writing that his or her continued registration is conditional upon the carer permitting the licensee (or his or her delegate) and any officer of the Department to inspect the carer's home during normal hours in which child care is provided by the carer.
- (5) The authorised supervisor is to issue a certificate of registration in the approved form to each person whose name is entered on the register for the service as a carer.

Maximum penalty (subclauses (1)-(5)): 5 penalty units.

### **31 Removal of names from Register**

- (1) The licensee of a family day care service may cause the name of a carer to be removed from the family day care register for the service at any time.
- (2) Without limiting the generality of subclause (1), the licensee may remove the name of a carer from the register if the carer fails to comply with a provision of the Code of Conduct.
- (3) The Minister may direct the licensee of a family day care service to remove the name of a carer from the register for the service:
  - (a) if the carer, or a person normally resident at the home of the carer, is convicted of an offence against the Act or this Regulation, or
  - (b) if the ground and buildings of the home of the carer, or any equipment or amenities used at the home in providing the service fail to comply with the licensing standards set out in Schedule 1, or
  - (c) if the carer has, in the Minister's opinion, contravened a provision of the Code of Conduct, or
  - (d) if a person normally resident at the home of the carer:
    - (i) is convicted of an offence for which a penalty of imprisonment for 12 months or more may be imposed, or
    - (ii) has injured, or in the Minister's opinion, taken any verbal or physical action against a child provided with a service at the home that has seriously humiliated, frightened or threatened the child.

Maximum penalty (subclause (3)): 5 penalty units.

### **32 Informing and meeting carers**

- (1) The authorised supervisor of a family day care service is to provide a carer whose name is entered on the family day care register for the service with all information in the authorised supervisor's possession in relation to a child to be placed with the carer before the child is placed with the carer.
- (2) The authorised supervisor is to convene a meeting as soon as practicable between:
  - (a) the person who requested the family day care service, and
  - (b) the carer who provides those services,at the reasonable request of either person.

Maximum penalty (subclauses (1) and (2)): 5 penalty units.

### **33 Considerations in placement of children**

- (1) The authorised supervisor of a family day care service must not arrange for a child to be placed with a carer unless:
  - (a) the carer is a person whose name is entered on the register for the service, and
  - (b) both a parent of the child and the carer consent to the proposed placement.
- (2) Before arranging for a child to be placed with a carer, the authorised supervisor of a family day care service must assess the suitability of the carer, and of each person normally resident at the carer's home, in relation to the proposed placement.
- (3) Without limiting subclause (2), the authorised supervisor is, subject to the [Criminal Records Act 1991](#), to make such inquiries as the authorised supervisor considers appropriate as to the criminal record, if any, of the carer and of each adult person who is normally resident at the carer's home.

Maximum penalty (subclauses (1) and (2)): 5 penalty units.

## **Part 5 Child numbers**

### **34 Number of children**

- (1) The licensee of a family day care service must ensure that the number of children for whom a service is provided by any carer of the service does not (together with the number of children related to the carer cared for by the carer) at any one time exceed 7 children under the age of 12 years.
- (2) The licensee of a home based child care service must not provide a service for a number of children that (together with the number of children related to the licensee

cared for by the licensee) at any one time exceed 7 children under the age of 12 years, 5 of whom have not started school.

### **35 Emergency child care arrangements**

- (1) The Minister may give approval for one more child to be enrolled for a service than the approved child numbers for the service if the Minister is of the opinion that the child needs to be provided for by the service as a matter of urgency.
- (2) The child concerned is to be named in the approval.
- (3) The Minister may give such an approval only if the child the subject of the approval:
  - (a) is a client of the Department or is a member of a family that is a client of the Department, or
  - (b) is, in the Minister's opinion, likely to become a client of the Department, or is a member of a family that is likely become a client of the Department, or
  - (c) has a parent whose health needs necessitate urgent care for the child, or
  - (d) has a parent who is undertaking a rehabilitation program, or
  - (e) is a client of or is a member of a family that is a client of an organisation funded by the Department, or
  - (f) has a parent who is participating in an approved job skills program for the long-term unemployed.
- (4) The period for which a child may be enrolled for a service under such an approval must not exceed 6 months.
- (5) The authorised supervisor must admit a child who is the subject of such an approval to the first available vacancy at the service, to enable the service to return to its approved child numbers.
- (6) In this clause:

**approved child numbers** for a service means:

- (a) in relation to a home based child care service—the maximum number of children who may be enrolled for the service specified in the licence for the service, and
- (b) in relation to a family day care service—the maximum number of children who may be placed with a carer of the service specified in the family day care register under clause 30 (1) (c).

**client of the Department** means a person to whom services are provided or assistance is given by any person or body under any Act administered by the Minister



for Community Services.

## Part 6 Miscellaneous

### 36 Definitions

In this Part:

**existing carer** means a person who, immediately before the commencement of this Regulation, was:

- (a) a registered caregiver within the meaning of the *Family Day Care Services Regulation 1989*, or
- (b) a licensed caregiver within the meaning of the *Home-based Child Care Services Regulation 1989*.

**existing licence** means licence for a service that was in force immediately before the commencement of this Regulation.

**repealed Regulation** means:

- (a) the *Family Day Care Services Regulation 1989*,
- (b) the *Home-based Child Care Services Regulation 1989*.

### 37 Repeal

(1) The following Regulations are repealed:

- (a) the *Family Day Care Services Regulation 1989*,
- (b) the *Home-based Child Care Services Regulation 1989*.

(2) Any act, matter or thing that, immediately before any such repeal, had effect under the Regulation concerned, continues to have effect under this Regulation.

### 38 Licensing standards applicable to premises in which care provided under existing licences

(1) Nothing in this Regulation requires the home of a carer for a service who, immediately before the commencement of this Regulation, was providing a service under an existing licence to comply with a licensing standard set out in this Regulation.

(2) Subclause (1) only applies if:

- (a) the carer's home complies with any provisions of a repealed Regulation applicable to it, and
- (b) the licence for the service is endorsed in the approved manner with a statement indicating that the carer's home is not required to comply with licensing standards

set out in this Regulation, and

- (c) in the case of a home based child care service, the licence is publicly displayed at the carer's home, and
- (d) in the case of a family day care service—a copy of the certificate of registration of the carer is publicly displayed at the carer's home.

## **Schedule 1 Licensing standards for services**

(Clause 15)

### **Note—**

Clause 15 sets out the respective responsibilities of licensees and carers for complying with standards set out in this Schedule.

### **1 Laundry**

- (1) The carer's home must have laundry arrangements either on the premises or through another facility, service or arrangement.
- (2) The carer's home must have safe, sanitary facilities for the storage of soiled clothes, linen and nappies before laundering or disposal.

### **2 Food preparation facilities**

The carer's home must have safe, hygienic facilities for the preparation, storage, heating and cooking of food for children, including a sink, refrigerator, suitable disposal facilities and hot water supply.

### **3 Toilets and washing facilities**

The carer's home must have toilet, hand washing and bathing facilities that are safe and appropriate to the ages of the children provided with the service at the home and facilities for cleaning those facilities whenever necessary.

### **4 Nappy change facilities**

The following facilities must be provided at the carer's home if children under 3 years of age are provided with the service at the home:

- (a) facilities for the storage of clean nappies,
- (b) a nappy changing bench or mat with an impervious washable surface that is cleaned after each use,
- (c) sanitary facilities for the storage of soiled nappies pending laundering or disposal of the nappies,
- (d) a bath or wash tub,

- (e) hand washing facilities in the immediate vicinity of the nappy changing area for use by the carer.

## **5 Sleeping facilities**

- (1) The carer's home must be equipped with one bed or mattress or other age and culturally appropriate form of bedding for each child enrolled for the service sleeping at the home on any day.
- (2) Provision must be made at the carer's home to ensure that:
  - (a) mattresses and other bedding used by children provided with the service at the home are clean and comfortable, and
  - (b) bed clothing is appropriate to the climate, and
  - (c) all bed clothing is kept clean and in good repair, and
  - (d) there is individual bed linen and blankets for each child, and
  - (e) children do not share the same bed at the same time, and
  - (f) bed linen used by one child is washed before it is used by another child, and
  - (g) no child who is of or above 7 years of age sleeps in the same room as another child, other than a relative, of the opposite sex, and
  - (h) no child above 2 years of age sleeps in the same room in which an adult is sleeping.
- (3) Beds, cots, stretchers or mattresses used at the carer's home for children enrolled for the service must be arranged so that there is easy access to each child and ease of exit is maintained.

## **6 Storage facilities**

- (1) The carer's home must have storage facilities that are secure and inaccessible to children for cleaning materials, disinfectants, poisonous and other dangerous substances, tools, equipment, toiletries, medications and first aid equipment.
- (2) The carer's home must be equipped:
  - (a) to provide independent access for children provided with the service at the home to books and equipment that is suitable to the children's development and needs and that is representative of a wide range of cultures, and
  - (b) to ensure that adequate provision is made to give children with a disability access to such books and equipment.
- (3) The carer's home must be equipped so as to provide each child with access to a space

for storage of the child's personal belongings.

## **7 Fencing**

- (1) That part of the premises of the carer's home designated as outdoor play space must be fenced on all sides.
- (2) The design of any fence on the premises of the carer's home must prevent children from scaling or crawling under it.
- (3) If the carer's home is adjacent to, or provides access to, any hazards, including water hazards or roads, the home must be isolated from the hazards by a barrier or fence that is designed, constructed, installed and maintained in accordance with the standards prescribed under the [Swimming Pools Act 1992](#) for child restraint barriers.

### **Note—**

See clause 4 of the [Swimming Pools Regulation \(No 2\) 1992](#).

- (4) Gates in fences at the carer's home must be provided with a child-proof latch that is inaccessible to children.
- (5) Any side of a stairway, ramp, corridor, hallway or external balcony at the carer's home that is not abutting a wall must be enclosed to prevent a child falling through.
- (6) Age appropriate child-proof barriers must be provided at the top and bottom of stairs at the carer's home.

## **8 Telephones**

- (1) The carer's home must be equipped with an operating telephone or two-way radio capable of communication with, at the least, the nearest police station, ambulance station, fire service, and medical emergency facility and that is readily accessible to the carer.
- (2) In areas where telephone services are not available, an effective emergency communication plan for the carer's home must be in place.

## **9 Pools**

- (1) Any swimming pool at the carer's home must be fenced. The fence must be in accordance with any applicable provisions of the [Swimming Pools Act 1992](#).
- (2) Provision must be made at the carer's home to ensure that:
  - (a) all paddling pools are emptied after use and stored to prevent the collection of water, and
  - (b) water containers are safely covered or are inaccessible to children, and
  - (c) pool filters are inaccessible to children.

## **10 Premises cleanliness, maintenance and repairs**

- (1) The carer's home and all equipment and furnishing used in providing the service at the home must be maintained in a safe, clean and hygienic condition and in good repair at all times.
- (2) The building in which children enrolled for the service are cared for at the carer's home must be properly ventilated, lit and heated, and must have heating and cooling systems that maintain the temperature in the building at a comfortable temperature for children at all times.
- (3) Exterior windows and doorways in the building must be fitted with flyscreens, unless the fitting of flyscreens is prohibited under the *Local Government Act 1993*.
- (4) Any buildings and grounds at the carer's home must be kept free of vermin.

## **11 Heating and cooling equipment**

- (1) All heating and cooling units at the carer's home must be adequately secured and guarded to prevent injury to children enrolled for the service through contact with hot surfaces or moving parts or the emission of any sparks or flames.
- (2) The controls of all equipment at the carer's home that may be hazardous to children must be guarded to prevent access by children provided with the service at the home.
- (3) Fans at the carer's home must be placed in a position that is inaccessible to children provided with the service at the home.

## **12 First aid**

- (1) The carer's home must be equipped with a suitable and fully stocked first-aid kit that is kept in a position that is inaccessible to children but readily accessible to the carer in an emergency.
- (2) A cardio pulmonary resuscitation flow chart must be displayed in a prominent position in the part of the carer's home used to provide the service.

## **13 Outdoor play equipment**

- (1) Provision must be made at the carer's home to ensure that outdoor play equipment does not constitute a hazard to children provided with the service at the home because:
  - (a) the surfacing used underneath or around the equipment does not comply with the requirements of AS/NZS 4422:1996, or
  - (b) of the height from which a child can fall, or
  - (c) of the likelihood that a child can be trapped, pinched or crushed in the equipment

or struck by it, or

(d) of sharp or rough edges and projections or rust, or

(e) of lack of stability.

(2) In this clause:

**AS/NZS 4422:1996** means the standard published jointly by Standards Australia and Standards New Zealand under the title "*Playground surfacing—Specifications, requirements and test method*", and numbered AS/NZS 4422:1996, as in force on the commencement of this Regulation.

#### **14 Emergency procedures and fire safety**

(1) The carer's home must be provided with:

(a) appropriately placed smoke detectors, and

(b) a fire blanket that is kept adjacent to the cooking facilities at the home, and

(c) a fire extinguisher.

(2) All fire protection equipment with which the carer's home is equipped must be tested in accordance with the requirements of AS 1851.1—1995 for Level 1 service and be kept in proper working condition.

**Note—**

AS 1851.1 requires equipment to be tested every 6 months at Level 1 service levels.

(3) In this clause:

**AS 1851.1—1995** means the standard published by Standards Australia under the title "*Maintenance of fire protection equipment, Part 1: Portable fire extinguishers and fire blankets*", and numbered AS 1851.1—1995, as in force on the commencement of this Regulation.

#### **15 Hot water**

Children provided with a service at a carer's home must not have unsupervised access to any hot water supply unless that supply is regulated so as to keep it below the temperature at which a child can be scalded.

#### **16 Plants**

(1) Any poisonous vegetation at a carer's home must be identified and provision made to ensure that the vegetation is not accessible to children.

(2) Any vegetation at the carer's home that can lead to injury or severe discomfort (for example, because of sharp prickles or prominent thorns) must be identified and

provision made to ensure that the vegetation is not accessible to children.

### **17 Equipment to support program**

- (1) The carer's home must be equipped with adequate and sufficient equipment to meet the developmental and other needs of children provided with the service at the home and be readily available for use by the children and the carer.
- (2) In determining the adequacy and sufficiency of equipment, the age, number and interests of children provided with the service at the home must be taken into account.

## **Schedule 2 Code of Conduct**

(Clause 15)

### **Note—**

Clause 15 (8) sets out the responsibilities of the licensee and authorised supervisor for ensuring that carers comply with the Code of Conduct.

### **1 Arrival and departure of child**

- (1) The carer of a service must ensure the person who brings the child to the carer's home records the time of the child's arrival in the attendance book kept at the home and signs the record.
- (2) The carer of a service must ensure that the person who collects the child from the carer's home records the time of the child's departure from the home in the attendance book kept at the home and signs the record.
- (3) The carer of a service must ensure that when a child leaves the carer's home the person who collects the child is the child's parent or a responsible person who is authorised in writing by the child's parent to collect the child.
- (4) If it is not possible to comply with subclause (3), the carer of a service must ensure that alternative arrangements to secure the safety and welfare of the child have been made before the child is permitted to leave the carer's home.
- (5) The carer of a service must ensure that when a child arrives at the carer's home the carer receives the child.
- (6) The carer of a service must ensure that if a school age child arrives at or leaves the carer's home unaccompanied by a parent the arrival or departure is in accordance with procedures agreed to in writing by the child's parent.

### **2 Child health**

- (1) The carer of a service must observe strict health and hygiene practices that have regard to current community standards and are in accord with relevant government

guidelines to minimise risks to children in relation to children provided with the service by the carer.

- (2) The carer of the service must encourage children to observe these practices.
- (3) The carer must be of good health and free from any medical conditions or dependency on any medication or substance that may affect the carer's ability to care for children.
- (4) A carer requiring regular medication must obtain a medical certificate confirming his or her ability to care for children.
- (5) The carer must not be under the influence of alcohol or any other drug while the carer is providing children with the service.
- (6) The carer must not consume any alcohol while the carer is providing the children with the service.
- (7) The carer must provide a smoke free environment while providing the children with the service at the carer's home.

### **3 Food**

- (1) The carer of a service must ensure that each child at the service is provided with food and drinks that are nutritious, adequate in quantity, varied, offered at frequent intervals and appropriate to the developmental needs of the child.
- (2) The carer of a service must ensure that drinking water is available to children at all times while the service is being provided.
- (3) The carer of a service must ensure that information is readily accessible to parents that outlines the approach to the dietary needs, culture, religion and health of individual children provided with the service.

### **4 Illness and accident**

- (1) The carer of a service must ensure that if a child enrolled for the service has an accident or becomes ill while at the carer's home:
  - (a) the child is kept under adult supervision until the child recovers or a parent of the child or some other responsible person takes charge of the child, and
  - (b) if the child requires medical aid, all reasonable attempts are taken to secure that attention, and
  - (c) every reasonable attempt is made to notify a parent of the accident or illness as soon as practically possible, and
  - (d) in the case of medication being required in an emergency without prior consent of



the child's parent every attempt is made to secure that consent or the consent from a registered medical practitioner, and

- (e) the child is returned as soon as practicable to the care of a person responsible for the child.
- (2) The carer of a service must ensure that a parent or other responsible person is notified of any medication administered to the child and any other matter concerning the child's health that comes to the carer's notice while the carer is providing the child with a service.
- (3) The carer of a service must ensure that a record of the accident is given to the child's parent.
- (4) The carer must ensure that if a child enrolled for the service has a serious accident while the carer is providing the service that causes hospitalisation or death, notice of the accident is immediately given to the authorised supervisor of the service.
- (5) On being notified of a serious accident that causes hospitalisation of a child enrolled for a service, the authorised supervisor of the service must immediately cause notice of that fact to be given to:
  - (a) a parent of the child, and
  - (b) the Director-General.
- (6) On being notified of the death of a child enrolled for a service, the authorised supervisor of the service must immediately cause notice of that fact to be given to:
  - (a) a parent of the child, and
  - (b) a police officer, and
  - (c) the Director-General.

## **5 Infectious diseases**

- (1) The authorised supervisor of a service must ensure that a policy on infectious diseases that outlines the exclusion practices and conditions for return to care for children who have an infectious disease or who have been exposed to an infectious disease is developed and maintained for the service, in accordance with the "Guidelines for the control of infectious diseases in child care" prepared on behalf of the Working Party on Infectious Diseases in Child Care, NSW Department of Health, 1993.

### **Note—**

The carer of a home based child care service is the authorised supervisor of the service.

- (2) The carer of a service must ensure that the policy is practised.

- (3) The authorised supervisor of a service must ensure that information about the occurrence within the service of infectious disease in children enrolled for the service, the carer of the service and persons resident at the carer's home is made available to the parents of children at the service in a manner that is not prejudicial to the rights of individual children, the carer or those persons.
- (4) Nothing in this clause authorises the disclosure of any information concerning exposure to or infection by Human Immunodeficiency Virus or Acquired Immunodeficiency Syndrome.
- (5) The authorised supervisor of a service must ensure that the infectious diseases policy covers all persons normally resident in the carer's home.

## **6 Medication**

- (1) The carer of a service must ensure that a parent of any child to whom medication is administered while the service is being provided is notified of the following:
  - (a) the name of the medication, and
  - (b) the date, time and dosage administered, and
  - (c) the name of the person who checked the dosage and administered the medication.
- (2) The carer of a service must ensure that medication is administered to a child only from its original packaging. In the case of prescription medication, this must only be administered to the child for whom it has been prescribed, from a container bearing the child's name and with a current use by date and in accordance with any doctor's instructions relating to the administration.
- (3) The carer of a service must ensure that medication is only administered to a child enrolled for the service with the written permission of a parent of the child.

## **7 First aid qualifications**

The carer of a service must be the holder of a current first-aid certificate or be otherwise appropriately qualified to provide first-aid in a medical or other emergency.

## **8 Parental access to children**

- (1) The authorised supervisor of a service must ensure that procedures are in place to ensure that any parent that the authorised supervisor knows to have been denied access to a child by a court order affecting the custody or residence of, or access to the child, is excluded from the premises of the service at all times.
- (2) The authorised supervisor of a service must ensure that any parent not subject to such orders can:

- (a) have access to his or her child at any time during the hours the child is at the service, and
- (b) exchange information about his or her child with carers on an ongoing basis.

## **9 Service program**

- (1) The carer of a service must provide a program of activities designed to stimulate and develop each child's social, physical, emotional, cognitive, language and creative potential and must provide activities that are appropriate to the development of children.
- (2) The carer of a service must ensure that the program has a balance of indoor and outdoor activities and includes activities that can be freely chosen by the child.
- (3) The carer of a service must regularly advise a parent of each child enrolled for the service about the activities engaged in by the child.

## **10 Interactions with children**

- (1) The carer of a service must interact with children for whom the service is being provided by the carer in a way that ensures that:
  - (a) the children are guided towards positive and responsible behaviour, and
  - (b) the children have the opportunity to freely choose activities and problem solve and have access to learning experiences, and
  - (c) the children are encouraged and supported towards self reliance and the development of positive self-esteem.
- (2) The carer must ensure that the dignity and rights of each child for whom the service is being provided by the carer are maintained at all times and that:
  - (a) child management techniques do not include physical, verbal or emotional punishment, including, for example, punishment that humiliates, frightens or threatens the child, and
  - (b) the child is not isolated for any reason other than illness, accident or a pre-arranged appointment with parental consent, and
  - (c) a child is given positive guidance directed towards acceptable behaviour with encouragement freely given, and
  - (d) the values of the child's family are respected, and
  - (e) the child has such access to the carer as the child needs to assist the child's learning experiences.

## **11 Supervision**

The carer of the service is to ensure that each child enrolled for the service is adequately supervised at all times while the service is being provided.

## **12 Animals**

- (1) The carer of a service must ensure that any animal or bird kept at the carer's home is in a clean and healthy condition.
- (2) The carer of a service must ensure that any animal or bird kept at the carer's home does not constitute a health or safety risk to children.
- (3) The carer of a service must ensure that every domestic pet or farm animal or other potentially dangerous animal kept at the carer's home is made inaccessible to a young child unless the child is under the supervision of the carer.
- (4) The carer of a service must provide an area where animals' feed and water containers can be kept separate from children.