

# Portfolio Procedures

Department of Communities

Disability Services Queensland

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**Title:** Enforcement options for licensed child care services  
**Related Policy No.:** 352-2  
**Policy Category:** Child care and family support > child care  
**Records File No.:** ADM/06172

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**Office:** Program Management Directorate  
**Help Contact:** Office for Children – 3224 4557

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## **Purpose:**

This procedure provides information about the different enforcement options under the *Child Care Act 2002* for non-compliance by licensees of child care services.

## **Process:**

### **A. Initial step in addressing non-compliance**

- In circumstances where an Authorised Officer (usually the Community Support Officer) identifies an issue of non-compliance, he/she will endeavour to engage the licensee cooperatively to resolve the issue.
- The Authorised Officer will send a letter to the licensee to ensure he/she is aware of the non-compliance.
- Where the licensee and the department are able to agree on a resolution of the breach, and the breach is resolved as agreed, the department will take no further steps in respect of compliance, ie a compliance notice will not be issued. A letter will be sent to the licensee confirming rectification of the breach.

### **B. Enforcement Options**

#### 1. The compliance notice

If a licensee:

- fails to comply with a provision of the legislation; and
  - has not rectified the breach or negotiated a reasonable timeframe to comply
- the department will issue a compliance notice. (Section 142 of the *Child Care Act 2002* sets out the requirements for a compliance notice).

Prior to issuing a compliance notice, an Authorised Officer must, in conjunction with the Manager (Community Capacity and Service Quality) brief the Regional Director about the non-compliance.

If the breach is rectified, the department will write to the licensee to confirm that the department is satisfied that the licensee has complied with the relevant provision.

Where a licensee does not comply with a compliance notice, other enforcement action will be taken where –

- the licensee has indicated an unwillingness or inability to comply with the requirements of the legislation,

- has not attempted to work cooperatively with the department towards a resolution of the area of non-compliance, or
- it is necessary to ensure the safety and wellbeing of the children in the service.

## 2. The building compliance notice

Prior to issuing a building compliance notice, an Authorised Officer (CSO) must, in conjunction with the Manager (Community Capacity and Service Quality) brief the Regional Director about the non-compliance.

Where necessary, building advice will be sought from a building certifier.

## 3. Amending, suspending or revoking a licence

The Director-General has not delegated the power to amend (unless the amendment is at the request of the licensee), suspend or revoke a licence.

The Regional Director in consultation with the Director, Office for Children, will prepare a brief for the Director-General providing the information relevant to the decision and a recommendation about amending, suspending or revoking the licence.

If a licence is amended, suspended or revoked (under sections 43, 45, or 46), the department will advise the Commission for Children and Young People and the Child Guardian in accordance with the requirements of section 50A of the *Child Care Act 2002*. However, the Commission will only be advised in circumstances where the enforcement action may be relevant to the functions or powers of the Commission (in accordance with the Act).

### (a) Amending a licence (sections 42 and 43)

The department will take steps to amend a licence as a means of enforcement where -

- the licensee is in breach of a provision of the legislation; and
- the licensee cannot operate the service in accordance with the legislation unless the amendment is made; and
- the licensee can continue to operate the service effectively with the licence in its amended form without breaching the legislation.

### (b) Suspending or revoking a licence (section 45)

The department will take steps to suspend a licence where -

- one of the grounds for suspension in section 45 has been made out,
- the licensee is in breach of a provision of the legislation which is considered essential to the safety of children in care, or the service has been identified as a chronic substandard service, and
- the licensee has not demonstrated a capacity or willingness to comply with the legislation and work cooperatively with the department.

### (c) Urgent suspension (section 46)

The Director-General will immediately suspend a licence where he/she is satisfied that it is necessary to do so in the interests of the wellbeing and safety of children being provided with child care.

The department will consider urgently suspending a licence where –

- there is an immediate safety risk to children, or
- where a licensee has failed to comply with the prescribed notice and suitability requirements of the *Commission for Children and Young People and Child Guardian Act 2000*.

### (d) Revocation of the licence

The department will take steps to revoke a licence where one of the grounds contained in section 45 has been made out.

The decision maker (the Director-General) will have regard to the following:-

- whether a licence in respect of the same licensee has previously been suspended or is currently suspended;
- whether the issues of non-compliance are of such a serious nature that it would not be appropriate to suspend the licence;
- the history, including the nature and extent, of non-compliance by the licensee in respect of the service.

#### 4. Refusal to grant a licence and refusal to renew a licence

A licence application, or renewal of licence application will be refused by the decision maker (the Director-General) when the applicant is not able to demonstrate a capacity to meet the requirements of the *Child Care Act 2002*, including but not limited to the following circumstances:-

- (a) a licensee fails to demonstrate compliance with the prescribed notice and suitability requirements of the *Commission for Children and Young People and the Child Guardian Act 2000*;
- (b) a licensee fails to demonstrate a capacity to meet any or a number of the requirements of the legislation, for example, the licensee does not have sufficient qualified carers to meet qualified carer to child ratios;
- (c) where the application is for renewal of a licence, the service has been chronically non-compliant during the term of the licence.

Where the department is considering refusing an application for a licence or a renewal application, the applicant will be given an opportunity to show cause why the application should not be refused before the decision is made.

The best interests of the children in the service will be the paramount consideration (section 9(a)) in determining whether the application should be refused or granted.

#### **Delegations:**

- Managers, Community Capacity & Service Quality and Regional Directors have the following delegations:
  - Section 21(5) – to issue and renew a licence (but not to refuse to renew a licence)
  - Section 42(5) – to amend a licence at the request of the licensee upon application by a licensee
- Authorised Officers appointed pursuant to section 111 of the *Child Care Act 2002* may issue compliance notices (sections 142 and 143).
- All other enforcement powers are retained by the Director-General (ie show cause processes, amendment, suspension and revocation of a licence).

#### **LINKS**

##### **Related Legislation or Standard**

##### **Related Departmental Policy**

Power of entry and other powers under the *Child Care Act 2002*

Reporting of Harm or Suspected Harm

Reporting of Deaths, Serious Incidents and Missing Person Policies and Procedures

##### **Forms, Standard Letters or Memorandum**

Building Compliance Notice

Compliance Notice

Notice of amendment of licence

Notice of revocation of licence

Notice of suspension of licence

Notice of urgent amendment of licence

Notice of urgent suspension of licence

Show cause notice (amendment of licence)

Show cause notice (suspension of licence)

Show cause notice (revocation of licence)

Show cause notice (renewal of licence)