

(Reprint No. 2)

SOUTH AUSTRALIA

**CHILDREN'S SERVICES ACT 1985**

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 16 April 1998.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

## SUMMARY OF PROVISIONS

### PART 1 PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Repeal and amendment
5. Schedule

### PART 2 ADMINISTRATION

#### DIVISION 1—GENERAL

6. Incorporation of the Minister
7. Objects
8. Functions of the Minister
9. Delegation

#### DIVISION 2—STAFF

10. Director and other staff may be referred to as the Children's Services Office
11. Director of Children's Services
12. Staff
13. Superannuation
14. Transfer of staff from the public service or prescribed employment

#### DIVISION 3—THE CHILDREN'S SERVICES CONSULTATIVE COMMITTEE

15. The Children's Services Consultative Committee
16. Term of office of members
17. Allowances and expenses
18. Conduct of business
19. Saving provision
20. Functions of the Committee

#### DIVISION 4—REGIONAL ADVISORY COMMITTEES

21. Regional advisory committees
22. Membership of regional advisory committees
23. Terms and conditions of office of members of regional advisory committees
24. Procedure, etc.

### PART 3 CHILDREN'S SERVICES

#### DIVISION 1—LICENSED CHILD CARE CENTRES

25. Business of child care not to be carried on without licence
26. Cancellation of licence
27. Period for which child may be left in child care centre
28. Register
29. Powers of entry and inspection

#### DIVISION 2—LICENSED BABY SITTING AGENCIES

30. Licensing of baby sitting agencies
31. Cancellation of licence

32. Records, etc.

**DIVISION 3—APPROVED FAMILY DAY CARE AND LICENSED  
FAMILY DAY CARE AGENCIES**

33. Application for approval of family day care  
34. Revocation of approval  
35. Register  
36. Powers of entry and inspection  
37. False representation as to approval  
38. Licensing of family day care agencies  
39. Cancellation of licence  
40. Records, etc.

**DIVISION 4—REGISTERED CHILDREN'S SERVICES CENTRES**

41. Applications for registration  
42. Registration  
43. Amendment of constitution of registered Children's Services Centres  
44. Management of Children's Services Centres  
45. Provision on dissolution of registered Children's Services Centre

**DIVISION 5—APPEALS**

46. Appeal against decisions of the Director

**DIVISION 6—MISCELLANEOUS**

47. Power of Director to enter certain places  
48. Restriction on child minding advertisements

**PART 4  
MISCELLANEOUS**

49. Annual report  
50. Financial provision  
51. Recognised organisations  
52. Registered Children's Services Centres exempted from land tax  
53. Service of notices  
54. Proceedings for offences  
55. Offences generally  
56. Evidentiary provision  
57. Regulations

**SCHEDULE 1**  
*Transitional Provisions*

**SCHEDULE 2**  
*Amendment of the Community Welfare Act 1972*

**APPENDIX**  
**LEGISLATIVE HISTORY**

# CHILDREN'S SERVICES ACT 1985

being

Children's Services Act 1985 No. 21 of 1985  
[Assented to 28 March 1985]<sup>1</sup>

as amended by

Children's Services Act Amendment Act 1987 No. 95 of 1987 [Assented to 17 December 1987]<sup>2</sup>  
**Children's Services (Child Care) Amendment Act 1998 No. 7 of 1998 [Assented to 2 April 1998]<sup>3</sup>**

<sup>1</sup> Came into operation (except Divisions 1, 2, 3 & 6 of Part 3 and Sched. 2) 1 July 1985: *Gaz.* 27 June 1985, p. 2244; Divisions 1 & 6 of Part 3 and portion of Sched. 2 came into operation 5 September 1985: *Gaz.* 5 September 1985, p. 700; Division 2 of Part 3 and portion of Sched. 2 came into operation 12 September 1985: *Gaz.* 12 September 1985, p. 796; Division 3 of Part 3 and portion of Sched. 2 came into operation 1 October 1985: *Gaz.* 26 September 1985, p. 944.

<sup>2</sup> Came into operation 4 February 1988: *Gaz.* 4 February 1988, p. 213.

<sup>3</sup> **Came into operation 16 April 1998: *Gaz.* 16 April 1998, p. 1706.**

**NOTE:**

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

**An Act to ensure the provision of services for children; to repeal the Kindergarten Union Act 1974; to amend the Community Welfare Act 1972; and for other purposes.**

The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Children's Services Act 1985*.

**Commencement**

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

**Interpretation**

3. In this Act, unless the contrary intention appears—

"**baby sitting agency**" means any person or body of persons that—

- (a) carries on a business in the course of which persons are employed for the purpose of caring for children, in their own homes, in the temporary absence of their guardians; or
- (b) carries on the business of introducing to the guardians of children persons who are prepared to care for the children, in their own homes, in the temporary absence of their guardians;

"**child**" means a person under the age of eighteen years;

"**child care centre**" means any place or premises in which more than 4 young children are, for monetary or other consideration, cared for on a non-residential basis apart from their guardians;

"**children's services**" includes—

- (a) pre-school education; and
- (b) the provision of non-residential care for children; and
- (c) any other service by way of assistance in, or the provision of facilities for, the proper care, guidance and support of children;

"**children's services centre**" means—

- (a) a kindergarten; or
- (b) a licensed child care centre that operates on a non-profit basis and is assisted by public funding; or
- (c) any other prescribed establishment;

**Children's Services Act 1985**

---

"**the Committee**" means the Children's Services Consultative Committee established under this Act;

"**the Director**" means the person holding or acting in the office of Director of Children's Services under this Act;

"**family day care agency**" means the business of introducing to the guardians of children persons who are prepared to care for the children on a non-residential basis in a family environment away from their own homes and apart from their guardians;

"**guardian**", in relation to a child, means a parent or legal guardian of the child and includes any person who has the immediate custody and control of the child;

"**kindergarten**" means an establishment at which pre-school education is provided for children;

"**the Kindergarten Union of South Australia**" means the Kindergarten Union of South Australia established under the repealed Act;

"**parent**" includes a step-parent;

"**pre-school education**" means programmes for the development and education of children who have not attained the age of six years;

"**regional advisory committee**" means a regional advisory committee established under this Act;

"**the repealed Act**" means the Kindergarten Union Act repealed by this Act;

"**young child**" means a child under the age of 6 years who has not yet commenced attending school.

**Repeal and amendment**

4. (1) The *Kindergarten Union Act 1974* is repealed.

(2) The *Community Welfare Act 1972* is amended in the manner indicated in the second column of schedule 2.

**Schedule**

5. The provisions of schedule 1 to this Act are incorporated with, and shall be read as part of, this Act.

**PART 2  
ADMINISTRATION**

**DIVISION 1—GENERAL**

**Incorporation of the Minister**

**6.** (1) The Minister and his successors in office shall be a corporation sole.

(2) The Minister shall, in his corporate name and capacity, be capable of—

- (a) suing and being sued; and
- (b) acquiring, holding, dealing with and disposing of real and personal property; and
- (c) acquiring or incurring any other rights or liabilities.

(3) A document purporting to bear the signature or the common seal of the Minister shall be presumed in any legal proceedings, in the absence of proof to the contrary, to have been duly executed by the Minister.

**Objects**

**7.** (1) The objects of the Minister, any committee established under this Act and any person involved in the administration of this Act, are—

- (a) to ensure the provision of pre-school education and such other children's services as are necessary for the proper care and development of every child; and
- (b) to ensure the development of an accessible range of children's services to meet the needs of all groups in the community; and
- (c) to encourage the provision of children's services that do not discriminate against or in favour of any person on the ground of his sex, marital status, mental or physical impairment, religion, race or nationality, except so far as it is necessary to do so for the purpose of assisting a child to overcome any disadvantage arising out of his sex, mental or physical impairment, religion, race or nationality; and
- (d) to ensure that the multicultural and multilingual nature of the community is reflected—
  - (i) in the planning, implementation and structure of programmes and services for children and their families; and
  - (ii) in the membership of any committee established under this Act and in the staffing of the various bodies, authorities and other agencies involved in the administration of this Act and in the provision of programmes and services for children and their families; and
- (e) to promote the involvement of parents and other members of the community in the provision of children's services.

(2) In dealing with children under this Act, the Minister shall regard the interests of the children as the paramount consideration.

---

**Functions of the Minister**

**8.** The functions of the Minister under this Act are—

- (a) to provide, and co-ordinate the provision of, children's services, having regard to the needs of the community and the need to achieve efficient use of available resources;
- (b) to develop and implement, or assist in the development and implementation of, policies relating to the provision of children's services and to keep the operation of those policies under constant review and evaluation;
- (c) to monitor and evaluate the nature and quality of children's services with a view to ensuring the highest possible standards of such services;
- (d) to ensure that the expertise and qualifications of persons who provide children's services are of the highest possible standards;
- (e) to encourage, or assist in the provision of, children's services by voluntary groups or organisations;
- (f) to keep the public informed on the availability of children's services and how they may be obtained;
- (g) to keep under review the special needs of individual groups of children (including those who suffer from physical or mental disabilities and those who are economically disadvantaged) and to provide, assist in the provision of, or promote, services to meet those needs;
- (h) to collaborate and consult with government departments (of the State, the Commonwealth or of other States or Territories of the Commonwealth), with public authorities, with municipal or district councils in this State and with non-government organisations that provide, or support or promote the provision of, children's services;
- (i) to encourage public discussion of policies affecting the provision of children's services;
- (j) to do such other things as may be necessary or desirable for the efficient discharge of its functions.

**Delegation**

**9.** (1) The Minister may delegate to the Director, or any other person, any of his powers or functions under this Act.

(2) A delegation under this section is revocable at will and does not derogate from the power of the Minister to act in any matter himself.

**DIVISION 2—STAFF**

**Director and other staff may be referred to as the Children's Services Office**

**10.** (1) The Director, and the other staff of the Minister under this Act, may be referred to as "the Children's Services Office".

(2) In addition to the other functions and duties of the Director under this Act, the Director shall be responsible for the efficient management of the other staff of the Minister under this Act and any other matter relating to the Children's Services Office.

### **Director of Children's Services**

11. (1) There shall be a Director of Children's Services.
- (2) The Director shall be appointed—
  - (a) for a term of office, not exceeding five years, specified in the instrument of his appointment; and
  - (b) upon terms and conditions determined by the Minister.
- (3) The Director is, on the expiration of a term of office, eligible for reappointment.
- (4) The *Public Service Act 1967* shall not apply to the office of Director.

### **Staff**

12. (1) The Minister may appoint such officers and employees as he thinks necessary or desirable to assist him to carry out his functions under this Act on such terms and conditions as he may determine.
- (2) Subject to subsection (3), the *Public Service Act 1967* shall not apply to officers and employees of the Minister under this Act.
- (3) The provisions of the *Public Service Act 1967*, with respect to long service leave, apply in relation to the officers and employees of the Minister under this Act with such modifications as may be prescribed.
- (4) The Minister may, with the approval of the Minister administering any Department in the Public Service of the State, on terms and conditions mutually arranged, make use of the services of any officer, or use any facilities or equipment, of that Department.
- (5) The Minister may, with the approval of the Minister of Education, on terms and conditions mutually arranged, make use of the services of any officer of the teaching service.
- (6) The Minister may, with the approval of the *South Australian Health Commission*, on terms and conditions mutually arranged, make use of the services of any officer of the *South Australian Health Commission*.

### **Superannuation**

13. (1) The Minister is a public authority within the meaning of the *Superannuation Act 1974* and may enter into arrangements with the South Australian Superannuation Board with respect to superannuation of any of his officers or employees under this Act.
- (2) Any officer or employee of the Minister under this Act who was, immediately before becoming such an officer or employee, a contributor to the South Australian Superannuation Fund shall, subject to the *Superannuation Act 1974*, remain a contributor to that Fund and any other officer or employee of the Minister under this Act may, subject to that Act, become a contributor to the South Australian Superannuation Fund.

### **Transfer of staff from the public service or prescribed employment**

14. (1) Where a person becomes an officer or employee of the Minister under this Act after ceasing to be employed—
  - (a) in the Public Service of the State; or

**Children's Services Act 1985**

---

- (b) in prescribed employment,

and that employment with the Minister follows immediately on the cessation of that previous employment—

- (c) his transfer shall be effected without loss of accrued recreation leave; and
- (d) his existing and accruing rights in respect of sick leave, accouchement leave and long service leave shall continue in effect.

(2) Except where subsection (1) applies, where a person becomes an officer or employee of the Minister under this Act within three months after ceasing to be employed—

- (a) in the Public Service of the State; or
- (b) in prescribed employment,

his existing and accruing rights immediately before the cessation of that previous employment in respect of recreation leave, sick leave, accouchement leave and long service leave shall continue in effect to the extent directed by the Minister and subject to such conditions as may be imposed by the Minister.

**DIVISION 3—THE CHILDREN'S SERVICES CONSULTATIVE COMMITTEE**

**The Children's Services Consultative Committee**

15. (1) There shall be a committee entitled the "Children's Services Consultative Committee".

(2) The Committee shall consist of the following persons:

- (a) twelve persons, elected by the regional advisory committees in accordance with the regulations, being, at the time of their election, parents of children enrolled at, or attending, any establishment that provides children's services; and
- (b) six persons, appointed by the Governor, being persons selected by the Minister from a panel of persons nominated in accordance with the regulations by each regional advisory committee and by such organisations involved in the field of children's services as may be prescribed; and
- (c) four persons, appointed by the Governor, being persons who, in the opinion of the Minister, are suitable persons to represent individual groups of children with special needs; and
- (d) one person, appointed by the Governor, upon the nomination of the South Australian Commission for Catholic Schools; and
- (e) one person, appointed by the Governor, upon the nomination of the South Australian Independent Schools Board Incorporated; and
- (f) one person, appointed by the Governor, upon the nomination of the South Australian Institute of Teachers, being a person employed in the provision of children's services; and
- (g) one person, appointed by the Governor, upon the nomination of the Public Service Association, being a person employed in the provision of children's services; and

- (h) one person, appointed by the Governor, upon the nomination of the Federated Miscellaneous Workers Union, being a person employed in the provision of children's services; and
- (i) one person, appointed by the Governor, upon the nomination of the Association of Junior Primary Parent Clubs, being a suitable person to represent the interests of persons involved with Child Parent Centres; and
- (j) one person, appointed by the Governor, being a person who, in the opinion of the Minister, is a suitable person to represent the interests of establishments that provide children's services and that are not assisted by public funding; and
- (k) four persons appointed by the Governor, being persons nominated by the Minister.

(3) In selecting persons for membership of the Committee under subsection (2)(b), the Minister shall seek to ensure that the persons selected have an appropriate diversity of experience in the provision of pre-school education for children, non-residential care of children, family day care for children and such other children's services as the Minister thinks fit.

(4) The Governor may appoint a member of the Committee to be the Chairman of the Committee and another member to be the Deputy Chairman.

(5) The Governor may appoint a suitable person to be the deputy of a member of the Committee (other than the Chairman), and the deputy may, in the absence of that member, act as a member of the Committee.

#### **Term of office of members**

**16.** (1) An appointed member of the Committee shall be appointed for such term, not exceeding three years, as the Governor determines and specifies in the instrument of his appointment and, on the expiration of a term of office, shall be eligible for reappointment.

(2) The Governor may remove a member of the Committee from office on the ground of—

- (a) mental or physical incapacity to carry out satisfactorily the duties of his office; or
- (b) dishonourable conduct; or
- (c) neglect of duty.

(3) The office of a member of the Committee becomes vacant if—

- (a) he dies; or
- (b) his term of office expires; or
- (c) he resigns by giving notice in writing to the Minister; or
- (d) he is removed from office by the Governor under subsection (2).

(4) Upon the office of a member of the Committee becoming vacant, a person shall be appointed or elected to that office in accordance with this Act.

#### **Allowances and expenses**

**17.** A member of the Committee shall be entitled to receive such allowances and expenses as the Governor may from time to time determine.

**Children's Services Act 1985**

---

**Conduct of business**

**18.** (1) The Chairman shall preside at any meeting of the Committee at which he is present and, in his absence, the Deputy Chairman shall preside.

(2) In the absence of both the Chairman and the Deputy Chairman from a meeting of the Committee, the members present shall elect one of their number to preside at the meeting.

(3) Seventeen members constitute a quorum of the Committee.

(4) A decision carried by a majority of the votes cast by the members present at a meeting of the Committee is a decision of the Committee.

(5) Each member present at a meeting of the Committee is entitled to one vote on a question arising for decision at that meeting and, in the event of an equality of votes, the person presiding is entitled to a second, or casting, vote.

(6) Subject to this Act, the business of the Committee shall be conducted in such manner as it determines.

(7) The Committee shall meet at least once annually in a country region in the State designated by the Minister under section 21.

(8) The Director shall provide such secretarial and other services and facilities as may reasonably be required for the purposes of the Committee.

**Saving provision**

**19.** An act or proceeding of the Committee is not invalid by reason of a vacancy in the membership of the Committee or a defect in an appointment to the Committee.

**Functions of the Committee**

**20.** The functions of the Committee are—

- (a) to advise the Minister and the Director on any matter relating to the administration of this Act (other than the employment of staff); and
- (b) to identify and assess the needs and attitudes of the community in relation to children's services and to advise the Minister and the Director in relation to programmes to accommodate those needs and attitudes; and
- (c) to consider reports made to the Committee by regional advisory committees; and
- (d) to investigate and report to the Minister on any matters referred by the Minister to the Committee for advice.

**DIVISION 4—REGIONAL ADVISORY COMMITTEES**

**Regional advisory committees**

**21.** (1) The Minister shall designate areas within the State for the purposes of this section.

(2) There shall be a regional advisory committee established in each of the areas designated under subsection (1).

**Membership of regional advisory committees**

**22.** (1) Each regional advisory committee shall consist of such number of members as may be prescribed.

(2) Subject to subsection (3), the members of a regional advisory committee shall be elected or appointed in accordance with the regulations.

(3) Each regional advisory committee shall have more elected members than appointed members.

(4) A majority of the members of a regional advisory committee must be, at the time of their election or appointment, parents of children enrolled at, or attending, any establishment that provides children's services.

(5) The members of a regional advisory committee shall elect one of the members of the committee to be the chairman of the committee.

**Terms and conditions of office of members of regional advisory committees**

**23.** (1) The members of a regional advisory committee shall hold office on such terms and conditions as may be prescribed.

(2) A member of a regional advisory committee is entitled to receive such allowances and expenses as the Minister may determine.

**Procedure, etc.**

**24.** (1) Subject to the regulations, the procedure of a regional advisory committee shall be such as is determined by the committee.

(2) A regional advisory committee shall consider, and report on, any matter relating to children's services.

(3) The chairman of a regional advisory committee shall—

(a) as soon as is practicable after each meeting of the committee, make a report to the Committee on the business transacted at the meeting; and

(b) make such reports to the Director and the Committee on the deliberations of and conclusions reached by the committee as the Minister may require.

(4) A regional advisory committee shall hold at least five meetings in each year.

(5) The Director shall provide such secretarial and other services and facilities as may reasonably be required for the purposes of a committee.

Children's Services Act 1985

---

**PART 3  
CHILDREN'S SERVICES**

**DIVISION 1—LICENSED CHILD CARE CENTRES**

**Business of child care not to be carried on without licence**

25. (1) No person shall have the conduct or control of a child care centre unless that person is the holder of a valid licence granted under this section in respect of the child care centre.

(2) The Director may grant a licence under this section subject to such terms and conditions as he thinks fit and specifies in the licence.

(3) A licence will be granted for a period of 2 years and may be renewed for successive periods of 2 years.

(4) A person shall not contravene any condition on which a licence is granted under this Division.

(5) This section does not apply in respect of any premises or place in which foster children are cared for by a person approved as a foster parent under the *Community Welfare Act 1972*.

(6) This section does not apply where the children who are cared for apart from their guardians are all of the same family.

**Cancellation of licence**

26. (1) Where the Director is satisfied that proper cause for the cancellation of a licence under this Division exists, he may, by notice in writing served personally or by post upon the licensee, cancel the licence.

(2) The Director shall not cancel a licence under this Division unless he has given notice in writing to the licensee of his intention to cancel the licence at least twenty-eight days before he does so.

**Period for which child may be left in child care centre**

27. (1) A person shall not leave a child under the age of six years to be cared for in a licensed child care centre for more than a prescribed number of consecutive hours over a prescribed period.

Penalty: Fifty dollars.

(2) The licensee of a child care centre shall notify the Director in writing of any breach of subsection (1).

**Register**

28. The licensee of a child care centre shall keep a register containing the following particulars with respect to every child received by him so far as those particulars are reasonably ascertainable by him:

- (a) the name and date of birth of the child; and
- (b) the name and address of the person from whom the child was received; and
- (c) the name and address of the person who will collect the child; and
- (d) the address and telephone number of the place or places where the guardians of the child may be contacted in the event of an emergency; and

- (e) the time of arrival and departure of the child each day; and
- (f) such other particulars as may be prescribed.

**Powers of entry and inspection**

**29.** (1) The Director, or any person authorised in writing by him, may at any reasonable time enter and inspect a licensed child care centre.

(2) The licensee of a child care centre shall, if so required by the Director or any such authorised person, produce for his inspection the register that he is required to keep under this Division, and shall furnish the Director or authorised person with such information in relation to any child as the Director may require.

(3) A person shall not hinder the Director or any such authorised person in the exercise of powers conferred on him under subsection (1), or fail to comply with a requirement made of him pursuant to subsection (2).

**DIVISION 2—LICENSED BABY SITTING AGENCIES**

**Licensing of baby sitting agencies**

**30.** (1) No person shall—

- (a) carry on the business of a baby sitting agency; or
- (b) hold himself out to the public as a baby sitting agency,

unless he is licensed as a baby sitting agency under this section.

(2) The Director may grant a licence under this section subject to such terms and conditions as he thinks fit and specifies in the licence.

(3) A licence shall, subject to this Division, remain in force for a period of twelve months from the day on which it was issued, and may be renewed for successive periods of twelve months.

(4) A person shall not contravene any condition upon which a licence is granted under this section.

**Cancellation of licence**

**31.** (1) Where the Director is satisfied that proper cause for cancellation of a licence under this Division exists, he may, by notice in writing served personally or by post upon the licensee, cancel the licence.

(2) The Director shall not cancel a licence under this Division unless, at least twenty-eight days before he does so, he has informed the licensee, by notice in writing served personally or by post upon him, of his intention to cancel the licence.

**Records, etc.**

**32.** (1) A licensed baby sitting agency shall maintain a register of baby sitters and such other records as may be prescribed.

(2) A licensed baby sitting agency shall, if so required by the Director, or any person authorised in writing by him, produce for inspection the records that the agency is required to maintain under this section, and shall furnish the Director or authorised person with such other information relating to the activities of the agency as he may require.

Children's Services Act 1985

---

**DIVISION 3—APPROVED FAMILY DAY CARE AND LICENSED  
FAMILY DAY CARE AGENCIES**

**Application for approval of family day care**

**33.** (1) A person—

- (a) who proposes, for monetary or other consideration, to care for not more than 4 young children on a non-residential basis in a family environment away from their own homes and apart from their guardians; and
- (b) who is not required to hold a licence under this Act, or the *Community Welfare Act 1972*,

may apply to the Director for approval—

- (c) of the applicant as a family day care provider; and
- (d) of the premises in which care is to be provided as family day care premises.

(2) The Director may give an approval in writing under this section subject to such conditions as he thinks fit and specifies in the approval.

(2a) It is a condition of every approval under this section (whether given before or after the commencement of this subsection) that the care provider must not, at any one time, have the care of—

- (a) more than 4 young children; or
- (b) more than 7 children, in total.

(2b) The Director may exempt an approved family day care provider from the conditions specified in subsection (2a) if—

- (a) all children being cared for by the care provider are of the same family; or
- (b) no more than 8 children are being cared for by the care provider and the Director is satisfied that special circumstances exist; or
- (c) immediately before the commencement of this subsection, the care provider had the care of more than 4 young children or more than 7 children, in total.

(2c) An exemption granted under subsection (2b) will apply only in relation to—

- (a) if the exemption is granted under subsection (2b)(a)—children of the family specified in the exemption; or
- (b) if the exemption is granted under subsection (2b)(b)—the children in the care of the care provider at the time the exemption is granted; or
- (c) if the exemption is granted under subsection (2b)(c)—the children in the care of the care provider immediately prior to the commencement of that subsection.

(2d) An exemption granted under subsection (2b) may be subject to such conditions as the Director thinks fit.

(3) An approval shall, subject to this Division, remain in force for a period of twelve months after the day on which it was given, and may be renewed for successive periods of twelve months.

(4) In determining the number of children being cared for by a care provider for the purposes of this section, the care provider's own children and any other children residing in the approved premises will be taken into account if those children are under the age of 13 years.

#### **Revocation of approval**

**34.** (1) Where the Director is satisfied that proper cause for the revocation of an approval under this Division exists, he may, by notice in writing served personally or by post upon the approved family day care provider, revoke the approval.

(2) The Director shall not revoke an approval pursuant to this section unless he has given notice in writing to the approved family day care provider of his intention to revoke the approval at least twenty-eight days before he does so.

#### **Register**

**35.** An approved family day care provider shall keep a register containing the following particulars with respect to every child received by him so far as those particulars are reasonably ascertainable by him:

- (a) the name and date of birth of the child; and
- (b) the name and address of the person from whom the child was received; and
- (c) the name and address of the person who will collect the child; and
- (d) the address and telephone number of the place or places at which the guardians of the child may be contacted in the event of an emergency; and
- (e) such other particulars as may be prescribed.

#### **Powers of entry and inspection**

**36.** (1) The Director, or any person authorised in writing by him, may at any reasonable time enter and inspect any approved family day care premises.

(2) An approved family day care provider shall, if so required by the Director or any such authorised person, produce for his inspection the register that he is required to keep under this Division, and shall furnish the Director or authorised person with such information in relation to any child as the Director may require.

(3) A person shall not hinder the Director or any such authorised person in the exercise of powers conferred on him under subsection (1), or fail to comply with a requirement made of him pursuant to subsection (2).

#### **False representation as to approval**

**37.** A person shall not falsely represent that he or any premises have been approved under this Division, nor make any representation that might reasonably be expected to cause or induce any other person falsely to believe that he or the premises have been so approved.

#### **Licensing of family day care agencies**

**38.** (1) No person shall—

- (a) carry on the business of a family day care agency; or

**Children's Services Act 1985**

---

(b) hold himself out to the public as a family day care agency,  
unless he is licensed as a family day care agency under this section.

(2) The Director may grant a licence under this section subject to such terms and conditions as he thinks fit and specifies in the licence.

(3) A licence shall, subject to this Division, remain in force for a period of twelve months from the day on which it was issued, and may be renewed for successive periods of twelve months.

(4) A person shall not contravene any condition upon which a licence is granted under this section.

**Cancellation of licence**

**39.** (1) Where the Director is satisfied that proper cause for cancellation of a licence under this Division exists, he may, by notice in writing served personally or by post upon the licensee, cancel the licence.

(2) The Director shall not cancel a licence under this Division unless, at least twenty-eight days before he does so, he has informed the licensee, by notice in writing served personally or by post upon him, of his intention to cancel the licence.

**Records, etc.**

**40.** (1) A licensed family day care agency shall maintain such records as may be prescribed.

(2) A licensed family day care agency shall, if so required by the Director, or any person authorised in writing by him, produce for inspection the records that the agency is required to maintain under this section, and shall furnish the Director or authorised person with such other information relating to the activities of the agency as he may require.

**DIVISION 4—REGISTERED CHILDREN'S SERVICES CENTRES**

**Applications for registration**

**41.** (1) The management committee of a Children's Services Centre may apply to the Director for registration of the Centre under this Division.

(2) An application for registration must—

(a) be made in the prescribed manner and form; and

(b) be accompanied by a copy of the constitution under which the Children's Services Centre is to operate.

**Registration**

**42.** (1) Subject to subsection (2), the Director may, on an application for registration duly made under this Division, register the Children's Services Centre and issue a certificate of incorporation in respect of the Children's Services Centre.

(2) The Director shall not register a Children's Services Centre under this section unless he has approved the constitution under which the Children's Services Centre is to operate.

(3) The registration of a Children's Services Centre under this section does not affect the title of the Centre to any of its property.

(4) A Children's Services Centre that is registered, or deemed to be registered, under this Act is a body corporate and has the powers and functions prescribed by its constitution.

(5) Incorporation of a Children's Services Centre by virtue of subsection (4) terminates incorporation of the Centre under any other Act.

#### **Amendment of constitution of registered Children's Services Centres**

**43.** (1) The Director may, by notice in writing, direct a registered Children's Services Centre to make such amendments to its constitution as are specified in the notice.

(1a) The Director must not give a direction under subsection (1) until the expiration of three months after the Director has informed the Children's Services Centre in writing of the amendments that the Director requires.

(1b) Before the direction is given the Children's Services Centre may make representations to the Director in relation to the proposed amendments and the Director must give proper consideration to those representations.

(2) Where a registered Children's Services Centre fails to comply with a notice under subsection (1) within the period specified in the notice, the Director may cancel its registration.

(3) An amendment to the constitution of a registered Children's Services Centre has no effect until submitted to, and approved by, the Director.

#### **Management of Children's Services Centres**

**44.** A registered Children's Services Centre shall be administered by a management committee constituted in accordance with the constitution of the Children's Services Centre.

#### **Provision on dissolution of registered Children's Services Centre**

**45.** Subject to the constitution of a registered Children's Services Centre, on its dissolution, all property, rights and liabilities vested in, or attached to, the Children's Services Centre shall vest in, or attach to, the Minister.

### **DIVISION 5—APPEALS**

#### **Appeal against decisions of the Director**

**46.** (1) A right of appeal to the Minister shall lie against any decision of the Director under this Part—

(a) to refuse a licence or registration under this Part; or

(b) to cancel a licence or registration under this Part.

(2) The appeal must be instituted, in the prescribed manner, before the expiration of one month from the day on which the decision appealed against took effect, but the Minister may, if he is satisfied that in the circumstances it is just and reasonable to do so, extend the period within which an appeal may be instituted.

(3) The Minister shall establish such number of appeal boards as may be necessary for the purposes of investigating appeals under this section.

(4) The Minister may pay to the members of an appeal board such allowances and expenses as he thinks fit.

**Children's Services Act 1985**

---

(5) Where an appeal under this section has been instituted against a decision, any action in relation to the decision shall be stayed until the appeal has been determined or withdrawn, unless the Minister directs otherwise.

(6) The Minister may, upon determining an appeal, revoke the decision appealed against and may substitute for that decision any other decision that could have been made in the first instance.

**DIVISION 6—MISCELLANEOUS**

**Power of Director to enter certain places**

**47.** (1) The Director, or any person authorised by him in writing, may, where the Director suspects on reasonable grounds that a child is being cared for in any place in contravention of this Act, enter that place for the purpose of investigating the matter.

(2) A person shall not hinder the Director or any such authorised person in the exercise of powers conferred on him under subsection (1).

**Restriction on child minding advertisements**

**48.** No person shall, by public advertisement, represent that he is prepared, for monetary or other consideration, to mind, look after or care for young children away from their own homes unless he is the holder of a valid licence under this Act in respect of caring for such children or unless he is an approved family day care provider.

**PART 4  
MISCELLANEOUS**

**Annual report**

**49.** (1) The Director shall, on or before the thirty-first day of October in each year, submit to the Minister a report on the administration of this Act during the year ending on the preceding thirtieth day of June and information upon such other matters as the Minister may direct.

(2) The Minister shall cause a copy of a report furnished to him under subsection (1) to be laid before each House of Parliament within fourteen sitting days of his receipt of the report if Parliament is then in session, but if Parliament is not then in session, within fourteen days of the commencement of the next session of Parliament.

**Financial provision**

**50.** The moneys required for the purposes of this Act shall be paid out of moneys appropriated by Parliament for the purpose.

**Recognised organisations**

**51.** (1) Where the Minister is of the opinion that an organisation (being an association registered under the *Industrial Conciliation and Arbitration Act 1972*) represents the interests of a significant number of his officers and employees under this Act, he shall, by notice published in the *Gazette*, declare that organisation to be a recognised organisation for the purposes of this section.

(2) A recognised organisation has the right to make submissions to the Minister on any matter that is an industrial matter within the meaning of the *Industrial Conciliation and Arbitration Act 1972* arising out of the exercise or performance by the Minister of his powers and functions under this Act.

**Registered Children's Services Centres exempted from land tax**

**52.** A registered Children's Services Centre is exempt from the payment of land tax under the *Land Tax Act 1936*.

**Service of notices**

**53.** A notice or document required or authorised to be given or served under this Act may be given or served personally or by post.

**Proceedings for offences**

**54.** Proceedings for offences against this Act shall be disposed of summarily.

**Offences generally**

**55.** (1) A person who contravenes, or fails to comply with, a provision of this Act is guilty of an offence.

(2) A person who is guilty of an offence against this Act for which no penalty is specifically provided shall be liable to a penalty not exceeding one thousand dollars.

**Evidentiary provision**

**56.** (1) In any proceedings for an offence against this Act, an allegation in the complaint—

- (a) that a specified person was or was not the holder of a licence under this Act; or
- (b) that a specified person was or was not an approved family day care provider; or

**Children's Services Act 1985**

---

- (c) that a licence or an approval was subject to specified conditions,

shall, in the absence of proof to the contrary, be proof of the matter so alleged.

**Regulations**

**57.** (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

- (2) Without limiting the generality of subsection (1), those regulations may—

- (a) prescribe any form for the purposes of this Act; and
- (b) prescribe, and provide for the payment of, fees; and
- (c) require registered Children's Services Centres to furnish periodic or other returns to the Minister containing information required by the regulations; and
- (d) prescribe the form of any notice, application, licence, certificate or other document given, made or granted under this Act; and
- (e) provide for—
- (i) the appointment or election of members of the Committee or a regional advisory committee; and
- (ii) in the case of the election of such members—
- (A) the appointment of a person to conduct the election; and
- (B) the persons, or class of persons, by whom such members are to be elected; and
- (C) the selection, or nomination, of candidates for election; and
- (f) exempt, conditionally or unconditionally, any person or class of persons from the requirement to hold a licence under this Act.

(3) Any regulation made under this Act may be of general or limited application according to—

- (a) the classes of persons; or
- (b) the circumstances; or
- (c) any other specified factor,

to which the regulation is expressed to apply.

**SCHEDULE 1**

*Transitional Provisions*

**Transitional provision relating to the repeal of the Kindergarten Union Act 1974 and the amendment of the Community Welfare Act 1972**

1. (1) A kindergarten registered under the repealed Act immediately before the commencement of this Act shall be deemed to be registered as a Children's Services Centre under this Act and shall, subject to this Act, continue to be registered.

(1a) Section 42(5) does not apply to a kindergarten incorporated under this Act before the commencement of the *Children's Services Act Amendment Act 1987*.

(1b) If a kindergarten is incorporated under this Act and the *Associations Incorporation Act 1985*, its incorporation under the *Associations Incorporation Act 1985* will terminate at the expiration of three months after the commencement of the *Children's Services Act Amendment Act 1987*, unless the kindergarten has, by notice in writing to the Director and the Corporate Affairs Commission, elected to retain its incorporation under the *Associations Incorporation Act 1985*.

(1c) If this Act and the *Associations Incorporation Act 1985* are in conflict in relation to a kindergarten incorporated under both Acts, the provisions of this Act will prevail.

(2) A kindergarten registered as a branch kindergarten under the repealed Act immediately before the commencement of this Act, shall, upon the commencement of this Act, continue to be exempt from the payment of rates under the *Local Government Act 1934*.

(3) All property, rights and liabilities vested in or attached to the Kindergarten Union of South Australia immediately before the commencement of this Act, shall, upon that commencement, vest in, or attach to, the Minister.

(4) A licence or approval in force under the repealed provisions of the amended Act immediately before the commencement of this Act shall be deemed to be a licence or approval granted and in force under this Act and shall, subject to this Act, continue in force.

(5) In subsection (4)—

"the amended Act" means the *Community Welfare Act 1972*;

"the repealed provisions" means the provisions of the amended Act repealed by this Act.

**Transfer of staff of the Kindergarten Union of South Australia**

2. (1) This section applies to employees of the Kindergarten Union of South Australia who were so employed immediately before the commencement of this Act.

(2) Subject to subsection (3), all persons to whom this section applies shall, on the commencement of this Act, become employees of the Minister on terms and conditions determined by the Minister.

(3) On the commencement of this Act—

(a) a salaried employee to whom this section applies who is specified in a notice published by the Governor in the *Gazette* shall become an officer of the Public Service in a Department specified in the notice, at the salary and classification specified in relation to him in the notice; and

(b) an employee to whom this section applies (not being a salaried employee) who is specified in the notice referred to in paragraph (a), shall become an employee of a Minister specified in the notice, upon terms and conditions fixed by the relevant Minister.

(4) The transfer of the employment of a person to whom this section applies shall be effected without loss of accrued recreation leave and without prejudice to, or interruption of his accrued or accruing rights in respect of sick leave, accouchement leave and long service leave arising out of his service with the Kindergarten Union of South Australia.

**Children's Services Act 1985**

---

**SCHEDULE 2**

*Amendment of the Community Welfare Act 1972*

Provision Amended	How Amended
Section 6(1)—	Strike out the definition of " <b>baby-siting agency</b> ".  Strike out the definition of " <b>child care centre</b> " and substitute the following definition:  " <b>child care centre</b> " has the same meaning as in the <i>Children's Services Act 1985</i> ;  Strike out the definition of " <b>family day-care agency</b> ".
Part 4, Division 2, Subdivisions 5, 6 and 7—	Subdivisions 5, 6 and 7 are repealed.
Section 79—	Section 79 is repealed.

## APPENDIX

### LEGISLATIVE HISTORY

*(entries in bold type indicate amendments incorporated since the last reprint)*

<b>Section 3:</b>	<b>definition of "child care centre" substituted by 7, 1998, s. 3(a)</b> <b>definition of "family day care agency" amended by 7, 1998, s. 3(b)</b> <b>definition of "young child" inserted by 7, 1998, s. 3(c)</b>
<b>Section 25(3):</b>	<b>substituted by 7, 1998, s. 4(a)</b>
<b>Section 25(6):</b>	<b>amended by 7, 1998, s. 4(b)</b>
<b>Section 33(1):</b>	<b>amended by 7, 1998, s. 5(a)</b>
<b>Section 33(2a) - (2d):</b>	<b>inserted by 7, 1998, s. 5(b)</b>
<b>Section 33(4):</b>	<b>substituted by 7, 1998, s. 5(c)</b>
Section 42(4):	substituted by 95, 1987, s. 3
Section 42(5):	inserted by 95, 1987, s. 3
Section 43(1a) and (1b):	inserted by 95, 1987, s. 4
<b>Section 48:</b>	<b>amended by 7, 1998, s. 6</b>
Schedule 1	
Clause 1(1a) - (1c):	inserted by 95, 1987, s. 5