

Operational Procedures

Department of Communities

Disability Services Queensland

Title: Power of entry and other powers under the *Child Care Act 2002*
Related Policy No.: 357-2
Policy Category: Child care and family support > child care

Date of approval: 30 May 2007
Date of operation: 2 July 2007
Date to be reviewed: 1 July 2009

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

Purpose:

These procedures provide a guide to authorised officers in exercising their monitoring and investigative powers in respect of child care services.

Process:

The powers include:

- power of entry;
- general powers after entry;
- power to seize evidence; and
- power to obtain information.

The legislation allows authorised officers to exercise discretion in regard to when the powers are invoked. Authorised officers must exercise the powers properly and fairly and with primary regard to the welfare of children in child care.

Identification

When an authorised officer exercises a power under the *Child Care Act 2002*, the authorised officer must:

- first present his/her identity card for inspection by the licensee, the occupier or to any other person with whom the officer deals with during entry and inspection; or
- ensure that his/her identity card is clearly displayed for the duration of the visit or time when the power is being exercised, eg the authorised officer wears the card pinned to his/her lapel (section 117(1)).

1. POWER OF ENTRY

What premises may be entered?

An authorised officer may enter premises where licensed child care is being provided. They may also enter "any place" (section 118) relevant to the monitoring of compliance (for eg. a home, a park, a hall, a club, or an office block).

Centres, homes and other places where child care is provided under a licence

An authorised officer is authorised to enter premises where child care is provided under a licence (ie a licensed child care centre or home in a licensed home based care service) in order to:

- investigate a complaint (although in some circumstances, it may not be necessary or appropriate to undertake a visit to the place where child care is provided in order to properly investigate a complaint); or
- follow up a compliance issue;
- undertake a general inspection of the premises in order to ensure compliance; or
- for any other reason properly within the scope of the Department's role as regulator of licensed child care services.

When a licensed child care centre or a home in a licensed family day care scheme is open for business and child care is being provided, an authorised officer may enter the centre or home and does not need the consent of the licensee or occupier (section 118(1)(c)). If the consent of the occupier is given, then entry can be made at any time (for eg. to a licensed child care centre outside of business hours).

Where an authorised officer intends entering a child care centre or home in a licensed home based care service under the authority of section 118(1)(c), the authorised officer is not required by the legislation to give notice to the licensee, Director, carer or any other person. The authorised officer is also not required to explain in detail or provide a reason for the visit whether it is for monitoring or inspection or use of the more comprehensive search powers. The authorised officer may however elect to notify the licensee of an intended visit to the centre or home in certain circumstances, for example: the authorised officer wishes to observe a specific carer for the purposes of investigating a complaint about the delivery of the program/activities and experiences in the centre or home.

If a licensee, occupier or staff member refuses entry to an authorised officer when child care is being provided under a licence, the authorised officer will inform the person that:-

- power of entry without consent is contained in section 118 of the *Child Care Act 2002*; and
- obstructing an officer is an offence unless the person has a reasonable excuse.

A child care centre will receive at least one visit from an authorised officer that is not announced to the licensee during the term of a licence. The purpose of the visit is to ensure that child care is being provided in accordance with the requirements of the legislation, and any conditions on the licence. A home based care service will receive at least one unannounced visit (either at the coordination unit or a home) during the term of the licence.

Home or other place where child care is provided but not under a licence

When entering a private home where child care is provided, but not under a licence (eg a stand alone home based care service), an authorised officer must have:

- the consent of the owner or occupier or person in charge; **or**
- a warrant authorising entry.

When entering any other place where child care is provided, but not under a licence (eg a resort providing child care), one of the following must apply:

- consent has been obtained; or
- it is a public place and the entry is made when the place is open to the public, eg a park; or
- entry is made when the place is open for business (provided the place is not a home); or
- a warrant authorising entry has been obtained.

An authorised officer must first attempt to obtain the consent of the occupier (owner or person in charge) before seeking a warrant. In an emergency situation, a special warrant may be sought on an urgent basis (see section 122). For more information on considerations and process for applying for a warrant, including a special warrant, to enter a place refer to the policy and procedures - *Obtaining and exercising a warrant in respect of licensed and stand alone child care services*.

When entering a home, an authorised officer must ensure that as far as possible, the privacy of anyone living in the home is preserved.

Other place where child care is not provided

Authorised officers may enter “any place” for the purpose of monitoring compliance. For example, authorised officers may enter the coordination unit of a family day care scheme (licensed home based service) or another relevant business office. Provided the place is not a home, entry is permitted without consent if entry is made when the place is open for the conduct of business (section 118(1)(d)).

Where consent is required to enter

An authorised officer may wish to enter a place that requires consent for the entry, for example:

- a licensed premises (including a centre or a home in a family day care scheme) when child care is not being provided under the licence; or
- a private home where child care is not being provided under a licence (eg stand alone child care); or
- a public place when the place is not open to the public; or
- another place where child care is not operating under a licence (eg. a resort or camp).

(Note: Entry can always be made under the power of a warrant even if consent has been denied.)

If consent is required, the authorised officer must ask the person in charge of the place, eg the licensee or owner, or if the owner is not there, the person who is caring for the children or appears to be in charge of caring for the children, for consent to enter. The authorised officer must tell the person:

- the reason why they want to enter; and
- the person is not required to consent to them entering (section 119(2)).

If consent is required to enter a private home, an authorised officer is permitted to go to the front door of the house (ie enter the land around the home to an extent that is reasonable) in order to ask the occupier for consent to enter (section 118(2)).

The procedure for asking consent, outlined in section 119, must be followed by authorised officers. If the person consents to the authorised officer entering, the authorised officer must ensure that the person signs the acknowledgment of consent to enter form (see Child Care Form 12). If the person refuses to sign the acknowledgment of consent to enter form, the authorised officer must not enter (see procedure for obtaining a warrant).

If the person signs the acknowledgment of consent to enter form, the authorised officer must give a copy of the form to the person IMMEDIATELY.

Notification within the Department where the licensee has indicated that he/she will refuse entry

If an authorised officer has indicated to a licensee that he/she intends conducting a visit to the centre or home operated under the licence for the purposes of investigating a specific complaint, or to generally ensure compliance (an announced visit), and the licensee has refused to cooperate, before exercising the power of entry under section 118, the authorised officer must first advise the Regional Director in writing of his/her intention. The advice to the Regional Director should include copies of any correspondence with the licensee and details of any conversations with the licensee, nominee or other representative of the licensee.

In urgent circumstances, for example where the authorised officer is at the centre and reasonably believes that the licensee is destroying evidence of the alleged breach, and the licensee is refusing entry to the authorised officer, the authorised officer may exercise his/her power to enter the centre without notifying the Regional Director prior to doing so. As soon as possible after exercising the power, the authorised officer must brief the Regional Director accordingly.

2. GENERAL POWERS AFTER ENTRY

In addition to the power of entry, section 125 of the *Child Care Act 2002* also sets out certain general powers of authorised officers that may be used in order for them to properly discharge their obligations to monitor and enforce the legislation. An authorised officer, who enters a place, has the authority to:

- search any part of the place;
- inspect, measure, test, photograph or film any part or thing;
- take a thing, or sample of it, at the place for analysis;
- copy any documents at the place;
- take into the place and use any equipment and materials reasonably required to exercise a power;
- require any person at the place, whether occupier, employee or a member of the public, to give reasonable assistance to perform these functions and information to help the officer find out whether the *Child Care Act 2002* is being complied with.

Some or all of these powers may be used by authorised officers in respect of licensed child care centres and homes in licensed home based care schemes:

- at re-licensing time;
- to investigate a specific complaint; and
- during unannounced and announced visits to a licensed centre or home to monitor compliance.

Authorised officers are permitted to use the powers to ensure compliance with the legislation generally, eg in respect of stand alone home based child care where no licence is required to operate the service.

If a person refuses to assist an authorised officer or to allow the authorised officer to exercise a power, the authorised officer will indicate to the person that:

- the authorised officer has authority under the *Child Care Act 2002* to exercise the power; and
- the person is required to assist and failure to assist is an offence under the *Child Care Act 2002* unless the person has a reasonable excuse (section 126).

3. POWER TO SEIZE EVIDENCE

An authorised officer has the power to seize anything at the place after entry, provided the thing seized is evidence of an offence against the *Child Care Act 2002*.

Seizing evidence after entry without consent or warrant

Where consent to entry is not required (eg a licensed child care centre or home in a family day care scheme when child care is being provided) the authorised officer may seize a thing at the place if the officer reasonably believes the thing is evidence of an offence against the *Child Care Act 2002* (section 128).

Seizing evidence after entry with consent or warrant

Where consent or a warrant is required for entry, and the consent or warrant has been given or granted, an authorised officer may seize a thing at the place if the officer reasonably believes the thing is evidence of an offence against the *Child Care Act 2002* and:

- where consent was required to be given, the seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for consent; or
- seizure of the thing is consistent with the warrant (section 129).

An authorised officer may also seize anything else at the place provided the authorised officer reasonably believes the thing is evidence of an offence against the *Child Care Act 2002* and the seizure is necessary to prevent the thing being hidden, lost, destroyed or used to continue to repeat the offence (section 129(4)).

Access to seized things

An authorised officer must allow the owner of a seized thing (or the owner's legal representative) to inspect it and if it is a document, to copy it, unless it would be unreasonable to allow the inspection or copying (section 133).

Receipts for seized things

When an authorised officer seizes a thing the authorised officer must:

- give a receipt describing each thing seized and its condition to the person from whom it was seized as soon as practicable after seizing a thing (or if it is not practicable to comply, leave the receipt at the place in a conspicuous position and in a reasonably secure way) (section 130); and
- give written notice to the owner or the person from whom the property was seized; and
- ensure the seized thing is documented, labelled, sealed and initialled by the authorised officer and placed in a safe and secure location.

The seized thing must be returned to the owner:

- at the end of 6 months, or
- if proceedings are instituted, when the proceedings (including any appeal) are over, or
- as soon as it is no longer required as evidence, or
- when it is not necessary to keep the thing to prevent it being used to continue or repeat the offence (section 132).

4. POWER TO OBTAIN INFORMATION

An authorised officer has power under the *Child Care Act 2002* to require information or documents to be provided.

Whenever an authorised officer requires a person to do something in accordance with a provision in Part 7 of the *Child Care Act 2002* the authorised officer must warn the person that failure to comply is an offence unless the person has a reasonable excuse (section 144). It is a reasonable excuse if complying might tend to incriminate him/her. However, a person may not claim privilege and refuse to produce documents that are required to be kept under the *Child Care Act 2002* or the *Child Care Regulation 2003* (section 138(2)).

Power to require name and address

Authorised officers may require a person to state their name and residential address (and provide evidence of the correctness of the stated name and address if the officer reasonably suspects it to be false) if an authorised officer finds:

- a person committing an offence against the *Child Care Act 2002*; or
- a person in circumstances that lead or has information that leads the officer to reasonably suspect the person is committing or has just committed an offence (section 134).

It is an offence for the person to fail to comply with the notice unless the person has a reasonable excuse.

Power to request age of carer

Authorised officers may require a person to state their date of birth and to provide evidence if necessary, where a person under the age of 18 years is reasonably believed to be providing care to children in a home based care service (section 135).

It is an offence for the person to fail to comply with the notice unless the person has a reasonable excuse.

Power to require information

Authorised officers may by notice in writing to a person, require the person to give information at a reasonable place and at a stated reasonable time where an authorised officer reasonably believes that:

- an offence against the *Child Care Act 2002* has been committed, and
- the person may be able to give information about the offence (section 136).

It is an offence for the person to fail to comply with the notice unless the person has a reasonable excuse.

Power to require production of documents at a place and time

Authorised officers may require a person to produce documents that are required to be kept under the *Child Care Act 2002* or *Child Care Regulation 2003* at a reasonable time and place (section 137). The authorised officer does not need to have the belief that an offence has been committed in order to request the documents.

It is an offence for the person to fail to comply with the notice unless the person has a reasonable excuse.

Links

Policy

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

Procedures

Obtaining and exercising a warrant in respect of licensed and stand alone child care services (358-2)

Related Legislation or Standard

Child Care Act 2002

Child Care Regulation 2003

Related Government Guidelines or Policy

Portfolio Compliance Framework and Escalation Process

Forms, Standard Letters or Memorandum

Child Care Form 12 - Acknowledgment of Consent to Enter

Rescinded Policies

Power of entry and other powers under the *Child Care Act 2002* (357-1)
