

NSW Department of Community Services Children's Services Regulation 2004

After extensive review and consultation with child care providers, parents and early childhood professionals, the new *Children's Services Regulation 2004* comes into effect on 30 September 2004.

The *Children's Services Regulation 2004* replaces the *Centre Based and Mobile Child Care Services Regulation (No 2) 1996* and the *Family Day Care and Home Based Child Care Regulation 1996*.

Also on 30 September 2004, Chapter 12 of the *Children's and Young Persons (Care and Protection) Act 1998* replaced the *Children (Care and Protection) Act 1987* for children's services. Service providers with a licence under the 1987 Act will now automatically operate under the 1998 Act on the same basis as before.

Current service providers will not need to comply with the new service standards in the 2004 Regulation for the first 15 months. However the 2004 Regulation does affect all new providers. Changes are also reflected in new licensing application, assessment and monitoring processes.

WHEN WILL THE NEW REGULATION AFFECT ME AND MY CHILD CARE SERVICE?

There is a 15-month transition period for the new Regulation for existing children's service providers.

This means that from 30 September 2004, a licence retains the same conditions. Generally, the parts of the new Regulation which cover facilities and equipment, staffing, child numbers, operating arrangements such as programming and excursions and administrative requirements such as records and notices (Parts 3 to 7) do not apply until 1 January 2006.

All licensees will be required to comply with all the terms of the new Regulation from 1 January 2006, except for the requirement concerning sleeping areas for children under two years of age, which will come into effect on 1 January 2008.

A new requirement in the 2004 Regulation is that applications for a further licence from an existing provider must be lodged six months prior to the expiry of the current licence. For example, if a current licence expires on 5 February 2006 the provider must lodge their application for a further licence by 5 August 2005. This requirement is important because, under Chapter 12 of the 1998 Act, a service cannot continue operating when its licence has expired and while its application for a further licence is being considered (see right: "Applying for a licence").

If a licence application was made before 30 September 2004 and has not been determined, it will still be considered and determined under the 1987 Act. If the licence is subsequently granted, the date for granting will be made retrospectively as 29 September 2004.

Existing services whose applications for further licences fall due between 30 September 2004 and 31 December 2005 will be licensed under the new Act, but in line with conditions of the 1996 Regulations.

A schedule for the roll-out of the changes is located on the back page of this factsheet.

major changes

Applying for a licence

Services are no longer able to operate past the expiry date of their licence, even if their application for a further licence is under active consideration on the expiry date.

Instead, if an application for a further licence is not approved by the end of the licence term then the application is refused.

If an application for a review of the refusal is made, then the licence continues until the review is finalised by the Administrative Decisions Tribunal.

Authorised supervisors

An authorised supervisor who was appointed under the 1987 Act is automatically an authorised supervisor under the 1998 Act. A temporary authorised supervisor under the 1987 Act is automatically a temporary supervisor under the 1998 Act for the remainder of the time they were authorised to act in that role.

There are several changes for authorised supervisors. An authorised supervisor is allowed to supervise two services if there is another qualified staff member at each service. If the authorised supervisor is the only qualified staff member at a service, then only that service may be supervised. This is to make sure that a high quality service is being delivered and a suitably qualified person is overseeing delivery.

Family day care

'Primary family day care carer' and 'Relief family day care carer' are defined in the Dictionary section of the Regulation. *(continued page 2)*

" There is a 15-month transition period for existing providers "



This ensures that checking of relief carers occurs, and encourages more people to become carers as they know that dependable relief care is available should they need it.

There are no specific 'soft fall' requirements for family day care. However, services need to ensure their equipment does not constitute a hazard to children, in terms of the height from which a child can fall and be injured.

Glass and safety glass

The Regulation requires services to install safety glass – if the Building Code of Australia requires the area to be glazed with safety glass, or apply glass treatments, to glass on the premises below .75 metres in areas accessible to children. As a general rule this would only apply to glass – in windows or doors, however, where there is other glass in these areas that is considered to pose a risk to children, the service should either protect the glass from breaking, place a barrier in front of it, or remove it from the area.

Group sizes

The maximum group size for children from three to five years of age is reduced from 25 to 20. This does not change staffing numbers required, just the way children are organised.

More information about group sizes is provided on page 3 of this factsheet.

Mobile services

The Regulation introduces an arrangement known as a 'venue management plan' through which mobile child care services submit a plan describing how the safety and wellbeing of children at the premises will be met (venue does not meet facilities and equipment requirements).

Venue management plans may be submitted from the commencement of the new Regulation, but must be in place by 31 December 2005.

Numbers of school age children

Child care centres that provide care for school children on their licensed premises can take increased numbers of very young school children.

If the children being cared for are in Kindergarten or Year 1, a centre may take 20% of their licensed numbers. In grades above Year 1, the 10% maximum continues to apply.

Where the above percentages of school age children attending the service are exceeded, the 2004 Regulation requires that the school age children do not use space and amenities at the same time as younger children.

Primary care staff

Two primary care staff must check children are not left in a centre at the end of the day.

(Previously, staff other than primary care staff were able to complete an end-of-day check.)

Probity checking and child protection

Probity checks are required on anyone engaged in the operation or management of a children's service. This includes staff working with children, managers, book keepers, cooks etc. Volunteers must also be screened.

Authorised supervisors are required to successfully complete a course in child protection. Licensees are required to ensure staff and carers understand their responsibilities under the child protection legislation.

'Savings' provision

These provisions allow certain services to continue operating despite the fact they cannot meet new requirements. The main 'savings' are in relation to space requirements (see below).

Space requirements

In general terms, services are required to provide:

1. 3.25 square metres of unencumbered indoor space and seven square metres of outdoor space per child
2. dedicated spaces for administration / parent interviews and staff respite.

Existing services (including when an existing licensee applies for a new licence for the same service) which can comply with either or both of these space requirements will be expected to comply by 31 December 2005.

However, the licensee of an existing service can be permanently 'saved' through an exception outlined in the Regulation, even after 1 January 2006. Such a licensee:

- is not subject to the space requirements of the new Regulation
- has to meet the same space requirements as it did before 30 September 2004, up until 1 January 2006
- will have its space requirements set out on the licence after 1 January 2006.

In other words, if an existing licensee does not meet the space requirements, they will not be required to while they are the current licence holder. The licence will set out the space requirements the service must meet.

After 1 January 2008 all centre based services must have a room or area that is used only for sleeping for children under two years of age.

Staff to child ratios in mixed age groups

Staff to child ratios are not changing.

The ratios and group sizes applicable to each age group need to be maintained at all times, even when children are in mixed age care arrangements.

Nothing in the 2004 Regulation prevents two or more groups of children being brought together if it is necessary to carry out any activity set out in the program of activities provided by the service.

Where two or more groups are brought together, the groups may only be combined if the staff to child ratios are maintained. There is no change to the required staff to child ratio associated with bringing the children together.

Services that currently care for 3-6 year olds in a group of 25 (with three staff) are allowed to arrange the children into two or three groups within the one room. No additional staff are required for this to occur.

For example, where there are 28 children in groups of 20 children aged three to five and eight children aged two, the ratios would require three staff. The children would need to be divided into at least two groups (to maintain appropriate group sizes), and the three staff would supervise those groups. No additional staff would be required.

Video monitoring equipment

This equipment is permitted in a service for viewing at the service itself, but is no longer allowed for remote viewing such as over the Internet.

This change ensures the safety and privacy of children and staff, as the technology used with webcams cannot be guaranteed to be secure.

Seat belts

When transporting children on excursions, vehicles capable of seating more than nine persons are not required to be fitted with child restraints.

Powers of entry

The 2004 Regulation clarifies the Department's power to enter a children's service and inspect records. For example, the Regulation requires licencees not to hinder an authorised person from entering and inspecting the child care premises.

GROUP SIZES AND STAFF TO CHILD RATIOS

	1996 REGULATION	2004 REGULATION
Staff to child ratios	0-2 years – 1:5 2-3 years – 1:8 3-6 years – 1:10	0-2 years – 1:5 2-3 years – 1:8 3-6 years – 1:10
Group sizes	0-2 years – 10 2-3 years – 16 3-6 years – 25	0-2 years – 10 2-3 years – 16 3-6 years – 20
Definition of 'group'	One or more children supervised by one or more members of the primary contact staff of the service in an individual room or well-defined space within a room on the premises of the service, or an outdoor area of the premises of the service.	One or more children supervised by one or more primary contact staff members in: <ul style="list-style-type: none"> • an individual room or well-defined space within a room • a part of a room that is recognisably a space for a group • a well-defined outdoor area that is recognisably a space for a group.
Supervising mixed ages	All children of a particular age are to be supervised with the staff to child ratio required for that age group.	When a service is provided to a group of children who are not in the same age group, the ratio for the group is as specified for the youngest child in the group.

The following examples show how these arrangements can work in practice.

EXAMPLE 1

A child care centre has 29 children involved in various activities all in a single large indoor area. The ages of the children in the room are as follows:

- six children under the age of two
- nine children aged two to three
- 14 children, three to five years of age.

There are several acceptable ways to organise these children into groups and arrange their supervision by primary contact staff. One approach is:

- four of the children under the age of two could be supervised in one group with one staff member. One advantage of this as a starting point is that it allows the youngest of the under-tuos to be grouped together
- the remaining two children under two can then be supervised in a group with seven of the children who are aged two to three. Because this is a mixed age group of nine children, the staff to child ratio required for the youngest child must prevail. Therefore this group is staffed with a 1:5 ratio and two staff are required

- the remaining two children aged two to three (preferably those best suited to a mixed age group) can be supervised in a group of 16, with the 14 children over the age of three. Again, another mixed group is created so the 1:8 ratio required for the youngest children prevails. A further two staff are required.

While being in one room, these three groups must each be organised to make it clear which members of the primary contact staff are supervising which children.

With this approach, five primary contact staff are required.

As noted in the table, the 2004 Regulation requires a lower group size for three to five year olds. In this example, because the group with the three to five year old children contains only 16 children, there is no difference in the staffing or group requirements between the requirements of *Centre Based and Mobile Child Care Services Regulation (No 2) 1996* and the 2004 Regulation.

EXAMPLE 2

A child care centre has 39 children of the following ages:

- six children under the age of two
- nine children aged two to three
- 24 children, three to five years of age.

The introduction of the 2004 Regulation means that from January 2006, supervising the three to five year olds in one group is no longer acceptable because of the lower group size requirement.

Several options remain. One acceptable and typical approach is:

- 20 children aged three to five in one group with two staff
- a second group of 13, made up of the remaining four three to five year olds, together with the nine two to three years olds. The presence of the two to three year olds means that a 1:8 ratio applies, and therefore two staff will supervise
- a third group of six children all under two years of age with two staff.

In this approach, six primary staff are required.

SCHEDULE FOR THE ROLL-OUT OF CHANGES

DATE	CHANGE
30 September 2004	<p><i>Children's Services Regulation 2004</i> takes effect for:</p> <ul style="list-style-type: none"> • prospective licensees who lodge an application to establish a new children's service on or after this date • prospective licensees who purchase an existing service, effecting a change of ownership on or after this date. <p>Applications for a new licence received before 30 September 2004 will be processed in accordance with the 1996 Regulations.</p> <hr/> <p>Chapter 12 of the <i>Children's and Young Persons (Care & Protection) Act 1998</i> is proclaimed. It deals with the children's services aspects of the Act.</p> <p>Section 213 of the Act (relating to the extension of Chapter 12 and the <i>Children's Services Regulation 2004</i> to cover child care services located on school premises and operated by the school) is not proclaimed at this time.</p>
30 September 2004 to 31 December 2005	<p>The Regulation has a 15-month transition period during which existing children's services will continue to operate under Regulations in effect prior to 30 September 2004.</p> <p>Child care licences due for renewal during this period will be re-licensed under the 1998 Act but will continue to be regulated under the 1996 Regulations.</p>
1 July 2005	<p>A new licensing approach comes into effect for all existing children's services whose licences expire on or after 1 January 2006 and who make an application for a further licence. Application for a further licence must be made at least six months before the expiry of a licence.</p>
1 January 2006	<p><i>Children's Services Regulation 2004</i> comes into effect for all existing children's services licences.</p> <p>Existing licensed centre based services remain exempt from the various space requirements described at Clause 30 of the Regulation. Instead these services must meet the same space requirements as before 30 September 2004. These requirements will be set out on the licence. No further reference to the 1989 Regulation will need to be made.</p>
1 January 2008	<p>All centre based children's services have to comply with the requirement to have a room or area that is used only for sleeping for children under two years of age. (See Schedule 2 of the Regulation.)</p>

WHERE CAN I GET MORE INFORMATION?

This factsheet is an introduction to the *Children's Services Regulation 2004* for providers of children's services in NSW.

More information about the new Regulation is available on the DoCS website www.community.nsw.gov.au. Please click on 'child care services' in the black menu bar under the main banner, then choose 'providing children's services'. On the 'children's services' page, select 'regulations' from the blue bar on the left side of the screen.

The new Regulation is publicly available from the Government Sales and Information Service on (02) 9238 0950, or from www.legislation.nsw.gov.au.