

# TASMANIA

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## CHILD CARE AMENDMENT BILL 2005

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# **CHILD CARE AMENDMENT BILL 2005**

*(Brought in by the Minister for Education, the Honourable  
Paula Catherine Wriedt)*

## **A BILL FOR**

### **An Act to amend the *Child Care Act 2001***

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

#### **1. Short title**

This Act may be cited as the *Child Care Amendment Act 2005*.

#### **2. Commencement**

This Act commences on the day on which this Act receives the Royal Assent.

#### **3. Principal Act**

In this Act, the *Child Care Act 2001*\* is referred to as the Principal Act.

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\*No. 62 of 2001

#### 4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by omitting “by a child care service provider or” from the definition of “ancillary staff”;
- (b) by omitting the definitions of “Appeals Panel” and “Appeals Panel Register”;
- (c) by omitting the definition of “child care service provider”;
- (d) by omitting the definition of “responsible person” and substituting the following definition:

**“responsible person”**, in respect of a child care service provided under a licence held by an individual or an incorporated or unincorporated body, means –

- (a) an individual, other than the person in charge of the child care service, to whom is assigned by the licensee the general responsibility for, and supervision of the operations of, the provision of the child care service under the licence;  
or
- (b) any other body or individual, other than the person-in-charge of the

child care service, who has the authority to give directions and make decisions in respect of the management of that child care service;

**5. Section 13 amended (Application for licence)**

Section 13 of the Principal Act is amended as follows:

- (a) by omitting paragraphs (b) and (c) from subsection (2);
- (b) by omitting subsection (3).

**6. Section 14 repealed**

Section 14 of the Principal Act is repealed.

**7. Section 15 amended (Investigation of application)**

Section 15 of the Principal Act is amended as follows:

- (a) by inserting the following subparagraph after subparagraph (ii) in subsection (3)(b):
  - (ia) each person who the applicant intends to employ or use, or is likely to be employed or used, as a responsible person;

- (b) by omitting from subsection (3)(b)(iii) “responsible person,”;
- (c) by omitting from subsection (3)(b)(iv) “subparagraph (i), (ii) or (iii)” and substituting “subparagraph (i), (ii), (ia) or (iii)”;
- (d) by omitting paragraphs (c) and (d) from subsection (3);
- (e) by omitting subsections (5), (6) and (7).

## 8. Sections 15A and 15B inserted

Before section 16 of the Principal Act, the following sections are inserted in Division 3:

### 15A. Criteria for grant of, or holding, licence

- (1) In this section –

“**applicant**” means applicant for a licence;

“**child care service**” includes a child care service that would be authorised by the prospective licence if granted;

“**former Act**” means the *Child Care Act 1960* (cited as the *Child Welfare Act 1960* before 1 July 2000);

“**licence**” includes a prospective licence;

**“person-in-charge, ancillary staff and child carer”** includes a person that an applicant has nominated in the application for a licence, or has later been nominated by the holder of a licence, by notice provided to the Secretary, to be employed or used in that position.

- (2) In determining whether an applicant for a licence or a holder of a licence is a fit and proper person to hold or to continue to hold a licence, the Secretary must take into account any matter the Secretary considers relevant including, but not limited to, any of the following matters:
- (a) whether the applicant or holder is a suitable person to operate or provide the child care service;
  - (b) where the applicant or holder is –
    - (i) an incorporated or unincorporated body; or
    - (ii) the servant or agent of an incorporated or unincorporated body –  
whether each director and other person concerned in the management of that body is a suitable person to be concerned in the operation or provision of the child care service;

- (c) whether any responsible person is a suitable person –
  - (i) to have responsibility for, and supervision of the operations of, the provision of the child care service under the licence; or
  - (ii) to have the authority to give directions and make decisions in relation to the management of the child care service provided under the licence;
- (d) whether any person-in-charge, child carer and ancillary staff are suitable persons to care for or have contact with children who are being, or would be, provided with the child care service under the licence;
- (e) whether any spouse or other close relative of a person referred to in paragraph (a), (b), (c), (d) or (f) might have contact with children who are being, or would be, provided with the child care service under the licence and, if so, whether that spouse or other close relative is a suitable person to have contact with such children;
- (f) whether any other person who the Secretary considers may have



frequent or extended contact with children who are being, or would be, provided with the child care service under the licence is a suitable person to have contact with such children;

- (g) whether any person referred to in paragraph (a), (b), (c), (d), (e) or (f) has been charged with, or found guilty of, in Tasmania or elsewhere, within the period of 10 years immediately preceding the time at which the Secretary is determining whether the applicant or holder is a fit and proper person to hold the licence, an offence punishable by a period of imprisonment;
- (h) whether any person referred to in paragraph (a), (b), (c), (d), (e) or (f) has been charged with, or found guilty of, or otherwise disciplined for, an offence against –
  - (i) this Act, the regulations or the Standards; or
  - (ii) a previous Act or law that substantially corresponds to this Act, the regulations or the Standards, including the former Act, the *Child Protection Act 1974* and any regulations or Standards made under either of those Acts; or

- (iii) the *Family Violence Act 2004*; or
  - (iv) the *Children, Young Persons and Their Families Act 1997*; or
  - (v) an enactment or law of another State or a Territory that substantially corresponds to this Act, the regulations, the Standards or another enactment or law referred to in subparagraph (ii), (iii) or (iv);
- (i) whether any person referred to in paragraph (a), (b), (c), (d), (e) or (f) is or has been subject to –
- (i) an order made under the former Act, the *Children, Young Persons and Their Families Act 1997* or the *Family Violence Act 2004*; or
  - (ii) a restraint order made under the *Justices Act 1959*;
- (j) whether any person referred to in paragraph (a), (b), (c), (d), (e) or (f) has, in Tasmania or elsewhere –

- (i) been refused a licence or other permission of any type to provide child care or provide, manage or operate a service or business which provides child care; or
  - (ii) had such a licence or other permission suspended or cancelled;
- (k) whether any person referred to in paragraph (a), (b), (c), (d), (e) or (f) is, or previously has been, concerned in the provision, management or operation of a service or business which provides child care, or in the provision of child care, in Tasmania or elsewhere and, if so, the quality and standard of that service or business and the child care so provided;
- (l) any reports provided by the Commissioner of Police under section 15B(5);
- (m) the result of any assessment undertaken in respect of any person referred to in paragraph (a), (b), (c), (d), (e) or (f) in compliance with a requirement of the Standards or otherwise undertaken;
- (n) whether each person referred to in paragraph (a), (b), (c), (d), (e)

or (f) is of good repute having regard to character, honesty and integrity;

(o) the qualifications and experience of the persons referred to in paragraphs (a), (b), (c) and (d);

(p) the knowledge of the persons referred to in paragraphs (a), (b), (c) and (d) relating to this Act, the regulations and the relevant Standards;

(q) any other matter prescribed by the regulations or Standards.

(3) In determining whether any person, other than the applicant, is a fit and proper person, or a suitable person, for the purposes of subsection (2), the Secretary must apply that subsection, with necessary modification and adaptation, as if the person concerned were the applicant or holder of the licence.

**15B. Police report for determination of fit and proper person**

(1) In this section –

**“investigation”** means an investigation by the Secretary to determine –

(a) whether an applicant for a licence should be granted that licence; or

- (b) whether a holder of a licence is a fit and proper person to continue to hold that licence; or
  - (c) whether a person nominated by an applicant for a licence or a holder of a licence, either in an application for a licence or by notice provided to the Secretary, for a position of responsible person, person-in-charge, child carer or ancillary staff is a fit and proper person to hold or to continue to hold that position.
- (2) In an investigation, the Secretary may require one or more of the following persons to authorise the Secretary to obtain a report from the Commissioner of Police in respect of convictions and proceedings taken against the person:
  - (a) the applicant for the licence or holder of the licence;
  - (b) if that applicant or holder is –
    - (i) an incorporated or unincorporated body; or
    - (ii) any servant or agent of any such body –

- each director and other person concerned in the management of that body;
- (c) any responsible person;
  - (d) any person-in-charge, child carer or ancillary staff;
  - (e) any spouse or other close relative of a person referred to in paragraph (a), (b), (c), (d) or (f) who might have contact with children who are being, or would be, provided with the child care service under the licence;
  - (f) any other person who the Secretary considers may have frequent or extended contact with children who are being, or would be, provided with the child care service under the licence.
- (3) In an investigation, the Secretary may require a person referred to in subsection (2) to have his or her photograph, fingerprints and palm prints taken as specified in the requirement for the purposes of the report of the Commissioner of Police made under subsection (5).
- (4) The Secretary may refer to the Commissioner of Police –
- (a) the name of any person referred to in subsection (2); and

- (b) any photographs, fingerprints and palm prints taken from that person; and
  - (c) any information and documentation that the Secretary considers relevant to the investigation.
- (5) The Commissioner of Police must inquire into and report to the Secretary on any matters concerning the application that the Secretary requests.
- (6) Sections 22(1), 31(1), 45(1) and 108 of the *Youth Justice Act 1997* do not apply to the identification in a report under subsection (5) of a youth, within the meaning of that Act, in respect of any action or proceedings referred to in those sections.

**9. Section 16 amended (Grant or refusal of licence)**

Section 16 of the Principal Act is amended as follows:

- (a) by omitting from subsection (3)(c) “any fee payable under section 13 or”;
- (b) by omitting subsection (4) and substituting the following subsection:
  - (4) In determining whether an applicant is a fit and proper person to hold the licence applied for, the Secretary must take into account any matter that the

Secretary considers relevant including, but not limited to, the matters specified in section 15A(2).

- (c) by omitting subsection (5).

**10. Section 17 amended (Issue of licence or notice of refusal)**

Section 17(1) of the Principal Act is amended by omitting “for the licence”.

**11. Section 22 amended (Amendment of licence)**

Section 22 of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) from subsection (2);
- (b) by inserting the following subsection after subsection (2):
- (2A) A prescribed fee is payable to the Secretary for a request under this section.

**12. Section 23 amended (Renewal of licence)**

Section 23 of the Principal Act is amended as follows:

- (a) by omitting from subsection (3)(b) “application” first occurring;



- (b) by omitting subsection (4);
- (c) by omitting from subsection (5) “Section 13(2), (3) and (4) and sections 14, 15, 16, 17 and 18” and substituting “Section 13(2) and (4) and sections 15, 15A, 15B, 16, 17 and 18”.

### **13. Section 25 amended (Disciplinary action)**

Section 25 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(b) “section 16(4)” and substituting “section 15A(2)”;
- (b) by inserting the following subsection after subsection (2):
  - (2A) Subject to this section, the Secretary may take disciplinary action, by issuing a letter of censure or by the imposition of a fine not exceeding 20 penalty units, against a responsible person who has contravened this Act, the regulations, the Standards or a condition to which the relevant licence is subject.
- (c) by inserting in subsection (3) “or responsible person” after “licence”;
- (d) by inserting in subsection (4) “or responsible person” after “licence”;

- (e) by inserting in subsection (6) “or responsible person” after “licence”;
- (f) by inserting in subsection (7) “or responsible person” after “licence”.

**14. Section 26 amended (When licence ceases to have effect)**

Section 26(1) of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

- (b) if the licence is surrendered, when that surrender takes effect under section 27;  
or

**15. Section 27 amended (Surrender of licence)**

Section 27(2) of the Principal Act is amended by omitting “, not less than 4 weeks after the notice is provided to the Secretary,”.

**16. Section 30 substituted**

Section 30 of the Principal Act is repealed and the following section is substituted:

**30. Insurance**

The holder of a licence must ensure that insurance cover is taken out and maintained in respect of the child care service as required by the regulations, the Standards or a condition to which the licence is subject.

Penalty: Fine not exceeding 20 penalty units.

**17. Section 33 substituted**

Section 33 of the Principal Act is repealed and the following section is substituted:

**33. Display of licence or certificate of registration**

(1) In this section –

**“certificate of registration”** means a certificate or other document that –

- (a) is issued to a person by an approved registration body; and
- (b) acknowledges that the person is registered by that body as a registered carer;

**“parent”** means a parent of a child who is being provided, or may be provided, with child care by a registered carer.

(2) The holder of a licence must ensure that the current licence is displayed in a prominent position for public view at the address where child care is provided or at the address of the child care service.

Penalty: Fine not exceeding 2 penalty units.

- (3) A registered carer must display any certificate of registration issued to him or her in a prominent position for view by parents at the address where the carer provides child care.

Penalty: Fine not exceeding 2 penalty units.

**18. Section 34 amended (Advertising not to be false or misleading)**

Section 34 of the Principal Act is amended as follows:

- (a) by inserting “and a responsible person” after “a licence”;
- (b) by inserting “or in which the responsible person has an interest” after “the holder”.

**19. Section 38 amended (Inspections of child care and child care services)**

Section 38(4) of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

- (b) where the applicant or holder is –
- (i) an incorporated or unincorporated body; or
- (ii) a servant or agent of any such body –

a director or other person concerned in the management of that body; or

**20. Section 44 amended (Emergency removal of children)**

Section 44(6) of the Principal Act is amended by inserting “registered with that approved registration body” after “carer”.

**21. Section 45 amended (Emergency suspension of licence or registration)**

Section 45 of the Principal Act is amended as follows:

(a) by omitting subsection (5) and substituting the following subsections:

(5) If the Secretary suspends a licence under this section, the Secretary may proceed to take disciplinary action under Division 4 of Part 3 or the Standards.

(5A) If an approved registration body suspends a registration under this section, it may proceed to take disciplinary action under the Standards.

(b) by omitting from subsection (6) “child care service that is the provision of child care by” and substituting “person who has been registered by that body as”.

**22. Section 47 amended (Child Care Standards)**

Section 47(3) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a)(iii) “services;” and substituting “services; and”;
- (b) by inserting the following subparagraph after subparagraph (iii) in paragraph (a):
  - (iv) responsible persons;
- (c) by omitting paragraph (e) and substituting the following paragraph:
  - (e) the assessment of –
    - (i) the operators or providers of child care or child care services; and
    - (ii) persons employed by the operators or providers, or employed in the operation or provision, of child care or child care services; and
    - (iii) other responsible persons –  
and the provision of assessments and the recognition of assessments and qualifications gained by such persons;
- (d) by inserting in paragraph (g)(iii) “registered with that approved registration body” after “carer”.

**23. Section 50 amended (Reviewable decisions)**

Section 50 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “Appeals Panel” and substituting “Magistrates Court (Administrative Appeals Division) under the *Magistrates Court (Administrative Appeals Division) Act 2001*”;
- (b) by inserting the following subsection after subsection (2):
  - (3) If, on the commencement of the *Child Care Amendment Act 2005*, an appeal against a reviewable decision has been instituted but not finally determined under this Act, this Act continues to apply to the appeal as if the amendments made by that Act had not taken effect.

**24. Part 8, Divisions 2, 3 and 4 repealed**

Divisions 2, 3 and 4 of Part 8 of the Principal Act are repealed.

**25. Section 64 amended (Register of child care services)**

Section 64(1) of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

- (b) persons-in-charge and persons acting in the position of person-in-charge.

**26. Section 75 amended (Regulations)**

Section 75 of the Principal Act is amended by inserting after subsection (2) the following subsections:

- (2A) The regulations may provide that any fee payable under this Act may vary by reference to a reasonable estimate of the cost of investigations and other work required to be done by the Secretary for the purposes of this Act.
- (2B) The regulations may provide that the Secretary may waive payment of part or all of any fee payable under the regulations.

**27. Section 77 repealed**

Section 77 of the Principal Act is repealed.

**28. Schedule 1 repealed**

Schedule 1 to the Principal Act is repealed.