

Portfolio Procedures

Department of Communities

Disability Services Queensland

Title: Obtaining and exercising a warrant in respect of licensed and stand alone child care services
Related Policy No.: 358-2
Policy Category: Child care and family support > child care

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

Purpose:

These procedures aim to provide a guide as to the considerations prior to seeking and exercising a warrant in respect of licensed and stand alone child care services and the departmental process for notification to the Chief Executive of a warrant being required.

Process:

An authorised officer is permitted under the *Child Care Act 2002* to apply for a warrant to enter a place.

In all circumstances where an authorised officer has come to the view that it is necessary to apply for a warrant to enter a place relevant to a licensed or stand alone child care service, the authorised officer must first endeavour to engage the cooperation of the licensee or operator of the service (eg the carer in a stand alone service), unless the licensee or operator has previously indicated an unwillingness to provide information or allow entry to the relevant premises.

An authorised officer must take steps to obtain a warrant in respect of a licensed or stand alone service in circumstances where:

- (a) the licensee or operator of the service has refused to cooperate with the Department,
- (b) the authorised officer believes that there is evidence of an offence against the Act located at the premises (eg a centre, home, or office), and
- (c) the licensee or operator has refused to allow the authorised officer entry to the premises where the evidence is located or is believed to be located.

An authorised officer must first obtain the written approval of the Regional Director prior to making an application for a warrant. Where the Regional Director is satisfied that it is appropriate to apply for the warrant, the Regional Director must advise the Director-General prior to the application being made.

Once approval has been received, in order to obtain the warrant, the authorised officer must satisfy the magistrate hearing the application for the warrant that there are reasonable grounds for suspecting that-

- there is a particular thing or activity that may provide evidence of an offence against the Act and
- it is at the place or may be at the place in the next 7 days.

An authorised officer who wishes to obtain a warrant must consult with the Legislation Unit, Office for Children and the Legal Services Unit to ensure that the all of the relevant material is properly prepared.

If the situation is urgent the Act also allows an authorised officer to apply for a warrant (a special warrant) by phone, fax, radio or another form of communication if necessary, because of urgent circumstances or other special circumstances (section 122).

The procedure for entry once the warrant is obtained includes the following:

(Section 123 sets out the legislative requirements once the warrant has been issued).

The authorised officer must:-

- produce for inspection or display their identity card (see section 117)
- give the person a copy of the warrant
- tell the person that the officer is permitted by the warrant to enter the place
- give the person an opportunity to allow the officer immediate entry to the place without using force.

The provision requires that all of the above things must be done, or the authorised officer must make a reasonable attempt to do them.

In addition, the authorised officer does not need to do the things listed above if they believe that immediate entry is necessary to ensure the effective execution of the warrant. (For example, if the authorised officer believes that a person is destroying evidence in a room in the house, then the authorised officer may enter the house under the warrant without giving the person an opportunity to allow them entry without using force).

Delegations:

There are no delegations under the *Child Care Act 2002*.

LINKS

Related Government Guidelines or Policy:

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

Rescinded Policies:

Obtaining and exercising a warrant in respect of licensed and stand alone child care services (358-1).