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Child Care in Queensland: Towards a National Quality Framework and Recent Amendments to the *Child Care Act* 2002 (Qld)

Around 43% of Australian children from birth to the age of 12 have some form of child care arrangements, with 22% of them attending formal child care services.

The formal child care industry is subject to legislative and administrative oversight by the Commonwealth Government and state or territory governments. State and territory governments are responsible for licensing child care services, as well as establishing, and ensuring compliance with, regulatory standards and obligations. In Queensland, the regulatory framework is provided by the Child Care Act 2002 (Qld) and the Child Care Regulation 2003 (Qld). For eligible parents of a child in child care to be able to claim the Child Care Benefit, the service must participate in the Commonwealth Government's quality assurance systems that overlay the licensing requirements and obligations imposed by state or territory legislation.

1 January 2012 will mark the establishment of a nationally consistent regulatory framework (the National Quality Framework) for child care services throughout the country, with changes to be rolled out over several years, beginning in July 2010. It therefore seems timely to consider the current regulatory environment for child care services operating in Queensland. This Research Brief updates an earlier Queensland Parliamentary Library publication, the Child Care Bill 2002 (Qld), and outlines the new compliance publication scheme and compliance history logbook requirements. The new National Quality Framework, to replace existing licensing and accreditation processes, will also be considered in relevant contexts.

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EXECUTIVE SUMMARY

Around 43% of Australian children from birth to the age of 12 have some form of child care arrangements, with 22% of them attending formal child care services. The formal child care industry is subject to legislative and administrative oversight by the Commonwealth Government and state or territory governments.

The Research Brief begins, in **Section 2**, with a consideration of the various types of child care services operating in Queensland. State and territory governments are responsible for licensing child care services and establishing, and ensuring compliance with, regulatory standards and obligations. In Queensland, the state level regulatory environment is provided by the *Child Care Act 2002* (Qld) and the *Child Care Regulation 2003* (Qld), administered by the Department of Education and Training's Office for Early Childhood Education and Care (OECEC). Child care services that are **centre based child care services** (including long day care, occasional care, limited hours care, school age care and kindergartens) and **home based care services** must be licensed. On the other hand, **stand alone care** provided to up to six children in a home does not need to be licensed but must abide by legislative requirements.

The Commonwealth Government's quality assurance systems build upon the licensing requirements and obligations imposed by state or territory legislation for long day care, family day care, outside school hours care, occasional care or in-home care services. For parents of a child in child care to be able to claim the Child Care Benefit (if otherwise eligible), the service must participate in the Commonwealth Government's approval and accreditation process.

Section 3 very briefly considers the establishment of the new **National Quality Framework (NQF)** which will replace existing licensing and accreditation processes from January 2012. The NQF proposes to deliver a national streamlined framework, including a new National Quality Standard, for the regulation and assessment of long day care, family day care, outside school hours care and kindergartens across Australia.

Section 4 discusses the **licensing** of Queensland child care services and the matters that must be considered for issuing a licence, including the guiding principles of the Act; the suitability of the licensee to conduct child care and the suitability of the facilities and premises. The **conditions** applying to licences, particularly regarding the maximum licensing capacity of services, are also considered.

The general requirements and obligations imposed upon centre based and home based child care services are discussed in **Section 5**. The requirements currently applying to such services, considered in this section, include those concerning **group sizes; staffing levels; staff: child ratios; general operational responsibilities** (e.g. safety and wellbeing of children; standards of facilities; hygiene and cleanliness). In addition, licensees must ensure certain standards are met for **programs, activities and experiences** provided to the children in care and that relevant **information** and documentation is supplied to parents and/or otherwise accessible. Changes under the new **NQF** will include assessments of child care services against a new National Quality Standard, a transparent quality

ratings system, and new staff: child ratios to ensure there are more carers to look after children.

Section 6 of the Research Brief considers **qualifications of carers** under the current legislation. Most carer positions in centre based child care services require at least a certificate III or IV in appropriate areas of child care related studies or a tertiary qualification. The various changes under the **NQF** will enhance those qualification requirements.

The various **compliance and enforcement** actions that the Queensland OECEC can take against licensees failing to meet their licence obligations or contravening the child care legislation are discussed in **Section 7**. The measures include issuing **compliance notices** requiring action to be taken to remedy a breach of the legislation or of the licensing requirements; and the **amendment, suspension or revocation of licences** where certain grounds of noncompliance or unsuitability exist. This section also considers recent amendments introducing a **website publication scheme** for providing information on the OECEC's website about compliance notices that have been given for more serious or repeated breaches and a new requirement for licensees to keep **compliance history logbooks** containing information about compliance notices and licence revocations or suspensions in relation to the licensee.

Section 8 briefly looks at **stand alone care** services which do not have to be licensed but must comply with relevant legislative requirements regarding working with children screening obligations; the numbers and ages of children in care; and insurance obligations. Providers of stand alone care can be issued with compliance notices for breaches of the legislation and the new website publication scheme also applies to these services.

Finally, **Section 9** provides a list of legislation and relevant government agencies dealing with the provision of child care services in other Australian states and territories.

1 INTRODUCTION

Around 43% of Australian children from birth to the age of 12 are in some form of child care, with 22% of them attending formal child care services. Long day care is the most common type of formal service attended, with 12% of children doing so in June 2008.¹ Parents and guardians entrusting their young children to child care services want to ensure that their offspring receive high quality early childhood education and care and have the best opportunities for social, cognitive and emotional development. As well as playing an important part in children's early education, the child care industry also contributes to the Australian economy by enabling parents to participate in work and study. The industry also employs more than 100,000 people across Australia.²

The formal child care industry³ is subject to legislative and administrative oversight by the Commonwealth Government and state or territory governments. State and territory governments are responsible for licensing child care services and establishing, and ensuring compliance with, regulatory standards and obligations. In Queensland, the regulatory framework is provided by the [Child Care Act 2002 \(Qld\)](#) and the [Child Care Regulation 2003 \(Qld\)](#). The Commonwealth Government provides financial assistance to families who use Commonwealth approved/accredited child care services. For eligible parents of a child in a child care service to be able to claim the Child Care Benefit, the service must participate in the Commonwealth Government's quality assurance systems that overlay the licensing requirements and other obligations imposed by state or territory legislation.

1 January 2012 will mark the establishment of a nationally consistent regulatory framework (the National Quality Framework) for child care services throughout the country, with changes to be rolled out over several years. It therefore seems timely to consider the current regulatory environment for child care services operating in Queensland. This Research Brief updates an earlier Queensland Parliamentary

¹ Australian Bureau of Statistics, [Childhood Education and Care, Australia, June 2008](#), October 2009, Cat 4402.0. This publication presents estimates of child care arrangements and early childhood education taken from the June 2008 Childhood Education and Care Survey.

² Commonwealth Department of Education, Employment and Workplace Relations (DEEWR), [Survey of Employers' Recruitment Experiences, Australian Child Care Industry](#), October 2008, p 5.

³ 'Formal child care' embraces regulated/approved government funded care services as opposed to 'informal care' provided by family, friends, baby sitters etc.

Library publication, the [Child Care Bill 2002 \(Qld\)](#),⁴ and outlines the new compliance publication scheme and compliance history logbook requirements for Queensland child care services. The new National Quality Framework, to replace existing licensing and accreditation processes, will also be considered in relevant contexts.

2 QUEENSLAND CHILD CARE SERVICES

Around 42% of Queensland children aged 0-12 years are in some type of child care; most (25%) attending formal child care services.⁵

2.1 ROLE OF THE STATE GOVERNMENT

The current regulatory environment for Queensland child care services is provided by the [Child Care Act 2002 \(Qld\)](#) (the [Act](#)) and the [Child Care Regulation 2003 \(Qld\)](#) (the [Regulation](#)) which are administered by the Department of Education and Training's [Office for Early Childhood Education and Care](#) (OECEC).⁶

In Queensland, child care services that regularly provide care for seven or more children for reward must be licensed (ss 5, 16). The two types of licensed child care services operating in Queensland are:⁷

- **centre based services** – child care services not provided in a home and include:
 - **long day care**: centres providing care for larger groups of children and generally operating for at least 10 hours a week for at least 48 weeks each year. While catering mainly for 0-6 year olds, some services may offer before and/or after school care for children up to 12 years of age;
 - **limited hours care**: centres providing care for smaller groups of children (up to 30 children) for a maximum of 20 hours a week;
 - **occasional care**: centres providing care on an occasional basis;

⁴ [Child Care Bill 2002 \(Qld\)](#), RBR 2002/28, Queensland Parliamentary Library, October 2002.

⁵ ABS, Childhood Education and Care, Australia, June 2008, [Queensland Tables](#), 44020DO002_200802, Table 1.

⁶ The OECEC was established in January 2009 and took over responsibility for early childhood education and care from the Queensland Department of Communities.

⁷ Queensland Department of Communities, '[Understanding early childhood education and care services](#)', Fact Sheet.

- **kindergartens:** centres providing care for children in the year prior to Prep (i.e. must turn 4 years old by 30 June in the year in which they attend kindergarten) for a minimum of 15 hours a week and for at least 40 weeks of the year;⁸ and
- **school age care** (centres providing before and/or after school care or before and/or after school and/or vacation care for children but not those providing just vacation care); and
- **home based services** – child care services provided for seven or more children in one or more private homes of carers (commonly known as ‘family day care’). Central coordination units organise and support a network of carers.

A person can conduct a **stand alone service** in his or her home or other place (e.g. a church) for a maximum of six children from birth to 12 years (not more than four of whom are not yet school children). While the service is subject to the Act, it does not have to be licensed.⁹

A number of types of care are not ‘child care services’ and are not covered by the Act. Examples are: services providing primary, secondary or special education; services principally conducted to provide residential care, therapeutic services, instruction in an activity (e.g. dance, music or sport), tutoring or coaching etc., recreational activities; care by relatives (see s 5 of the Act for the other exclusions).

The Queensland Department of Education and Training’s (the Department’s) [Annual Report 2008-2009](#) notes that, during the reporting year, there were 2,547 licensed child care services in Queensland including 596 school age care services, 84 home based services and 1,867 centre based services.

2.2 ROLE OF THE COMMONWEALTH GOVERNMENT

Currently, the Commonwealth Government has formal quality assurance systems in place for child care services which complement and build upon the licensing regime and regulatory requirements operating in each jurisdiction. To enable families using a particular child care service to receive financial assistance towards the costs of the care, the service must, after obtaining a licence, go through Commonwealth Government approval and accreditation processes. The responsible Commonwealth agency is the Department of Education, Employment

⁸ Queensland Department of Education and Training, [Office for Early Childhood Education and Care](#) (OECEC), [2010 Kindergarten Funding Scheme: Guidelines for Long Day Care Services](#)

⁹ See Part 5 of the [Child Care Act 2002](#).

and Workplace Relations (DEEWR), [Office of Early Childhood Education and Child Care \(OECECC\)](#).

An **approved child care service** is long day care, family day care, outside school hours care,¹⁰ occasional care or an in-home care service that has been approved for the purposes of the Commonwealth Government's Child Care Benefit. To be approved, the service must meet relevant standards and requirements such as having qualified staff, being open for certain hours, and complying with health and safety requirements. The Child Care Benefit is available to parents/guardians of children attending an approved service who meet the eligibility requirements and helps to meet the costs of child care.¹¹

An **accredited child care service** is one that complies with, or is working towards compliance with, the Commonwealth Government's quality assurance system. The quality assurance requirements seek to build upon state and territory licensing requirements. The three types of services that must have accreditation as a condition of approval for Child Care Benefit purposes (to enable families to claim the Child Care Benefit) are long day care, family day care and outside school hours care. Assessments of those services are undertaken periodically and by way of 'spot visits' by the [National Childcare Accreditation Council \(NCAC\)](#), an independent body funded by the Commonwealth Government. The NCAC reports about a service that is not complying with the quality standards in areas such as learning and development; health, safety and wellbeing; and staff relations with children.¹²

3 NATIONAL QUALITY FRAMEWORK REFORMS

At the December 2009 meeting of the Council of Australian Governments (COAG), a new [National Quality Framework \(NQF\)](#) for early childhood education and care and outside school hours care was agreed upon by all Australian governments.¹³ The NQF will be fully in place on 1 January 2012, replacing the

¹⁰ Before and after school care and vacation care.

¹¹ Commonwealth Department of Education, Employment and Workplace Relations (DEEWR), Office of Early Childhood Education and Child Care (OECECC), www.mychild.gov.au, [FAQs](#). Some families will also qualify for the Child Care Rebate providing extra assistance for those using approved care services to undertake work, training or study.

¹² Commonwealth OECECC, www.mychild.gov.au, [Fact Sheet 15](#); [FAQs](#).

¹³ The first step towards the development of the NQF was the release of a [Discussion Paper](#) in August 2008 followed by public consultation and a report from an [Expert Advisory Panel](#). In July 2009, COAG sought further public comment via the publication of a COAG [Consultation](#)

diverse range of licensing and regulatory requirements of each state and territory with a unified national system. It seeks to deliver a nationally consistent higher standard of care for children and provide more information for parents about available service options.¹⁴ There will be changes to staff: child ratios and qualifications of carers to be phased in over several years under a new [National Quality Standard](#).¹⁵ Some aspects of the National Quality Standard will be rolled out from 1 July 2010, with full implementation from 1 January 2012. From that date, a jointly governed national quality system will monitor long day care, family day care, kindergarten and outside school hours care.

It is intended that the NQF will replace the current licensing and accreditation processes undertaken by each state and territory and overseen by the NCAC, meaning that child care services will interact with just one body for quality assessment rather than several.¹⁶ A national body will guide the management of the NQF and Victoria will be the lead jurisdiction for the national legislative framework.¹⁷ Review of the Queensland [Child Care Act 2002](#) is occurring to enable implementation of the new national standards in Queensland.

The NQF forms a key component for achieving the COAG endorsed [Investing in the Early Years: A National Early Childhood Development Strategy](#) to guide government reforms focusing on children under eight years and their families. It also plays a part in the COAG [Early Years Learning Framework](#) which describes the principles, practice and outcomes essential to support and enhance young children's learning from birth to five years of age, as well as their transition to school.

Further information about the key reform areas of the NQF is provided in the relevant contexts throughout this Brief.

[Regulation Impact Statement](#) (CRIS). Consultations on the CRIS occurred during July and August 2009, including forums, focus groups, written submissions on a Regulation Impact Statement, and survey responses. The culmination of this process was the release of a [Regulation Impact Statement](#) in December 2009.

¹⁴ Queensland OECEC, '[Special Edition of "A to Z of Early Childhood"](#)', e-newsletter, 10 December 2009.

¹⁵ [National Quality Standard for Early Childhood Education and Care and School Age Care](#): see Queensland OECEC, [National Reforms](#).

¹⁶ Queensland OECEC, [National Reforms](#).

¹⁷ Council of Australian Governments, 28th Meeting, Brisbane, 7 December 2009, [Communiqué](#), p 4.

4 LICENSING OF CHILD CARE SERVICES IN QUEENSLAND

Currently the Queensland [Child Care Act 2002](#) requires **centre based** and **home based** child care services in Queensland to be licensed. Operating such a service without a licence is an offence and can attract a fine of up to \$10,000 for a first offence (by an individual) (s 16).

The maximum length of a licence for centre based and home based child care services is three years (s 14) but a licence can be renewed pursuant to s 21. It can also be transferred or surrendered, or it may be amended, suspended or revoked (considered later in this Brief).¹⁸ A provisional licence can be issued for up to three months (s 20) in circumstances where there are some minor matters that need to be resolved within those three months but, apart from these things, the licence would have been granted.

4.1 ELIGIBILITY FOR A LICENCE

In deciding whether or not to issue, renew, amend, suspend or revoke a licence, or to impose conditions upon it, the chief executive is required by Part 2, Division 4 of the Act to consider a number of matters:¹⁹

- the Act's **guiding principles** (in s 9). These principles include making the child's best interests the paramount concern as well as ensuring that child care services are provided in a way that protects children from harm, respects their dignity and privacy, promotes wellbeing and provides positive experiences and also meets children's other needs as set out in those principles (s 25);
- the **suitability** of the licensee/applicant (or, if a corporation, each executive officer and nominee). An individual is not suitable if he or she does not have a current positive prescribed notice (Blue Card) or if there is a prohibition notice in force for the individual (s 26(2)-(3)). **Prescribed notices** are issued by the [Commission for Children and Young People and Child Guardian](#) and relate to criminal history checking of persons in certain

¹⁸ Sections 40-55. Fees that apply to obtaining a new licence, renewals and other dealings with licences are set out in Schedule 3 of the [Regulation](#).

¹⁹ Licensing decisions can be appealed to the [Queensland Civil and Administrative Tribunal](#) (QCAT) (s 163).

types of child-related activities and employment.²⁰ Persons working in child care services must possess a current Blue Card.

A **prohibition notice** is a notice issued by the chief executive under Part 6 of the Act if the person presents an unacceptable risk of harm to children if he or she was to provide care to children. It has the effect of preventing the person from engaging in child care.²¹

A carer in a home based service must not provide child care in the home unless each adult occupant has a Blue Card and has not been issued with a prohibition notice (s 97).²² Other suitability matters that may be considered (under s 26(4)) include whether the licensee/applicant has contravened child care legislation, even if not an offence provision; or has been convicted of an offence involving a child or of another relevant offence; or has been denied a licence in the past (or had such revoked or suspended);

- the **safety and suitability** of the child care centre and related facilities (s 28). In essence, this means being satisfied that the building and facilities comply with relevant building standards under the [Building Act 1975 \(Qld\)](#). For home based services, the licensee must be willing and able to ensure that the home and facilities are safe and suitable for providing child care (s 29);
- if the child care service is to be principally within an Aboriginal or Torres Strait Islander community, regard must be had to the culturally specific needs of those children (s 30);
- other matters to which the chief executive must have regard, as set out in s 31 (e.g. the number of children to be cared for, their ages; length of time the care is provided; number of carers; and (if centre based) the available space);

The licence must be displayed in a prominent place at the service (s 90).

²⁰ The licensee must also comply with the [Commission for Children and Young People and Child Guardian Act 2000 \(Qld\) \(CCYPCG Act\)](#) in relation to the engagement of each carer in, and staff member of, the child care service (s 27).

²¹ Part 6 of the [Child Care Act 2002](#) sets out the procedures for the chief executive to follow in issuing a prohibition notice. Licensees must not engage carers or staff if it is known, or reasonably should be known, that they are under a prohibition notice (s 110).

²² The Commissioner for Children and Young People and Child Guardian (Commissioner), on written request from the chief executive, must give the chief executive information about the Blue Card status of licensees, carers, staff and other persons under s 140(1).

4.2 CONDITIONS ON LICENCE AND LICENSED CAPACITY

Licences can be subject to **conditions** such as the ages of the children to be cared for (s 19(6)). For a **centre based service**, a condition stating the maximum number of children to whom care can be provided at any one time (s 32) must be included in the licence. The **maximum licensed capacity** for such services, other than school age care services, is 75 children (but can, in certain circumstances, be set at greater than 75 for no more than two hours per day). A range of factors to be considered in specifying the maximum licensed capacity is set out in s 32(6) (e.g. space and facilities available, whether the licensed capacity has been exceeded in the past).²³

For **home based care**, s 92 of the Act states that there must not be more than seven children at the home and no more than four of these are allowed to be non-school children unless exceptions apply (e.g. where the carer is the parent of the school children being cared for; or children who are 12 or older are not being provided with care). A breach of these requirements is an offence. A condition can also be imposed on the licence further restricting the number of children who may be at the home (s 93).²⁴ However, it is possible for two or more carers, as prescribed by the Regulation (see Part 3, Div 2 of the [Regulation](#)), to supervise the children in care to come together for an excursion for a short period when the maximum number restriction can be exceeded (s 96).

4.3 CHANGES UNDER THE NQF

A key component of the National Quality Framework (NQF) will be streamlined regulatory arrangements whereby states and territories will be responsible for administration and regulation of the new National Quality Standards (thus, the OECEC will continue to regulate Queensland services) overseen by a new national body, and all jurisdictions will establish mirror legislation. Thus, services will only need to meet one set of regulatory requirements. All services will be required to obtain approval to operate. Approvals for centre based services will be issued once and will allow those services to operate in a number of jurisdictions.

²³ Provision is made for emergency care by s 33 of the Act where the licensed capacity of the centre may be temporarily exceeded subject to specified restrictions.

²⁴ The prescribed limits also apply when care is being provided away from the home (s 95). As with centre based services, s 94 provides for emergency care. Similar restrictions apply as for centre based services.

5 REQUIREMENTS FOR QUEENSLAND CHILD CARE SERVICES

The discussion below focuses on the current requirements for services operating under the *Child Care Act 2002* regarding group sizes; staffing numbers; staff to child ratios; general operational requirements and standards; information provision; and other matters. Under the new NQF, in place from 1 January 2012 (some measures commencing in mid 2010), various changes to these requirements will be phased in and services covered by the NQF (long day care, kindergarten and family day care services) will be assessed against a National Quality Standard. Some of the implications of those reforms will be noted in the relevant contexts below.

5.1 STAFFING LEVELS AND STAFF TO CHILD RATIOS

5.1.1 Centre Based Services

Centre based care services must currently comply with ‘**standard requirements**’ set out in the [Child Care Regulation 2003 \(Qld\)](#) (s 61 of the [Act](#)). Noncompliance may attract a fine of up to \$10,000 (s 62). The Regulation (Part 2, Div 2) includes standard requirements for centre based services (other than school age care) requiring children to be cared for in groups. Schedule 1 of the Regulation specifies the **maximum numbers** of children in each group, **age restrictions**, the minimum number of qualified **staff involved** in the group, and **staff: child ratios**. Schedule 1 is reproduced in **Appendix A**.

The requirements apply at all times the service is conducted between 5 am and 10 pm each day but, if the service operates between 10 pm and 5 am the following morning (usually overnight care), the applicable requirements are those stated in its licensing conditions (s 62 of the Act). For each group, other than during a rest period, a qualified group leader must be in charge of the group and the number of carers per group must comply with Sch 1 child: staff ratios.²⁵

A licence condition for centre based services (apart from school age care) can provide for one or more **rest periods** for up to two hours per day, the provision of which depends on matters set out in s 63(3) (e.g. the ages of the children, staffing arrangements). The Regulation (s 25) also covers staffing during rest periods (where staffing levels can be varied to allow assistance to be provided by

²⁵ An extra group leader is required for certain larger centre based services (45 or more children) ([Regulation](#), s 28).

unqualified adult relief carers but the director of the centre or assistant director must be present).²⁶

Each child care centre must have one or more suitably qualified persons present for long enough to properly carry out the function of a **director** (i.e. to carry out or oversee required programs and policies and assist communication between staff and parents) (s 64). If the centre does not provide school age care or does not have more than 30 children at any part of the day, the director must be present at the centre at prescribed times or a penalty can be imposed on the licensee (s 64 of the Act and ss 40-41 of the Regulation).

If the service is not a school age care service, s 65(2) of the Act requires the presence of at least one staff member with prescribed first aid competency (s 66). Penalties apply for breach of these requirements.

For **school age care**, ss 29-32 of the Regulation set out standard requirements relating to staffing levels and the presence of qualified staff members. For instance, there must be at least one carer for every 15 children and at least one qualified assistant for every 30 children. In addition, s 65(3) of the Act specifies that at least two adult staff members be present; or one adult staff member must be present and one other adult is present or able to be quickly called upon. Again, penalties apply for noncompliance.

5.1.2 Home Based Services

Home based services must engage only adults as carers (s 68 of the [Act](#)) and carers must have prescribed first aid competency (s 69). As noted above, the carer: child ration must be no greater than 1: 7 (no more than four of whom are not yet school children). There must be enough suitably qualified persons to act as **coordinators** to ensure the service is properly conducted (s 67). Coordinators are responsible for monitoring the standards of care being provided; providing carers with relevant information and training to appropriately provide care; and coordinating the placement of children.²⁷

²⁶ See, Department of Community Services, Child Care Licensing Information – [Licensed Centre Based Services](#). Differing numbers of relief carers are required depending upon the licensed capacity of the centre. If a group has a child aged under 2, no variation on staffing levels is allowed.

²⁷ Part 4, Division 1 of the [Regulation](#) sets out other requirements for centre based and home based services regarding supervision of children undertaking certain activities such as swimming and while on excursions, including transportation to and from, as well as the information that must be provided to parents about the activity. See also, s 83 of the [Child Care Act 2002](#).

5.1.3 Changes Under the NQF

Under the NQF, new staff to child ratios for long day care, kindergarten and family day care services will be phased in from 1 January 2012 so each staff member will have fewer children to care for. These are also set out in **Appendix A**.

5.2 CONDUCT OF THE CHILD CARE SERVICE GENERALLY

Licensees have an overriding obligation to conduct the service in a way that has sufficient regard to the abovementioned **guiding principles** in s 9 of the Act, especially to do so in a manner that ensures the safety and wellbeing of the children concerned (s 75). The current requirements for running child care services are outlined here but the new NQF will introduce a new National Quality Standard against which long day care, family day care and outside school hours care services will be assessed and given a rating. This may impact upon the way in which programs are delivered and the quality of the service. The changes will commence for some services from 1 July 2010 and will take full effect on 1 January 2012, replacing current licensing and regulatory processes in each state and territory.

5.2.1 Centre Based Services

At present, licensees of **centre based services** must meet a number of requirements about the general conduct of the service and the standards of the building and facilities used to provide care, and penalties apply for noncompliance. Only a few of these obligations can be mentioned here:

- centres must comply with ss 46, 47, 50 and 50A of the Regulation regarding bedding; laundering of bed linen; laundry facilities for cleaning children's soiled clothes or other items; and storage of soiled items. Centres must also have baths available for infants; and hand washing facilities (ss 51-52 of the [Regulation](#));
- centres must have facilities such as furniture; indoor and outdoor play equipment and drinking and eating utensils that are adequate and suitable for the children in care (s 53 of the Regulation);
- centres must observe specified hygiene and health and safety requirements set out in ss 54-63 of the Regulation.

5.2.2 Home Based Services

Providers of **home based care** must ensure that the care provided includes appropriate activities and experiences designed for the stimulation and development of each child (s 98 of the [Act](#)). The [Regulation](#) (ss 65-67) expands on

this requirement stating specifics about the activities and learning experiences to be provided, such as the need to ensure a balance of activities and experiences; that they be flexible and responsive to children's abilities, interests and skills; that they are inclusive of all abilities; and respect and value each child's social and cultural backgrounds etc. Documentation regarding activities and experiences must be available for inspection by parents and carers.

Further, home based care licensees must also conduct their services in accordance with various general requirements, noncompliance with these incurring a penalty. The obligations are set out in ss 78-91 of the Regulation and include matters such as sufficiency of beds and bed linen; reasonable access to safe outdoor play areas; availability at the home of adequate and appropriate facilities; and health and safety measures.²⁸

5.3 PROGRAMS

Licensees of **centre based services** must ensure that care is provided under an **appropriate program** designed to stimulate and develop each child's creative, emotional, intellectual, lingual, physical, recreational and social potential (s 89 of the [Act](#)). Part 2, Division 1 of the [Regulation](#) imposes relevant obligations about programs in relation to their content; their requirements (e.g. a balance of indoor and outdoor activities and individual and group activities designed to nurture children's self-esteem, self-reliance and competence as well as seeking to have other positive outcomes for the children); and program planning and development (including regular evaluation).

The centre must have, on display and accessible to parents/guardians, a **notice** providing general information about the program and parents/guardians are entitled to request information about the program as it relates to their child.

5.4 POLICIES

Licensees must prepare and keep up to date, **written policies** about the conduct of the child care service, addressing matters such as (s 76 of the [Act](#)):

²⁸ See also ss 97-99 of the [Regulation](#) regarding provision of medication and medical attention to children in centre based and home based services. Other obligations under Part 4 of the [Act](#) include keeping of role statements for staff positions; allowing parents/guardians to observe care being provided; prohibiting licensees from entering into agreements with parents/guardians excluding liability for negligence; reporting any death or serious injury to children to the chief executive; informing the chief executive about relevant changes impacting on holding a licence (e.g. Blue Card status); and holding adequate public liability insurance cover.

- participation of parents, students, volunteers and others in the conduct of the service;
- hygiene practices and dealing with injuries, illness and infectious diseases;
- safety, emergency and evacuation procedures;
- procedures for dealing with parent/guardian, staff and carer concerns;
- monitoring staff progress through their child care qualification studies.

A copy of a policy must be given to parents/guardians on request.

5.5 RECORDS AND PROVISION OF INFORMATION TO PARENTS/GUARDIANS

Licensed services must keep specified records and provide parents/guardians and other relevant persons with information about matters involving the service.

5.5.1 Records

Part 4, Division 2 of the [Act](#) and Part 4, Division 3 of the [Regulation](#) require licensees of child care services to keep certain **records** for the prescribed time (set out below) or a fine will be incurred. The matters about which, and the prescribed time for which, records must be kept include:

- **information about each child** in care such as personal details about the child and the care provided; relevant health matters, such as immunisation and allergies; his or her special needs or cultural requirements; any parenting orders or plans under the Commonwealth *Family Law Act 1975*; instructions and details about medication and medical care to be given to the child; medical contacts and a range of other personal information relevant to caring for the child.²⁹ These records must be kept for three years after the last care was given to the child but longer if about an illness or injury suffered by the child (until the child turns 21) or the child dies (six years);
- for **centre based services – information about staff** such as their attendance at the centre, staff rest pauses taken; information about **excursions** undertaken with the children; information about **escorts** of children in the course of the service; details about **emergency care**; in certain circumstances, details about **groups**. The staff records and other records must be kept at the centre for three years;

²⁹ See s 101 of the Regulation for further matters about which records must be kept regarding the children in care.

- for **home based services** – **information about each home and each carer** in the service; some details about **excursions** (but less information is required than for centres conducting excursions); and information about **escorts** during the service; details about **emergency care; contact details** for staff. Records are to be kept for three years.

The licensee of the service must allow a parent/guardian to **inspect** a record on request or to take a copy of it, unless doing so would contravene a court or tribunal order (s 86 of the Act). However, the licensee must also ensure that children's personal information³⁰ is non-accessible to anyone other than staff or carers or the parent/guardian or the child to whom it applies. The carers, staff and licensee must also maintain the confidentiality of children's personal information. A breach of these requirements attracts a penalty, unless the access or disclosure is permitted under the Act (see s 87(3) e.g. giving of access with the parent's consent).

5.5.2 Notices and Written Information

A centre based care service (unless it is a school age care service) must **display various notices** about (ss 33-39 of the [Regulation](#)):

- staffing levels and each staff member's qualifications and position;
- that a staff member is on a rest pause at the relevant time;
- each of the groups in which care is provided and related matters;
- provision of emergency care and the fact it increases the number of children in a group above the prescribed limit and the number of children in the centre above the licensed capacity of the service.

Licensees must **give written information** about the matters specified in s 106A of the Regulation to a parent/guardian when a child first receives care at the child care centre. The matters include (see s 106A for the full list):

- that the child care service is licensed and has to comply with the legislation;
- the telephone number of the Department's Child Care Information Service;
- ages of the children in the child's child care group;
- the name, position and qualifications of each of the child's carers;
- the content and operation of the program in which the child will be involved;

³⁰ 'Personal information' is defined in s 87(3) of the Act and s 106 of the Regulation as information about the child's health, special needs, parenting orders or plans, and information about medication.

- that parents/guardians can request information about the activities and experiences given to children; the service's philosophy; and its knowledge and skills goals.

5.6 CHANGES UNDER THE NQF

The NQF will implement a new transparent quality ratings system to provide a nationally consistent indicator of service quality to parents/guardians. This seeks to allow an easy comparison to be made among services about whether they are meeting the National Quality Standard (NQS). Approval and ratings information must be prominently displayed by each service and will also be provided online.

The rating descriptions will be: 'Excellent', 'High Quality', 'Meeting the NQS', 'Operating towards meeting Requirements', and 'Unsatisfactory'.³¹ The seven areas in the NQS across which performance of a service are assessed are: educational program and practice; health and safety; physical environment; staffing ratios and qualifications; relationships with children; collaborative partnerships with families/communities; leadership and management.³²

Some services will begin to be assessed by the NCAC against the new NQS National from July 2010, with full implementation by January 2012.

6 QUALIFICATIONS OF CARERS

The legislation requires child care workers in centre based services and coordinators of home based services to be **appropriately qualified**. The relevant qualification requirements are set out in Part 5 of the [Regulation](#). Only a brief overview can be provided here.³³ Under the new NQF, as discussed below, staff

³¹ An 'unsatisfactory' rating indicates that the National Quality Standard is not being met and steps are being taken to help the service to quickly improve. If there is no improvement, the service will be closed down: see DEEWR, Early Childhood Policy Agenda, NQF, '[Quality Rating System](#)'.

³² Commonwealth DEEWR, Early Childhood Policy Agenda, NQF, '[Information for Families](#)'. For full details about the National Quality Standard see COAG, Early Childhood Development Steering Committee, [National Quality Standard for Early Childhood Education and Care and School Age Care](#), December 2009.

³³ Licensees must keep a document evidencing staff qualifications and competencies and of staff enrolments in a course of study: ss 72 and 73 of the [Act](#). The chief executive must keep a list of qualifications prescribed for various carer positions which must be available for inspection by the public, free of charge (s 108 of the Regulation).

will have to meet specified qualification requirements. Those new requirements will be phased in over a number of years.

6.1 CENTRE BASED SERVICES

At present, staff working with children in **centre based services**, apart from unqualified carers in school age care services, must have, or be studying towards, an appropriate early childhood or children's services qualification for the position they hold in the service, as discussed immediately below.³⁴

6.1.1 Qualified Assistant

The qualifications which must be held by an **assistant in centre based services (other than school age care)** are (s 112 of the Regulation):

- a certificate III or IV in an area of study applying to child care workers under the [Australian Qualifications Framework](#) (AQF);³⁵ or
- a 1 year qualification in early childhood studies or child care studies (i.e. a qualification awarded by a university or interstate university, or awarded as a result of successful completion of a higher education course accredited or recognised under relevant higher education legislation); or
- a qualification as a group leader under s 113 of the Regulation; or as a director under s 114 of the Regulation (explained below).

A qualified assistant working in a **school age care service** must possess:

- a certificate III or IV in community services under the AQF; or
- a 1 year qualification in a relevant area of study set out in s 120 of the Regulation. Those areas of study include (but are not limited to) nursing, physiotherapy; primary, secondary or special education; human welfare studies and services; behavioural science; sport and recreation; creative arts; or
- a qualification as a group leader under s 113(d) of the Regulation.

³⁴ The chief executive may approve a qualification as an 'equivalent qualification' (e.g. a certain qualification from an overseas university); and may approve particular qualifications held by a person if satisfied that the studies completed are the equivalent to the studies ordinarily completed to obtain the qualification prescribed by the Regulation (ss 109-111 of the [Regulation](#)).

³⁵ The AQF is a policy framework that defines all nationally recognised education and training qualifications.

A person who does not possess the above qualifications for a qualified assistant can be engaged as an assistant for up to three months. Alternatively, a person can be studying for those qualifications while being employed at the centre and this also includes a 17 year old person who has started a course leading to assistant qualifications (ss 118-119 of the Regulation).

6.1.2 Group Leader

A **group leader** in a **centre based service (other than school age care)** must possess prescribed group leader qualifications, which are (s 113 of the Regulation):

- a diploma in an area of study applying to child care workers under the AQF; or
- a 2 year qualification in early childhood studies or child care studies (i.e. a qualification awarded by a university or interstate university, or awarded as a result of successful completion of a higher education course accredited or recognised under relevant higher education legislation); or
- director qualifications under s 114 (see below).

A person who is a qualified assistant can be engaged as a group leader at the centre without group leader qualifications for up to three months. Alternatively, the person can be enrolled in a course leading to such qualifications, provided he or she is a qualified assistant or a primary school teacher.

A **group leader** working in **school age care** must have:

- a diploma in community services under the AQF; or
- a 2 year qualification in an area of study mentioned in s 120 (these related areas were set out above).

A person without the relevant qualifications can be engaged as a group leader for school aged care provided they are studying towards group leader qualifications.

A group leader position can also be filled by an adult who is engaged in a coordinating position at a school age care service for no more than six months.

6.1.3 Director

An adult staff member can be a **director of a centre based service (other than school age care)** if he or she has (s 114 of the Regulation):

- an advanced diploma in an area of study applying to child care workers under the AQF; or
- a qualification that is at least a 3 year qualification in early childhood studies or child care studies. A '3 year qualification' is a qualification

awarded by a university or interstate university; or awarded as a result of successful completion of a higher education course accredited or recognised under relevant higher education legislation; or

- a postgraduate qualification that is at least a 1 year qualification in early childhood studies or child care studies.

The position of director can also be fulfilled by a qualified group leader who does not possess director qualifications, but for no more than three months. A qualified group leader can also be engaged as a director if he or she, within three months, enrolls in a course leading to a director qualification.

6.2 HOME BASED SERVICES

No formal qualifications are required for being a carer in a **home based care service** but carers must participate in professional development through a family day care scheme. It appears that many carers are studying towards relevant child care qualifications.³⁶

Family day care schemes are organised by the **coordinator** of home based services who is an adult staff member of the service holding an appropriate early childhood or approved related area qualification. That qualification is any of (s 115 of the Regulation):

- a diploma in an area of study applying to child care workers under the AQF; or
- a 2 year qualification in early childhood studies or child care studies;
- a qualification for a director position (see above);
- a diploma in community services under the AQF;
- a 2 year qualification in an area of study mentioned in s 120 (set out earlier).

Coordinators provide information, training and other support to home based carers, monitor the standards of care being given; and coordinate placements of children.

Section 67 of the Act states that if the licence conditions of a home based service require more than 35 coordinator hours per week to be completed, at least one hour must be completed by a qualified coordinator with an early childhood qualification. The first three bulleted qualifications fulfil the early childhood qualification requirement.

³⁶ 'Understanding early childhood education and care services', Fact Sheet.

6.3 CHANGES UNDER THE NQF

Improved staff qualifications are seen as important for achieving better outcomes for children in terms of greater understanding of health and safety issues and ability to lead activities that assist in children's learning and development.³⁷ Under the NQF, the qualification requirements will include:³⁸

- all staff in long day care and kindergarten services must hold, or be studying towards, a Certificate III or higher in early childhood education and care by 1 January 2014 (with half of the staff needing at least a Diploma in this qualification). Most services will require an early childhood teacher to be in attendance while care is being provided but smaller centres only need a teacher for some of the time;³⁹
- all carers in family day care services must have, or be studying for, at least a Certificate III qualification and all coordinators, a Diploma in early childhood education and care, by 1 January 2014;
- for outside of school hours care, new qualification requirements will not apply but existing legislative staffing requirements will continue to operate.⁴⁰

7 COMPLIANCE AND ENFORCEMENT

The [Child Care Act 2002](#) contains provisions enabling various **actions** to be taken by authorised officers of the Queensland OECEC, who are appointed under the Act, against licensees who fail to meet their licensing obligations or who contravene the child care legislation. The enforcement options are set out under the headings below.

The Department's [Annual Report 2008-2009](#) reveals that the OECEC went on more than 8,000 visits to child care services during 2008-2009 and found a high level of compliance with legislative requirements. During the reporting period, 830

³⁷ Commonwealth DEEWR, Early Childhood Policy Agenda, NQF, '[Information for Services](#)', p 3.

³⁸ See Queensland OECEC, '[Special Edition of "A to Z of Early Childhood"](#)' for more information.

³⁹ By 1 January 2020, a second early childhood teacher or suitably qualified leader must be in attendance at all times that long day care and kindergarten care is provided to more than 80 children (or for at least half of the time if there are 60 or more children involved): see DEEWR, Early Childhood Policy Agenda, NQF, '[Information for Services](#)', p 3.

⁴⁰ DEEWR, Early Childhood Policy Agenda, NQF, '[Information for Services](#)', pp 2-3.

complaints about child care services were made to the OECEC, the majority of which related to health and safety issues; staffing and qualifications; interaction; accidents/incidents; and group sizes. During 2008-2009, 76 compliance notices were issued but no licence suspensions or revocations occurred.

7.1 COMPLIANCE NOTICES

The OECEC states that when it finds that a service is not meeting the legislative requirements, it works quickly to give it a **compliance letter** before taking further action. This is not covered by the Act but is said to support departmental policy of engaging with licensees to cooperatively resolve noncompliance (including the granting of an extension to the due date to remedy the breach, if appropriate). If the service acts to quickly remedy the contravention, no further action is taken. However, if the breach persists, a compliance notice under ss 142 or 143 will be issued.⁴¹

If a departmental authorised officer reasonably believes that a person is contravening the Act, or has contravened the Act in circumstances that make it likely the contravention will be repeated, the authorised officer may give the person a **compliance notice requiring the contravention to be remedied** within a stated reasonable time. The person must comply, unless he or she has a reasonable excuse, or an offence is committed (s 142). This provision applies to licensees of child care services as well as persons conducting a stand alone service.

Also, if an authorised officer reasonably believes that a child care centre does not comply with a *Building Act* requirement, its licensee can be issued with a **notice requiring compliance with the *Building Act*** within a stated time of at least 30 days. If the licensee fails to act on the notice, the licensee may be required to give the chief executive a written certificate from a building certifier stating that the centre complies with the Building Act (s 143). Failure to comply with the notice is a ground for suspension or revocation of the child care licence.

Further, the Department of Education and Training's (Department's) chief executive is required to place information about certain noncompliance by services on the Department's website (discussed further below). A s 142 notice will indicate to the service whether the contravention is one that may be published on the website.

⁴¹ Queensland OECEC, '[Compliance publication fact sheet](#)' p 2, ([OECEC Fact Sheet](#)).

A *Courier Mail* article from November 2009 reports focuses on compliance issues emerging from documents on the Department's Right to Information webpage.⁴² One of the examples highlighted involved a centre against which a number of compliance letters and notices had been issued and a licence suspension was proposed. Among the compliance issues were: some play equipment was unsafe (e.g. wood frame around sandpit had sharp edges; slides had exposed fibreglass); there was limited play equipment for children; the centre had uneven floor surfaces; there were gaps in the fencing; there were exposed drain grates and pipes; vermin and rat faeces were found in play areas; there was little or no supervision for children in the nursery group; and there were group sizes exceeding the required limit.⁴³

7.2 AMENDING, SUSPENDING OR REVOKING A LICENCE

The chief executive can **amend** a licence at any time (for instance, by changing a condition of the licence to reduce the licensed capacity of the service). However, the licensee must first be given a show cause notice inviting a written response to the proposed amendment within a period of at least 30 days. The chief executive must consider any such response received and then either make some or all of the proposed amendments, or not amend the licence (s 42).⁴⁴

If the chief executive is reasonably satisfied, in the interests of the wellbeing and safety of the children being given care under a licence, it is necessary to **amend the licence immediately**, the chief executive may do so without first giving the licensee a show cause notice. The licensee must be given notice about why the amendment has been made. The amendment can only last for up to 60 days (s 43).

The licensee can apply to QCAT for a review of the above decisions regarding amendment and urgent amendment.

The chief executive may **suspend** or **revoke** a licence at any time if the chief executive is satisfied that (s 45):

- the licensee is in contravention of the Act or of a licence condition in a way, or to an extent, as to justify the suspension or revocation; or
- the licensee is unable or unwilling to continue to conduct the service; or

⁴² There are 3 lots of information about compliance notices on the webpage: [part 1](#); [part 2](#) & [part 3](#).

⁴³ See Tanya Chilcott, "'Shocking conditions' uncovered in Queensland child care centres", News.com.au, 14 November 2009; [RTI Application 340/5/1791 - File A, Attach A pp 44-49](#).

⁴⁴ See also, s 42(5) and s 44 about other ways of amending the licence.

- the licensee is unsuitable to conduct the service, or if the licence is held by a corporation, a nominee or any of the corporation's chief executive officers is unsuitable, or there is no appointed nominee for the licence; or
- the licensee is contravening, or has contravened, the *CCYPCG Act* in relation to the engagement of a carer in, or staff member of, the child care service; or
- if involving a centre based service, the centre is unsafe or unsuitable for child care or the licensee has not complied with the requirement under s 143(4) to show compliance with the *Building Act*; or
- there is another reason for it being necessary in the interests of the children's safety and wellbeing that the licence be suspended or revoked.

Examples of the above might be an unsafe outdoor play area; a child care centre building infested with termites and in very poor repair; ongoing enrolment of school age children during vacation periods causing the licensed capacity to be exceeded.⁴⁵

The chief executive must first give the licensee a show cause notice allowing the licensee to respond within a stated time of at least 30 days. After considering any such response, the chief executive may, by notice to the licensee, suspend or revoke the licence. The suspension or revocation generally takes effect at least 14 days after the notice is given.

If the chief executive is reasonably satisfied it is in the interests of the safety and wellbeing of the children being given child care, the chief executive can, under s 46, **immediately suspend the licence** (for instance, the centre may have become unsafe). This urgent suspension ends 14 days within the giving of the notice to the licensee unless it is first cancelled or the licensee is given a show cause notice.

The above decisions to suspend or revoke a licence can be reviewed by QCAT. A licensee can apply to have the suspension lifted and a decision regarding this is also reviewable (s 50).⁴⁶

If a licensee has his or her licence suspended or revoked, **notice** of such (plus the reasons why) must be given to a parent/guardian of each of the children who are regularly given child care by the service. If the matter involves a home based service, the notice must also be given to each carer in the service. If the licence suspension relates to a centre based service, a notice must be displayed at the

⁴⁵ [Queensland OECEC Fact Sheet](#), p 3.

⁴⁶ The chief executive can notify the Commissioner for Children and Young People and Child Guardian about the chief executive's amendments, suspension or revocation of a licence if relevant to the Commissioner's powers or functions (s 50A).

centre for the duration of the suspension stating that the licence has been suspended. If the licence has been revoked, a notice must be displayed at the centre until at least the day the revocation takes effect (s 49).⁴⁷ Details of licence amendment, suspension or revocation are also **published on the OECEC's website** (see below).

Part 7 of the [Act](#) sets out the various **powers** of entry, search, inspection and obtaining of evidence exercised by authorised officers. These powers assist in the OECEC's monitoring and compliance role.

7.3 WEBSITE PUBLICATION SCHEME

As the result of recent amendments to the Act,⁴⁸ from 1 February 2010, the chief executive must publish information about compliance notices on the Department's **website** (OECEC's website) regarding repeated or serious breaches of the legislation or actions taken in relation to licences (e.g. suspensions and revocations). The OECEC states that the publicly available information will enable parents/guardians to make informed decisions about a child care service for their child and will seek to encourage more accountability and improvement within the sector.⁴⁹ When introducing the amending legislation into the Parliament, the Minister for Education said that the Government was '*committed to openness and transparency and believes it is vital that parents have access to crucial information about services such as ... child-care centres*'.⁵⁰ The [online compliance publication scheme](#) applies to **licensed centre based services** (but not school age care),⁵¹ **home based services** and **stand alone care**.

Certain information must be published on the OECEC's website if (s 143A):

⁴⁷ Section 123 of the [Regulation](#) specifies the format of the notice and what it must contain.

⁴⁸ Effected by the *Education Legislation Amendment Act 2009* (Qld) (No 39 of 2009), the substantive parts of which commenced on 1 February 2010.

⁴⁹ [Queensland OECEC Fact Sheet](#), p 1; OECEC, '[Compliance Publication Scheme](#)'.

⁵⁰ Hon GJ Wilson MP, Minister for Education and Training, Education Legislation Amendment Bill 2009 (Qld), *Queensland Parliamentary Debates*, 16 September 2009, p 2324.

⁵¹ The [Queensland OECEC Fact Sheet](#), p 1, explains that school age care is not included at the moment because such services are relatively new to licensing and the initial focus of the amendments is on services that mainly provide care to children under school age. However, whether school age care should be included in the future will be explored.

- A licensee of a child care centre or person conducting a stand alone service is given a **s 142 compliance notice within 3 years after the first compliance notice**; and
- in each case, the authorised officer is reasonably satisfied that the non-compliance means that there is **more than a minor risk** to the wellbeing and safety of the children being given the child care. Examples of a ‘minor risk’ would be inadequate playground equipment; a minor build-up of dirt and grime or minor record keeping irregularities. However, a **‘more than minor risk’** would be uneven ground in an outdoor play area that poses a significant tripping hazard, engagement of unqualified staff, or significant breaches in staffing levels or group sizes.

Thus, if there are two or more compliance notices issued under s 142 in a three year period that relate to issues posing more than a minor risk to children’s wellbeing and safety, information relating to both notices will be published.

The information that must be published on the website is (s 143B):

- if the matter involves a licensee of a child care centre or of a home based service – the address of the centre/service, and the name of the centre/service;⁵²
- if the matter involves a person conducting a stand alone service – the name under which it is conducted;
- details of the reasons for the giving of the compliance notice; the steps the authorised officer reasonably believes are necessary to remedy the breach or to avoid further contravention; and the day by which the person must remedy the breach.

The information must be kept on the website for one year (s 143E). However, if the licence is transferred to another person before the expiry of one year, the information must be removed as soon as practicable after the transfer takes effect. Exceptions to this apply as set out in s 143E(3) and relate to where the first licensee is involved in the new licence.

The information must not be published on the website until the end of the period the person has to apply for a review of the authorised officer’s decision to issue the compliance notice. If the person does apply for review, the information must not be published until the matter has been dealt with and, then, the published information must be consistent with the decision on review (s 143C).

If the person has had information published about his or her non-compliance on the website and he or she has taken steps to remedy the contravention or to avoid

⁵² However, the address of the home based service is not provided on the website if it is also the home address of a carer in the service.

further contravention, the chief executive has to amend the published information to state that the person has taken the necessary steps to remedy the breach or to avoid further contravention as of a certain day (when the authorised officer became aware of the remedying) (s 143D).

Similarly to the situation involving compliance notices, the chief executive must publish certain information on the Department's website if one of the following **actions is taken against a licensee** (other than for a school age care service) (ss 50B-50C):

- a refusal to renew a licence;
- an amendment of the licence following a show cause notice;
- an urgent amendment in the interests of children's safety and wellbeing;
- a suspension or revocation of the licence following a show cause notice;
- an urgent suspension of a licence in the interests of children's safety and wellbeing.

The nature of the information published on the Department's website about the above actions on the licence is similar to what must be placed on the website in cases of failing to comply with compliance notices (e.g. details of the action and when it takes effect) (s 50D). Again, the publication on the website cannot occur until the licensee's review rights have expired or been dealt with (s 50E) and, if a suspension is lifted, the website information must be amended to indicate this (s 50F). The information must remain on the website for 3 years (s 50G).⁵³

Examples of how the information about a service that has had compliance and enforcement action taken against it will be published can be found on the OECEC's [Enforcement and Compliance Action webpage](#).

The website reportedly has the support of the child care workers' union whose spokesperson is said to have commented that it would improve standards of child care. Further, Childcare Queensland president, Gwynn Bridge believed that the site would enable parents to '*feel secure that they have chosen a facility where they know their children will be safe and cared for*' but also said that such a 'big stick' approach needed to work alongside adequate resourcing, assistance and working with the child care sector.⁵⁴

⁵³ Section 50G also deals with when the licence is transferred.

⁵⁴ 'Qld child care website to name and shame', *brisbanetimes.com.au*, 9 February 2010.

7.4 COMPLIANCE HISTORY LOGBOOKS

The *Child Care and Another Act Amendment Act 2010* (Qld) (the Amending Act), was passed on 24 February 2010 to amend the [Child Care Act 2002 \(Qld\)](#) to insert a new Part 4, Division 2A (ss 88A-88N) requiring licensees of **centre based** and **home based services** (apart from school age care services)⁵⁵ to keep compliance history **logbooks**. This requirement marks the second stage of the Government's stated commitment to provision of more information to parents and is proposed to take effect around July 2010.⁵⁶ Noncompliance with the logbook requirements is an offence and penalties apply.

A logbook must contain the licensee's address and the name of the centre or home based service. However, the address of the service must not be entered if it is the home address of a carer in the home based service (ss 88D, 88E). No personal information that identifies a child or a person other than the licensee can be entered (s 88H).

The logbook must also contain details of the licensee's compliance history (s 88D). The compliance information found in the logbooks is similar to that published on the Department's website. In essence, it will set out (s 88F):⁵⁷

- details of licence amendments or urgent amendments and the reasons for such, when they take effect, and when an urgent amendment ceases;
- details of licence suspensions and urgent suspensions and the reasons for such, when they take effect and when an urgent suspension ceases;
- details and reasons for the issue of a compliance notice for minor and more than minor issues, as well as information about steps taken to rectify contraventions.

The logbook will not contain information about licence revocations or nonrenewals because the service will no longer be in operation if its licence is not renewed or it is revoked.⁵⁸

⁵⁵ Consideration of inclusion of school age care services will be undertaken during Stage 3 of delivery of the Government's stated commitment to provide more transparency in the operation of child care services: OECEC, 'Explanatory Document: Access to information about noncompliance child care services – Compliance history logbook' ('Explanatory Document').

⁵⁶ Child Care and Another Act Amendment Bill 2010, (Qld) *Explanatory Notes*, p 2; 'Explanatory Document'.

⁵⁷ A sample logbook can be found on the Queensland OECEC website in [Attachment A](#) to the 'Explanatory Document'.

⁵⁸ Information about compliance letters is also not included.

The licensee must enter the above information into the logbook within 14 days after the end of the period for seeking a review of, or appeal against, the decision; or within 14 days after any commenced review or appeal is ended by the licensee; or within 14 days after a decision on review or appeal has been made (s 88G).

Licensees must update their logbook information if a suspension is lifted or the required steps under a compliance notice have been taken. This must occur within 14 days of either event occurring (s 88J).

The logbook must be kept at the centre if the relevant service is a centre based service. For a home based service, it must be kept at an address stated on the licence – i.e. at the family day care scheme rather than at the address of individual carers (unless the carer is also the licensee) (s 88C). Parents/guardians must be informed in writing that the logbook exists within seven days of their child starting to receive care. They must also be told of their right to inspect the logbook (s 88M). The logbook can be inspected and parts of it copied by parents/guardians or any members of the public (s 88N).

In general, when a licence is transferred to a new licensee, the new licensee has to start and keep a new logbook containing his or her own compliance history. Thus, the previous licensee's compliance history is not to be included in the logbook. However, the exceptions to this are set out in ss 88J and 88K.⁵⁹ In brief, the compliance history of the previous licensee must be entered in the logbook of the new licensee where the old licensee is involved in some capacity with the new licensee; or where the new licensee (or person having an interest in the new licence) has previously held (or had an interest in) a licence to operate a child care service on the same premises and that previous licence ended within 3 years before the new licence was issued. In the second type of circumstances, if the previous licence ended because it was revoked or not renewed, these facts and the reasons for it must also be entered into the new licensee's logbook, together with the previous licensee's compliance history. These obligations seek to ensure that the compliance history of someone who was involved in the previous licence is made known to anyone who wishes to inspect the relevant logbook.⁶⁰

As observed in the Explanatory Notes to the Bill (p 9) that became the Amending Act, a licensee did not have a right of review in respect of a compliance notice regarding minor risks to children's safety and wellbeing, (s 163(2)(b) only allowing QCAT to review compliances notices about 'more than a minor risk' to safety and wellbeing of the children). However, such information must be entered into the licensee's logbook and may therefore impact upon his or her business. Thus, the

⁵⁹ *Explanatory Notes*, p 8.

⁶⁰ *Explanatory Notes*, p 9.

new s 164B provides a process to enable the licensee to seek internal review, within 28 days, by the chief executive who will either confirm the authorised officer's decision or revoke the compliance notice.⁶¹

8 STAND ALONE SERVICES

Part 5 of the [Child Care Act 2002 \(Qld\)](#) covers **stand alone care** which is where care is provided to up to six children in a home or a centre based service. No licence is required but a number of regulatory requirements under the legislation must still be met. For instance, s 102 states that there must not be more than six children at the home or place and not more than four children who are not yet school children.⁶² In determining the number of children, the carer's own school aged children are not counted nor are children being cared for by someone else at the home or children at least 12 years of age not being given child care. The carer must be an adult (s 99). The service must also be covered by public liability insurance (s 102).

Further, a carer must not provide child care at a home if he or she knows, or should reasonably know, that an occupant of the home is a disqualified person (i.e. has a negative prescribed notice issued against him or her under the *CCYPCG Act*), or possesses a prohibition notice issued by the chief executive under Part 6 of the *Child Care Act 2002*, or if a notice under s 139 of the *Act* (see below) directing that care not be provided is in force (s 100).

To enable the monitoring of the suitability of persons in homes in which stand alone care is provided, departmental authorised officers can ask a person to apply for a Blue Card if the officer knows or reasonably suspects that the person lives in the home and has a criminal history that may cause the person to be unsuitable to be there while child care is being provided. If the person does not apply for a Blue Card or withdraws the application, the authorised officer may give a notice to the care provider not to provide child care in the home (s 139).

Providers of stand alone care can also be issued with a compliance notice under s 142 of the *Act* for breaches of the *Act*. Further, the new website publication requirements under ss 143A-143E, discussed earlier, apply to providers of stand alone care.

⁶¹ The *Explanatory Notes*, pp 13-14, set out the justifications for providing only for an internal right of review in respect of compliance notices for minor matters.

⁶² 'School children' include children not yet attending school but enrolled to attend that year.

9 CHILD CARE LEGISLATION IN OTHER JURISDICTIONS

For the information of the reader, the current legislative requirements applying to child care services in Australian states and territories are as follows:

- Australian Capital Territory: [Children and Young People Act 2008](#) (Ch 20);
- New South Wales: [Children and Young Persons \(Care and Protection\) Act 1998](#) (Ch 12); [Children's Services Regulation 2004](#). See also, Department of Community Services [Child Care Website](#);
- Northern Territory: [Community Welfare Act](#) (Part 10), [Department of Health and Families](#);
- South Australia: [Children's Services Act 1985](#) (Part 3); [Children's Services \(Child Care Centre\) Regulations 1998](#). See also, Department of Education and Children's Services [Child Care Services Website](#);
- Tasmania: [Child Care Act 2001](#). See also, Department of Education [Child Care Website](#);
- Victoria: [Children's Services Act 1996](#); [Children's Services Regulation 2009](#). See also, Department of Education and Early Childhood Development [About Child Care Website](#);
- Western Australia: [Child Care Services Act 2007](#); [Child Care Services Regulation 2007](#). See also, Department for Communities.

APPENDIX A

Source: Schedule 1 of the *Child Care Regulation 2003* (Qld)

Ages of children in group	Qualified carer: child ratio	Maximum group size	Other limits or exceptions
birth to 2 years	1 : 4	8	
birth to 3 years, including at least 1 child aged 3 years	1 : 5	10	The group may not include more than 2 children aged birth to 1 year for each qualified carer.
15 months to 3 years	1 : 5	10	
2 to 3 years	1 : 6	12	
2½ to 3 years	1 : 8	16	
3 years to 6 years	1 : 12	24	
4 years to 6 years	1 : 13	25	
4 to 12 years, including at least 1 child of more than 6 years	1 : 12	no maximum	The group may not include more than 13 children aged 4 or 5 years.
ages for which no other entry applies	1 : 7	21	<ol style="list-style-type: none"> 1 The group may not include more than 4 children aged birth to 1 year. 2 The group may not include more than 2 children aged birth to 1 year for each qualified carer. 3 If the group is in a centre based service with a licensed capacity of more than 30, the group may not include more than 10 children aged birth to 2 years.

New NQF Requirements

Source: Early Childhood Policy Agenda, NQF, '[Information for Services](#)', pp 2-3.

	Ages of Children in Group	Staff: Child Ratio	Compliance Timeframe
Long Day Care and Preschool	Birth to 24 months	1: 4	1 January 2012
	25 to 35 months	1: 5	1 January 2016
	36 months to school age	1: 11	1 January 2016
	Mixed Age Groups	Proportionate formula based on above ratios	1 January 2012
Family Day Care	Mixed Age Groups of Children	1: 7 (max 4 not yet attending school)	1 January 2014
Outside School Hours Care	No proposals as yet to change staff to child ratios		

APPENDIX B

List of Acronyms

AQF	Australian Qualifications Framework
CCYPCG Act	Commission of Children and Young People and Child Guardian Act 2000 (Qld)
COAG	Council of Australian Governments
DEEWR	Commonwealth Department of Education, Employment and Workplace Relations
NCAC	National Childcare Accreditation Council
NQF	National Quality Framework
OECEC	Office for Early Childhood Education and Care (within the Queensland Department of Education and Training)
OECECC	Office of Early Childhood Education and Child Care (within the Commonwealth Department of Education, Employment and Workplace Relations)
QCAT	Queensland Civil and Administrative Tribunal

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