



New South Wales

## Children's Services Amendment Regulation 2010

under the

Children and Young Persons (Care and Protection) Act 1998

*[The following enacting formula will be included if the Regulation is made:]*

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

Minister for Community Services

### **Explanatory note**

The object of this Regulation is to amend the *Children's Services Regulation 2004* as a consequence of changes to the licensing system for providers of children's services made by the *Children and Young Persons (Care and Protection) Amendment (Children's Services) Act 2010*.

This Regulation is made under the *Children and Young Persons (Care and Protection) Act 1998*, including Chapter 12 (in particular section 220) and section 264 (the general regulation-making power).

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Clause 1 Children's Services Amendment Regulation 2010

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## **Children's Services Amendment Regulation 2010**

under the

Children and Young Persons (Care and Protection) Act 1998

### **1 Name of Regulation**

This Regulation is the *Children's Services Amendment Regulation 2010*.

### **2 Commencement**

This Regulation commences on 1 January 2011 and is required to be published on the NSW legislation website.

*[Note. 1 January 2011 is the proposed commencement date of the Children and Young Persons (Care and Protection) Amendment (Children's Services) Act 2010.]*

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## **Schedule 1      Amendment of Children's Services Regulation 2004**

### **[1]    Clause 3 Application**

Omit “, 200 and 213” from the note. Insert instead “and 200”.

### **[2]    Part 2**

Omit the Part. Insert instead:

## **Part 2    Licences and approvals**

### **Division 1      Applications for licences and approvals**

#### **7    Who may apply for licences and approvals**

- (1) An application for a licence may not be made by a natural person unless he or she is of or above the age of 21 years.
- (2) An application for a children's service approval for a particular prescribed children's service may only be made by a person holding a licence that authorises the person to provide that type of prescribed children's service or who has made an application for such a licence that has not yet been dealt with by the Director-General.
- (3) An application for a supervisor approval may only be made by a natural person.

#### **8    Applications for licences and approvals**

- (1) An application for a licence or an approval must be made in the approved form.
- (2) The application must be accompanied by all the information, documents and particulars required by or under this Part, unless the Director-General has waived or postponed the requirement in relation to the applicant.
- (3) An application for a children's service approval must be accompanied by the application fee and the annual fee specified in Schedule 1B.

#### **9    Information to be provided by applicant for licence**

- (1) An application for a licence must contain the required information about each of the following persons:
  - (a) if the applicant is a natural person, the applicant,

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- (b) if the applicant is a public authority:
    - (i) the chief executive officer (however described) of the public authority, and
    - (ii) if the public authority is a local authority, the manager of community services (however described) of the local authority,
  - (c) if the applicant is an entity (other than a public authority), or a natural person applying for or on behalf of such an entity, each natural person who is a relevant person in relation to the application (within the meaning of section 206 (2) of the Act).
- (2) The **required information** is the following:
- (a) the person's full name, any other name by which the person is known (such as a nickname) and all former names of the person,
  - (b) the person's contact details, including the person's postal address, home, business and mobile telephone numbers, any home and business fax numbers and any email address,
  - (c) the person's residential address, if different from the postal address,
  - (d) the period of time for which the person has lived at that residential address, and the residential address at which the person lived before taking up residence at the current residential address,
  - (e) the person's date of birth and place of birth (including country of birth),
  - (f) any identification documents required for the purposes of background checking under Division 3 of Part 7 of the *Commission for Children and Young People Act 1998*,
  - (g) details of any criminal conviction of the person for an offence relating to neglect of a child or young person or assault (including sexual assault), whether or not the conduct constituting the offence occurred, or the person was convicted, in New South Wales,
  - (h) details of any charge for an offence relating to neglect of a child or young person or assault (including sexual assault) laid against the person in the period of 5 years immediately before the application is made, whether or not the conduct to which the charge relates occurred, or the charge was laid, in New South Wales (but only if proceedings are pending in respect of the charge),

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- (i) details of any disciplinary action or departmental or other proceedings of which the person is aware that have been taken in respect of the person relating to neglect of a child or assault (including sexual assault) in the period of 5 years immediately before the application is made, whether or not the conduct to which the action or proceedings relate occurred, or the proceedings were taken, in New South Wales,
  - (j) details of any conviction of the person of an offence under the Act, this Regulation or Part 7 of the *Commission for Children and Young People Act 1998*, whether or not the conduct constituting the offence occurred, or the applicant was convicted, in New South Wales.
- (3) For the purposes of section 206 (2) (c) of the Act, if an applicant is a corporation and a majority shareholder of the applicant is another corporation, each natural person involved in the control and management of the majority shareholder corporation is a relevant person in relation to the application.

## **10 Additional information to be provided by certain applicants**

An application for a licence by an entity, or by a person for or on behalf of any entity, must be accompanied by the following information:

- (a) the full name of the entity, including any ACN or ABN,
- (b) the former names of the entity (if any),
- (c) the full name of any persons involved in the control or management of the entity (such as a chief executive officer, director or majority shareholder of a corporation),
- (d) in the case of an application made for or on behalf of an association, partnership or trust—the full name of any 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),
- (e) the address of the registered office or head office of the entity,
- (f) the contact details for the entity, including postal address (if different from the registered office or head office), telephone numbers (including mobile telephone numbers) and any fax number and email address,
- (g) the current constitution, charter, memorandum, rules, statement of objects, deed of trust or partnership agreement of the entity (if any),

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- (h) in the case of a corporation or body corporate, evidence of incorporation (such as a certificate of incorporation, or a certificate of registration under the *Corporations Act 2001* of the Commonwealth).

**11 Additional information to be provided by applicant for licence for home based children's service**

An application for a licence authorising the provision of a home based children's service must be accompanied by:

- (a) information to demonstrate that the applicant:
  - (i) has the required abilities to care for children, and
  - (ii) has experience in caring for children, and
  - (iii) has demonstrated a capacity to exercise overall supervision of the provision of a children's service, and
  - (iv) has an understanding of nutrition, safe food handling, health, hygiene and safety in caring for children, and

**Note.** The required abilities to care for children are specified in clause 6.

- (b) a copy of the applicant's current approved first aid qualification.

**12 Information to be provided by applicant for children service's approval**

- (1) An application for a children's service approval must:
  - (a) nominate a person whom the licensee proposes to appoint as authorised supervisor of the children's service, and
  - (b) be accompanied by:
    - (i) a copy of the person's supervisor approval (or a copy of an application by the person for a supervisor approval that has not been finally dealt with by the Director-General), and
    - (ii) evidence that the person consents to being the authorised supervisor of the service concerned.
- (2) If development consent under the *Environmental Planning and Assessment Act 1979* is required for the conduct of the children's service at the premises of the proposed service, an application for a children's service approval must be accompanied by a copy of the development consent.

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- (3) An application for a children's service approval authorising the operation of a centre based children's service must be accompanied by the following information and documents:
- (a) the address of the premises where the children's service will be provided,
  - (b) 2 copies of a site plan of the premises at which the service is to be provided that:
    - (i) shows the location of every building, structure, outdoor play area, fence, gate and shaded area on the premises, and
    - (ii) shows the location of each point of entry to or exit from the premises, including entries and exits by way of any residential premises, and
    - (iii) specifies the type of each fence and gate located on the premises, and
    - (iv) shows the boundaries of the premises, and
    - (v) is drawn by a person who is an architect within the meaning of the *Architects Act 2003* or who is accredited by the Building Designers Association of NSW Inc in relation to the design of the class of buildings concerned, and
    - (vi) is drawn to a metric scale of 1:100 or 1:200, and
    - (vii) is drawn on one sheet of paper,
  - (c) 2 copies of a plan of each building on the premises that:
    - (i) shows the elevations and dimensions of the building and the dimensions of the lot on which the building is located, and
    - (ii) shows the location of fences on the premises, and
    - (iii) shows the floor plan of each of the buildings concerned, together with the proposed use of each part of the building (including the location of the toilets, any nappy change area, craft preparation area and internal storeroom), and
    - (iv) is drawn by a person who is an architect within the meaning of the *Architects Act 2003* or who is accredited by the Building Designers Association of NSW Inc in relation to the design of the class of buildings concerned, and
    - (v) is drawn to a metric scale of 1:50 or 1:100, and
    - (vi) is drawn on one sheet of paper,

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- (d) a statement in writing signed or sealed by the applicant and by the person referred to in paragraph (c) (iv) (or a person with the qualifications referred to in that paragraph):
    - (i) stating that the premises comply with the Part 3 facilities and equipment requirements applicable to a centre based children's service, or
    - (ii) stating any respect in which the premises do not comply with those requirements,
  - (e) if an occupation certificate is required under the *Environmental Planning and Assessment Act 1979* for the proposed use of the premises for a children's service, a copy of the certificate.
- (4) An application for an approval authorising the operation of a mobile children's service must be accompanied by the following information and documents:
- (a) the addresses of the premises where the children's service will be provided,
  - (b) if an occupation certificate is required under the *Environmental Planning and Assessment Act 1979* for the proposed use of the premises for a children's service, a copy of the certificate.

### **13 Venue management plans for mobile children's services**

- (1) An application for a children's service approval authorising the operation of a mobile children's service is to be accompanied by:
  - (a) a statement as to whether any of the premises at which the service is proposed to be provided do not comply with the Part 3 facilities and equipment requirements applicable to a mobile children's service, and
  - (b) if so, a plan describing how the applicant intends to ensure the safety and well-being of children at those premises.
- (2) The Director-General:
  - (a) may approve a plan submitted under subclause (1) (b), or
  - (b) may require the applicant to revise the plan as to any matter or in any respect specified by the Director-General.
- (3) A revised plan may be resubmitted to the Director-General for the approval of the Director-General.
- (4) The Director-General may not grant a children's service approval authorising the operation of a mobile children's service for which

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a plan is required unless the Director-General has approved a plan for the service under this clause.

- (5) A plan approved by the Director-General under this clause is referred to in this Regulation as a *venue management plan*.

#### **14 Information to be provided by applicant for supervisor approval**

- (1) An application for a supervisor approval must be accompanied by the following information:
- (a) the applicant's full name, any other name by which the applicant is known (such as a nickname) and all former names of the applicant,
  - (b) the applicant's contact details, including the applicant's postal address, home, business and mobile telephone numbers, any home and business fax numbers and any email address,
  - (c) the applicant's residential address, if different from the postal address,
  - (d) the period of time for which the applicant has lived at that residential address, and the residential address at which the applicant lived before taking up residence at the current residential address,
  - (e) the applicant's date of birth and place of birth (including country of birth),
  - (f) any identification documents required for the purposes of background checking under Division 3 of Part 7 of the *Commission for Children and Young People Act 1998*,
  - (g) details of any criminal conviction of the applicant for an offence relating to neglect of a child or young person or assault (including sexual assault), whether or not the conduct constituting the offence occurred, or the applicant was convicted, in New South Wales,
  - (h) details of any charge for an offence relating to neglect of a child or young person or assault (including sexual assault) laid against the applicant in the period of 5 years immediately before the application is made, whether or not the conduct to which the charge relates occurred, or the charge was laid, in New South Wales,
  - (i) details of any disciplinary action or departmental or other proceedings of which the applicant is aware that have been taken in respect of the person relating to neglect of a child or assault (including sexual assault) in the period of 5 years immediately before the application is made, whether or not

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the conduct to which the action or proceedings relate occurred, or the proceedings were taken, in New South Wales,

- (j) details of any conviction of the applicant for an offence under the Act, this Regulation or Part 7 of the *Commission for Children and Young People Act 1998*, whether or not the conduct constituting the offence occurred, or the applicant was convicted, in New South Wales,
  - (k) the prescribed documents.
- (2) In this clause, ***prescribed documents*** means the following:
- (a) duly certified copies of the person's qualification referred to in clause 17 (2) (c) and of any other of the person's qualifications in the area of children's services or any related area (such as a diploma, certificate of competency or statement of attainment from a registered training organisation),
  - (b) work references from 2 independent referees (being individuals who are not relatives of the person) describing the person's performance during the training or work experience referred to in clause 17 (2) (d).

## 15 Waiver and postponement of certain application requirements

The Director-General may waive or postpone a requirement to provide specified information or documents under this Division, or may approve the provision of specified information or documents in place of information or documents the subject of such a requirement.

## 17 Grounds for refusal to grant a supervisor approval

- (1) The Director-General may refuse to grant a supervisor approval if of the opinion that the applicant does not have the required qualifications and experience.
- (2) The ***required qualifications and experience*** are the following:
  - (a) the required abilities to care for children and the capacity to exercise overall supervision of the provision of a children's service,  
**Note.** The required abilities to care for children are specified in clause 6.
  - (b) successful completion of an approved course in child protection (being a course that covers all applicable requirements under the child protection legislation),
  - (c) one or more of the following qualifications:

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- (i) an approved degree or diploma in early childhood education from a university following a course with a duration (on a full-time basis) of not less than 3 years,
- (ii) a Diploma of Children's Services (Early Childhood Education and Care) from a registered training organisation,
- (iii) another approved qualification,
- (d) 12 months' full-time experience or its equivalent in part-time experience in providing a relevant children's service (gained after obtaining the qualification referred to in paragraph (c)).

**Note.** Section 219C of the Act specifies other grounds on which the Director-General may refuse to grant a supervisor approval.

## **18 Refusal to grant licences and approvals**

- (1) If the Director-General intends to refuse to grant a licence or an approval, the Director-General must cause to be served on the applicant a notice stating that, when 4 weeks have expired after service of the notice, the Director-General will refuse the licence or approval on the grounds specified in the notice unless the applicant has established to the Director-General's satisfaction that the licence or approval should not be refused.
- (2) The Director-General is to consider any submissions made during the 4 week period and if the Director-General refuses to grant the licence or approval, the Director-General must cause to be served on the applicant a notice stating the grounds on which the licence or approval has been refused.

## **Division 2 Licences and approvals**

### **19 Form of licences and approvals**

- (1) A licence or an approval granted under this Division is to be in the approved form.
- (2) Any condition imposed on a licence or an approval by the Director-General under the Act is to be endorsed on the licence or approval.
- (3) A service provider licence must include the following particulars:
  - (a) the name of the licensee,
  - (b) the number and date of issue of the licence,

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- (c) in the case of a licence issued to a person who is not a natural person, or to a person for or on behalf of an entity, the business address of the licensee or entity and any ACN or ABN,
  - (d) the types of prescribed children's service authorised to be provided,
  - (e) any conditions imposed by the Director-General.
- (4) A children's service approval must include the following particulars:
- (a) the name of the children's service, including any ACN or ABN,
  - (b) the number and date of issue of the approval,
  - (c) the address of the premises of the approved children's service,
  - (d) the type of prescribed children's service for which the approval has been granted,
  - (e) the maximum number of children who may attend the approved children's service at any one time,
  - (f) the date on which the annual fee is due,
  - (g) any conditions imposed by the Director-General.
- (5) A supervisor approval must include the following particulars:
- (a) the name of the authorised supervisor,
  - (b) the number and date of issue of the approval,
  - (c) the type of prescribed children's service for which the approval has been granted,
  - (d) any conditions imposed by the Director-General.

## **20 Annual fee for children's service approvals**

- (1) A licensee of a children's service must pay the annual fee specified in Schedule 1B for the children's service approval in respect of the year commencing on the grant of the approval and each subsequent year, or part of a year, for which the approval remains in force.
- (2) An annual fee that is not required to accompany an application for an approval must be paid before the commencement of the year to which it relates and in the manner specified by the Director-General.

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## **21 Refund or waiver of annual fee for children's service approvals**

- (1) The Director-General may refund an annual fee that is required to accompany an application for a children's service approval if:
  - (a) the Director-General refuses to grant the approval, or
  - (b) the applicant withdraws the application before the Director-General grants the approval.
- (2) The Director-General may waive or refund the whole, or any part, of the annual fee for an approval if the Director-General is satisfied that there are exceptional circumstances that justify waiving the whole or part of the annual fee.

## **Division 3 Variation, suspension and revocation of licences and approvals**

### **22 Grounds for variation, suspension and revocation of licences and approvals**

- (1) The grounds on which the Director-General may vary, suspend or revoke a service provider licence are:
  - (a) the licensee has requested that the Director-General take the action, or
  - (b) the licensee has contravened a provision of the Act or this Regulation that applies to the licensee, or
  - (c) the licensee has contravened a condition of the licence.

**Note.** Section 211 of the Act specifies other grounds on which the Director-General may suspend or revoke a service provider licence.
- (2) The grounds on which the Director-General may vary, suspend or revoke a children's service approval are:
  - (a) the licensee has requested that the Director-General take the action, or
  - (b) the licensee has contravened a provision of the Act or this Regulation that applies to that person, or
  - (c) the licensee of the approved children's service has failed to pay an annual fee for the children's service approval in accordance with this Regulation, or
  - (d) any premises of the approved children's service do not comply with a provision of this Act or this Regulation or with a condition of the children's service approval or the licence, or
  - (e) the licensee has contravened a condition of the children's service approval, or

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- (f) the authorised supervisor of the approved children's service does not have the overall supervision of the provision of the service.

**Note.** Section 219 of the Act specifies other grounds on which the Director-General may suspend or revoke a children's service approval.

- (3) The grounds on which the Director-General may vary, suspend or revoke a supervisor approval are:
  - (a) the authorised supervisor has requested that the Director-General take the action, or
  - (b) the authorised supervisor has contravened a provision of the Act or this Regulation that applies to that person,
  - (c) the authorised supervisor has contravened a condition of the supervisor approval.

**Note.** Section 219G of the Act specifies other grounds on which the Director-General may suspend or revoke a supervisor approval.

- (4) The Director-General may suspend a licence or an approval for a period not exceeding 6 months.

## **23 Variation, suspension or revocation of licences and approvals**

- (1) If the Director-General intends to vary, suspend or revoke a licence or an approval, the Director-General is to cause to be served on the licensee or approval holder (as the case requires) a notice:
  - (a) stating that when 4 weeks have expired after service of the notice, the Director-General intends to take the action specified in the notice unless it has been established to the Director-General's satisfaction that the action should not be taken, and
  - (b) stating the reasons for the intention to take the action, and
  - (c) stating that the licensee may make submissions to the Director-General about the proposed action within the period of 4 weeks after service of the notice.
- (2) When 4 weeks have expired after such a notice is served, the Director-General may, after considering any submissions made during that period by the licensee or approval holder, take the action specified in the notice by a further notice served on the licensee or approval holder.
- (3) Subclauses (1) and (2) do not apply to any action taken at the request of the licensee or approval holder.
- (4) Action taken pursuant to the further notice under subclause (2) takes effect on the date specified in the notice for that purpose.

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- (5) If a licence or an approval is revoked, the licensee or approval holder:
  - (a) must return the licence or approval to the Director-General within the period specified in the notice for its return, and
  - (b) in the case of a service provider licence or children's service approval—must take all reasonably practicable steps to inform a parent of each child to whom the children's service is provided under the licence or approval that the service will cease to be provided on the date specified in the notice for that purpose.
- (6) If a licence or an approval has been suspended, the Director-General may, at any time during the period of suspension, restore the licence or approval by serving on the person who was the licensee under the licence or the approval holder immediately before it was suspended a notice stating that the licence or approval is restored.

**24 Notice to parents of certain changes to service provider licences and children's service approvals**

- (1) A licensee who requests the Director-General to vary or revoke a condition of the licensee's service provider licence or the children's service approval for a children's service provided by the licensee or to suspend or revoke such a licence or approval:
  - (a) must give written notice of the request to a parent of each child to whom a children's service is provided under the licence or approval within 2 weeks after the request is made, and
  - (b) must give written notice of the result of the request to each parent within 2 weeks after the licensee is notified of the result of the request by the Director-General.
- (2) A licensee of an approved children's service must cause written notice to be given to a parent of each child to whom the service is provided of any other variation of a licence condition within 2 weeks after the licensee is notified by the Director-General of the variation.

Maximum penalty: 5 penalty units.

**25 Change of venue management plan—mobile children's service**

A licensee of a mobile children's service who intends to change a venue management plan:

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- (a) must request the Director-General to vary the children's service approval with respect to the venue management plan specified in the approval, and
- (b) must provide to the Director-General the information and documents specified in clauses 12 and 13, where relevant, and such other information as the Director-General may reasonably require.

## **Division 4 Conditions of licences and approvals**

### **26 Conditions of service provider licence**

For the purposes of section 208 (1) (a), the prescribed conditions of a service provider licence are the provisions of Parts 3, 4, 5, 6 and 7 that are relevant to the type or types of prescribed children's service provided by the licensee.

### **27 Conditions of children's service approvals**

- (1) For the purposes of section 217 (1) (a) of the Act, the prescribed conditions of a children's service approval are the provisions of Parts 3, 4, 5, 6 and 7 that are relevant to the type of children's service authorised by the approval.
- (2) It is also a condition of a children's service approval that the licensee of the children's service must develop, maintain and implement procedures to ensure that the authorised supervisor and all other members of staff of the approved children's service comply with the provisions of this Regulation that apply to them.
- (3) It is also a condition of a children's service approval that the licensee of the approved children's service must have the right to occupy the premises at which the service is provided under the approval.
- (4) It is also a condition of a children's service approval authorising the operation of a family day care children's service that the licensee must:
  - (a) make it a condition of registration with the service that a family day care carer must comply with the provisions of this Regulation that apply to a family day care carer, and
  - (b) develop, maintain and implement procedures to ensure that each family day care carer who is registered with the service complies with those provisions.

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## **28 Conditions of supervisor approvals**

For the purposes of section 219E (1) (a) of the Act, the prescribed conditions of a supervisor approval are the provisions of Parts 3, 4, 5, 6 and 7 that are relevant to an authorised supervisor.

**Note.** See clauses 47, 52, 54, 60, 63–72, 75, 77A–83, 92, 94–96, 114 and 116.

### **[3] Part 3**

Omit the heading to Part 3. Insert instead:

## **Part 3 Facilities and equipment requirements**

### **[4] Clause 30 Space requirements—centre based children's services**

Omit “guidelines published by the New South Wales Cancer Council under the title *Shade for Child Care Services*, as in force immediately before the commencement of this Regulation” from clause 30 (6).

Insert instead “*The Shade Handbook*, published by the New South Wales Cancer Council in 2008”.

### **[5] Clause 34 Toilets and washing facilities**

Omit the heading to clause 34 (1).

### **[6] Clause 34 (2)**

Omit the subclause.

### **[7] Clause 36 Sleeping facilities**

Omit “AS/NZ 2172:2003: *Cots for household use—Safety requirements*” from clause 36 (6).

Insert instead “entitled AS/NZS 2172:2010, *Cots for household use—Safety requirements*”.

### **[8] Clause 38A**

Insert after clause 38:

#### **38A Venue management plans—mobile children's services**

The licensee of a mobile children's service for which there is a venue management plan must ensure that the premises of the service comply with the plan for those premises.

### **[9] Clause 41 First aid kits**

Omit clause 41 (1). Insert instead:

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- (1) There must be a suitably equipped and well stocked first aid kit at each premises of a children's service.

**[10] Clause 42 Fire safety equipment**

Omit the heading to clause 42 (1).

**[11] Clause 42 (2) and (3)**

Omit clause 42 (2) and (4). Insert instead:

- (2) All fire protection equipment with which the premises of a centre based or mobile children's service, or the home of a family day carer or home based licensee, is equipped must:
- (a) be tested every 6 months and in accordance with the Australian Standard entitled AS 1851—2005, *Maintenance of fire protection systems and equipment*, and
  - (b) be kept in proper working condition.
- (3) The licensee of a children's service must keep a record of any test of fire protection equipment carried out on the premises, including the date of the test and the name of the person who carried out the test. The licensee must retain any such record for a period of 2 years after the record is made.

**[12] Part 4**

Omit the heading to Part 4. Insert instead:

## **Part 4 Staffing requirements**

**[13] Clause 51A**

Insert after clause 51:

**51A Appointment of authorised supervisors**

- (1) The licensee of an approved children's service must not appoint more than 2 authorised supervisors as authorised supervisors of the service at any one time, unless the Director-General approves otherwise.
- (2) An authorised supervisor must not be appointed as authorised supervisor of more than 2 approved children's services at any one time, unless the Director-General approves otherwise.

**[14] Clause 53 Staff to child ratios**

Omit "1:5" from clause 53 (1) (a). Insert instead "1:4".

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**[15] Clause 56 Supervision by authorised supervisor**

Omit "centre based" from clause 56 (1).

**[16] Clause 56 (1A)**

Insert after clause 56 (1):

- (1A) The licensee of a children's service must keep a record of the name of the authorised supervisor who has the overall supervision of the provision of the service.

**[17] Clause 56 (2)**

Insert "**Centre based children's service**" as the heading of the subclause:

**[18] Part 5**

Omit the heading to Part 5. Insert instead:

## **Part 5 Child number requirements**

**[19] Clause 58 Number of children**

Omit clause 58 (1) and (2). Insert instead:

(1) **Centre based or mobile children's service**

The number of children who may attend a centre based or mobile children's service at any one time while a service is being provided must not exceed the maximum number of children specified in the children's service approval for the service.

- (2) The number of children under the age of 2 years who may attend a centre based or mobile children's service at any one time while a service is being provided must not exceed 40, unless the Minister otherwise approves in a particular case.

**[20] Clause 61 Group size—centre based or mobile children's service**

Omit "not more than 10" from clause 61 (a). Insert instead "not more than 12".

**[21] Clause 62 Caring for school children at service—centre based or mobile children's service**

Insert "at the premises of the service" after "by the licensee" in clause 62 (1).

**[22] Clause 62 (1) (b1) and (b2)**

Insert after clause 62 (1) (b):

- (b1) the safety of any pre-school child attending the service is not adversely affected, and

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(b2) the education and care provided to any pre-school child attending the service meet the child's needs, and

**[23] Part 6**

Omit the heading to Part 6. Insert instead:

## **Part 6 Operational requirements**

**[24] Clause 64 Programs for children**

Insert “, maintain and implement” after “develop” in clause 64 (1).

**[25] Clause 65 Interaction with children**

Omit the heading to clause 65 (1).

**[26] Clause 67 Child health**

Omit “and maintain” from clause 67 (2) and (4) wherever occurring.

Insert instead “, maintain and implement”.

**[27] Clause 68 Food and nutrition**

Omit “Dietary Guide for Children” from clause 68 (1) (b) and (f) wherever occurring.

Insert instead “Healthy Eating Guidelines”.

**[28] Clause 68 (5)**

Omit the clause. Insert instead:

(5) In this clause, *Healthy Eating Guidelines* means the document entitled “*Get Up and Grow: Healthy Eating and Physical Activity for Early Childhood*” published by the Commonwealth Department of Health and Ageing in 2009.

**[29] Clause 69 Pool Safety**

Omit “and maintain” from clause 69 (4).

Insert instead “, maintain and implement”.

**[30] Clause 73 Obtaining information about child**

Omit “ensure that procedures are in place for a parent of a child attending the service to obtain”.

Insert instead “develop, maintain and implement procedures to ensure that a parent of a child attending the service can obtain”.

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**[31] Clause 74 Arrival and departure of child**

Omit “and maintain” wherever occurring in clause 74 (4) and (5).

Insert instead “, maintain and implement”.

**[32] Clause 76 Information and access to be denied to certain persons**

Omit “ensure that procedures are in place” from clause 76 (2).

Insert instead “develop, maintain and implement procedures”.

**[33] Clause 77A**

Insert before clause 77:

**77A Risk assessment of excursions**

**(1) All children's services**

The licensee and an authorised supervisor of a children's service must ensure that a risk assessment is carried out in relation to any excursion before the excursion takes place.

**(2) Family day care or home based children's service**

A family day care carer or home based licensee must ensure that a risk assessment is carried out in relation to any excursion before the excursion takes place.

**(3)** In this clause, *risk assessment*, in relation to an excursion, means the identification and assessment of the risks associated with the excursion to the safety, welfare and well-being of any child participating in the excursion and includes the identification and implementation of measures to manage and minimise any identified risks.

**[34] Clause 77 Authority for excursions**

Omit “and maintain” from clause 77 (4).

Insert instead “, maintain and implement”.

**[35] Clause 78 Conduct of excursions: general**

Omit “suitable and fully stocked” from clause 78 (3).

Insert instead “suitably equipped and well stocked”.

**[36] Clause 78 (4)**

Omit “and maintain”. Insert instead “, maintain and implement”.

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**[37] Clause 79 Conduct of excursions: water hazards**

Omit "significant" wherever occurring in clause 79 (2), (4) and (5).

**[38] Clause 79 (3)**

Omit "and maintain" from clause 79 (3).

Insert instead ", maintain and implement".

**[39] Clause 79 (4) (a) and (b)**

Omit the paragraphs. Insert instead:

(a) a current approved first aid qualification, and

**[40] Clause 80 Illness, accident and emergency treatment**

Omit "and maintain" wherever occurring in clause 80 (7) and (8).

Insert instead ", maintain and implement".

**[41] Clause 82 Infectious diseases**

Omit "and maintained" from clause 82 (1).

Insert instead ", maintained and implemented".

**[42] Clause 83 Emergency and evacuation procedures**

Omit "and kept up to date" from clause 83 (1).

Insert instead ", maintained and implemented".

**[43] Part 7**

Omit the heading to Part 7. Insert instead:

## **Part 7 Administrative requirements**

**[44] Clause 85 Policies to be made available**

Insert ", maintain and implement" after "develop" in clause 85 (1).

**[45] Clause 88 Notice of complaint**

Insert at the end of the clause:

(2) A reference in this clause to a complaint about the conduct of a children's service means a complaint that consists of:

(a) an allegation of a contravention of the Act or this Regulation by the licensee or member of staff of the service, or

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- (b) an allegation of a contravention of a condition of a service provider licence or an approval by the licensee or member of staff of the service, or
- (c) an allegation that the safety, health or well-being of a child attending the service has been compromised while the child attended the service.

**[46] Clause 93 Records in relation to staff and visitors**

Omit "times of arrival and departure during the day and including details of absences" from clause 93 (2).

Insert instead "the full name and times of arrival and departure of each person during the day and details of all absences".

**[47] Clause 93 (3)**

Omit "times of arrival and departure".

Insert instead "the full name and times of arrival and departure of each visitor".

**[48] Clause 93 (5)**

Insert after clause 93 (4):

- (5) A record kept in relation to the attendance of a person at the service must be made at the time of, or as soon as practicable after, the arrival and departure of the person.

**[49] Clause 94 Records in relation to attendance at children's service**

Insert after clause 94 (4):

(5) **All children's services**

A record of attendance by children at a children's service must be made at the time of, or as soon as practicable after, the arrival and departure of the child

- (6) For the purposes of this clause, a *record of attendance by children* at a children's service means a record containing the full name of each child who attends the service each day, including the time of arrival and departure of the child.

**[50] Clauses 102 and 103**

Omit the clauses.

**[51] Clause 109**

Omit the clause. Insert instead:

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**109 Notice of significant change in circumstances of licensee**

- (1) A licensee of a children's service must give the Director-General written notice of any significant change that may affect the licensee's capacity to provide the children's service within one week after the change occurs.
- (2) In this clause, *significant change* means a significant change in the circumstances of the licensee or, in the case of a licensee that is not a natural person, in the circumstances of a person involved in the control and management of the licensee.
- (3) A significant change includes a change in financial circumstances, such as the licensee becoming bankrupt or going into receivership.

**[52] Clause 111 Notice of cessation of children's service**

Omit "of any class of children's service intends to cease providing the service".

Insert instead "of an approved children's service intends to cease providing the approved children's service (and it is not proposed that the service continue to be operated by another licensee)".

**[53] Clause 111A**

Insert after clause 111:

**111A Notice of transfer of operation of children's service**

- (1) If a licensee of an approved children's service intends to cease providing the approved children's service and another licensee (the *new licensee*) intends to commence providing that service, both licensees must give the Director-General written notice of that intention at least 6 weeks before the new licensee starts providing the approved children's service.
- (2) Within 1 week of the new licensee starting to provide the approved children's service, both licensees must give the Director-General written notice of that fact.

**[54] Clause 113A**

Insert after clause 113:

**113A Notice of appointment of authorised supervisor**

- (1) Within one week after appointing a person as authorised supervisor of an approved children's service, the licensee must give the Director-General written notice of that fact.

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- (2) Within one week after a person ceases to be the authorised supervisor of an approved children's service, the licensee must give the Director-General written notice of that fact.

**[55] Clause 114 Notice of criminal charges or convictions**

Insert at the end of the clause:

- (2) An authorised supervisor of a children's service must immediately give the Director-General written notice if the authorised supervisor is charged with or convicted of a notifiable offence.

**[56] Clause 122D Application for approval**

Insert "or children's service approval" after "licence" in clause 122D (1).

**[57] Clause 122D (2) and (2A)**

Omit clause 122D (2). Insert instead:

- (2) An application for an approval may not be made by a natural person unless he or she is of or above the age of 21 years.
- (2A) If development consent under the *Environmental Planning and Assessment Act 1979* is required for the conduct of a children's service at the premises of the proposed service, an application for an approval may not be made until development consent has been obtained.

**[58] Clause 122H Effect of approval**

Insert "or children's service approval" after "licence".

**[59] Clause 123 Review by Administrative Decisions Tribunal**

Omit clause 123 (a)–(f).

**[60] Clause 123 (2)**

Insert at the end of the clause:

- (2) An application may be made to the Administrative Decisions Tribunal for a review of a decision of a licensee of a family day care children's service to remove or suspend a family day care carer's name from the register for the service.

**[61] Clauses 123A and 123B**

Omit clause 123A. Insert instead:

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## **123A Review of decision to issue compliance notice**

- (1) A person who has been served with a compliance notice may apply to the Director-General for a review of the decision to issue the compliance notice.
- (2) The person must make the application within 28 days after being served with the compliance notice and may make only one application in respect of a compliance notice.
- (3) On receiving an application, the Director-General must review the decision to issue the compliance notice and may confirm, vary or revoke the decision.
- (4) The Director-General must notify the applicant of the outcome of the review within 21 days after receiving the application.
- (5) The decision to issue a compliance notice is stayed from the date on which the Director-General receives an application for review until the applicant is notified of the outcome of the review.

## **123B Information to be included in children's services register**

The Director-General may record in the children's services register in relation to an approved children's service particulars of any enforceable undertakings given by a person under Division 2 of Part 5 of Chapter 12 of the Act in relation to that approved children's service.

## **[62] Schedule 1B**

Omit Schedule 1B. Insert instead:

## **Schedule 1B Fees**

(Clauses 8 (3) and 20 (1))

<b>Matter</b>	<b>Fee (\$)</b>
Application fee in respect of a children's service approval authorising the operation of:	
(a) a home based children's service	187
(b) a mobile children's service	241
(c) a family day care children's service	241
(d) a centre based children's service:	
(i) provided to not more than 29 children	187

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<b>Matter</b>	<b>Fee (\$)</b>
(ii) provided to more than 29 children, but not more than 60 children	241
(iii) provided to more than 60 children	294
Annual fee in respect of a children's service approval authorising the operation of:	
(a) a home based children's service	700
(b) a mobile children's service	900
(c) a family day care children's service:	
(i) with not more than 99 full time places or the equivalent of 99 full time places	700
(ii) with more than 99 full time places or the equivalent of 99 full time places, but not more than 199 full time places or the equivalent of 199 full time places	900
(iii) with more than 199 full time places or the equivalent of 199 full time places	1,100
(d) a centre based children's service:	
(i) provided to not more than 29 children	700
(ii) provided to more than 29 children, but not more than 60 children	900
(iii) provided to more than 60 children	1,100

**[63] Schedule 2 Savings and transitional provisions**

Insert at the end of the Schedule:

**19 Sleeping facilities**

A children's service that operated immediately before 1 January 2011 may continue to comply with the requirements of the Australian/New Zealand Standard entitled AS/NZ 2172:2003, *Cots for household use—Safety requirements* for the purposes of clause 36 (6) instead of the Standard referred to in that subclause.

**[64] Dictionary**

Insert the following in alphabetical order:

*approval* has the same meaning as in section 199 of the Act.

*approved children's service* has the same meaning as in section 199 of the Act.

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*children's service approval* has the same meaning as in section 199 of the Act.

*children's services register* has the same meaning as in section 199 of the Act.

*compliance notice* has the same meaning as in section 199 of the Act.

*entity* means a body corporate, a trust, a partnership, an association or another entity (other than a natural person).

*licensed service provider* has the same meaning as in section 199 of the Act.

*supervisor approval* has the same meaning as in section 199 of the Act.

**[65] Dictionary, definition of "authorised supervisor"**

Omit the note.

**[66] Dictionary, definitions of "children's service record", "independent referee", "mobile children's service register" and "temporary supervisor"**

Omit the definitions.

**[67] Dictionary, definition of "licence"**

Insert "or *service provider licence*" after "*licence*".

**[68] Dictionary, definition of "licence"**

Omit the note.

**[69] Dictionary, definition of "licensee"**

Omit the note.

**[70] Dictionary, definition of "premises of a centre based children's service"**

Omit "licence". Insert instead "children's service approval".

**[71] Dictionary, definition of "premises of a mobile children's service"**

Omit "licence". Insert instead "children's service approval".

**[72] Dictionary, definition of "venue management plan"**

Omit "clause 17". Insert instead "clause 13".