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**Leaving children unsupervised in motor vehicles**

29. A person who leaves any child in the person's care in a motor vehicle without proper supervision for such period or in such circumstances that—

- (a) the child becomes or is likely to become emotionally distressed; or
- (b) the child's health becomes or is likely to become permanently or temporarily impaired,

is guilty of an offence.

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PART 3

LICENSING OF CHILD CARE ARRANGEMENTS

DIVISION 1—*Child care services*

**Application of Division**

30. This Division applies to such class of child care services as may be prescribed by the regulations for the purposes of this Division.

**Unlicensed persons not to provide child care services**

31. (1) A person who provides a child care service to which this Division applies, or who advertises himself or herself or holds himself or herself out as being willing to provide such a child care service, is guilty of an offence unless the person is the licensee under a licence for the child care service.

(2) The licensee under a licence for a child care service is guilty of an offence unless the authorised supervisor under the licence has the overall supervision of the provision of the child care service to which the licence relates.

(3) A person who has the overall supervision of the provision of the child care service to which a licence for a child care service relates is guilty of an offence unless the person is the authorised supervisor under that licence.

(4) A person who is the licensee or authorised supervisor under a licence for a child care service is guilty of an offence if the person contravenes or fails to comply with any condition of the licence that applies to the person.

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(5) A person who wilfully publishes any advertisement with respect to a child care service to which this Division applies, being a child care service that is not licensed, is guilty of an offence.

(6) A person who is the authorised supervisor under a licence for a child care service but is not the licensee under the licence is not guilty of an offence by virtue of subsection (1) in respect of any thing done by the person in the course of supervising the provision of the child care service to which the licence relates.

(7) A person is not guilty of an offence by virtue of subsection (1) in respect of any thing done by the person in accordance with directions given by the licensee under a licence for a child care service or by the authorised supervisor under such a licence if that thing is done by the person in the course of providing or assisting in providing the child care service to which the licence relates.

(8) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

**Licences**

**32. (1)** A licence for a child care service shall specify—

- (a) the person or body to whom or to which it is granted;
- (b) the child care service to which it relates; and
- (c) the person who is authorised by the licence to have the overall supervision of the provision of the child care service to which it relates.

**(2)** If a licence specifies that it is granted to a body, and the body consists of an **unincorporated body of persons**, then—

- (a) except as provided by paragraph (b)—the applicant for the licence;  
or
- (b) if a person who has been appointed by the body to be the licensee under the licence gives written notice to the Minister of the appointment and of the person's full name and residential address—the person so appointed,

shall, for the purposes of this Act, be deemed to be the person to whom the licence is granted.

**(3)** Schedule 1 applies to a licence for a child care service.

*Children (Care and Protection) 1987***Termination of illegal child care services**

**33. (1)** If a child care service is being provided for a child and an offence under section 31 is being committed in relation to the child care service (whether or not a person has been proceeded against for the offence), any person responsible for the child shall, on the request of an officer, forthwith cease to provide the child with the service.

Penalty: \$500.

**(2)** Subsection (1) does not apply to or in respect of a child who is related to the person by whom the offence under section 31 is being committed.

*DIVISION 2—Residential child care centres***Unauthorised persons not to conduct residential child care centres**

**34. (1)** A person who conducts a residential child care centre, or who advertises himself or herself or holds himself or herself out as being willing to conduct a residential child care centre, is guilty of an offence unless the centre is licensed and the person is the licensed manager of the centre.

**(2)** A person who is the licensed manager of a licensed residential child care centre is guilty of an offence if the person contravenes or fails to comply with any condition of the licence for the centre that applies to the person.

**(3)** For the purposes of subsection (1), but without affecting the generality of that subsection, a person who is in charge of a residential child care centre shall be deemed to have the conduct of the centre.

**(4)** A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

**Unlicensed premises, etc., not to be used as residential child care centres**

**35. (1)** The proprietor of a residential child care centre is guilty of an offence if the centre is not licensed.

**(2)** The licensee of a licensed residential child care centre is guilty of an offence if—

- (a) the centre does not comply with any condition of the licence for the centre that applies to the centre; or
- (b) the licensee contravenes or fails to comply with any condition of the licence for the centre that applies to the licensee.

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**(3)** The licensee of a licensed residential child care centre shall produce the licence for the centre to an officer requesting the licensee to do so.

Penalty: \$200.

**(4)** A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

**Licences**

**36. (1)** A licence for a residential child care centre shall specify—

- (a) the person or body to whom or to which it is granted;
- (b) the premises to which it relates; and
- (c) the person who is authorised by the licence to have the conduct of the centre.

**(2)** If a licence specifies that it is granted to a body, and the body consists of an unincorporated body of persons, then—

- (a) except as provided by paragraph (b)—the applicant for the licence;  
or
- (b) if a person who has been appointed by the body to be the licensee under the licence gives written notice to the Minister of the appointment, and of the person's full name and residential address—the person so appointed,

shall, for the purposes of this Act, be deemed to be the person to whom the licence is granted.

**(3)** Schedule 1 applies to a licence for a residential child care centre.

**Removal of children from unlicensed residential child care centres**

**37. (1)** If—

- (a) a child resides—
  - (i) at a residential child care centre that is not licensed; or
  - (ii) at a licensed residential child care centre that is conducted otherwise than by the licensed manager of the centre;
- (b) an officer requests a person responsible for the child to remove the child from the residential child care centre; and
- (c) the child is not forthwith so removed,

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the child shall be deemed to be a child in need of care.

(2) Subsection (1) does not apply to or in respect of a child who is related to the person who has the care of the child at that centre.

**Notification of deaths at licensed residential child care centres**

**38. (1)** If a child dies at a licensed residential child care centre, the licensed manager of the centre shall forthwith cause notice of the death to be given to—

- (a) such of the parents of the child as can reasonably be located;
- (b) a member of the police force at the police station nearest the centre;  
and
- (c) the Director-General.

Penalty: \$500.

(2) Subsection (1) does not apply to or in respect of a child who is related to the licensed manager of the licensed residential child care centre.

**Entry without warrant into premises of residential child care centres**

**39. (1)** For the purpose of—

- (a) making an inquiry in relation to an application under this Act with respect to the premises of any residential child care centre;
- (b) ensuring that the provisions of this Act and the regulations with respect to the premises of any licensed residential child care centre, and of any conditions imposed on a licence with respect to any such premises, are being complied with; or
- (c) ensuring that the conditions of any exemption relating to the premises of a residential child care centre are being complied with,

any authorised officer may at any time, without any authority other than that conferred by this subsection, enter the premises and inspect them and observe and converse with any person apparently residing there.

(2) In exercising the powers conferred by subsection (1), an authorised officer may be accompanied—

- (a) by a medical practitioner; or
- (b) by a member of the police force,

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or both, and any such medical practitioner may inspect the premises and observe, examine and converse with any person apparently residing there.

**(3)** Nothing in subsection (2) authorises—

- (a) the examination of a child in contravention of section 20 or 21; or
- (b) the examination of any other person against that person's will.

**DIVISION 3—*Private fostering agencies***

**Unauthorised private fostering agencies prohibited**

**40. (1)** A person who carries on private fostering services, or who advertises himself or herself or holds himself or herself out as being willing to carry on private fostering services, is guilty of an offence unless the person is an authorised private fostering agency.

**(2)** An authorised private fostering agency is guilty of an offence unless the principal officer of the agency has the overall supervision of the private fostering services carried on by it.

**(3)** A person who has the overall supervision of the private fostering services carried on by an authorised private fostering agency is guilty of an offence unless the person is the principal officer of the agency.

**(4)** A person who is an authorised private fostering agency or the principal officer of such an agency is guilty of an offence if the person contravenes or fails to comply with any condition of the agency's private fostering agency authority that applies to the person.

**(5)** A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

**Private fostering agency authorities**

**41. (1)** A private fostering agency authority may be granted only to a non-Government organisation and shall specify—

- (a) the non-Government organisation to which it is granted; and
- (b) the person who is authorised by the authority to have the overall supervision of the provision of the private fostering services carried on under the authority.

**(2)** Schedule 1 applies to a private fostering agency authority.

*Children (Care and Protection) 1987*DIVISION 4—*Fostering***Unauthorised fostering prohibited**

**42. (1)** A person (other than the holder of a fostering authority) who, for a period, or for periods in the aggregate, exceeding 50 days in any period of 12 months, has in his or her care one or more children for the purpose of fostering the children (whether or not for fee, gain or reward) is guilty of an offence.

**(2)** Subsection (1) does not apply to or in respect of—

- (a) a child who has been placed in the care of the person by an authorised private fostering agency;
- (b) a child who has been placed in the care of the person by, or with the written approval of, the Minister or the Director-General;
- (c) a child who is related to the person; or
- (d) a person who, at any licensed residential child care centre, acts as a foster parent to any children.

**(3)** The holder of a fostering authority is guilty of an offence—

- (a) if the holder acts as a foster parent—
  - (i) to more children (other than children who are related to the holder) than the maximum number of children specified in the authority;
  - (ii) where the fostering authority specifies the maximum number of children in any age group to whom it applies—to more children (other than children who are related to the holder) in any such age group than the maximum number of children so specified;
  - (iii) where the fostering authority specifies the child or children to whom it applies—to any child (other than a child who is related to the holder) other than the child or children so specified; or
  - (iv) where the fostering authority specifies the maximum period for which the person to whom it is granted may act as a foster parent in respect of any child or children or in respect of any child or children so specified—to any child (other than a child who is related to the holder) for a period exceeding the maximum period so specified; or
- (b) if the holder contravenes or fails to comply with any condition of the fostering authority.

(4) A provision of this section does not, to the extent of the exemption, apply to or in respect of any person exempted from the operation of that provision under section 48.

### **Fostering authorities**

**43.. (1)** A fostering authority—

- (a) shall specify the person to whom it is granted;
- (b) shall specify the maximum number (not exceeding 5) of children to whom it applies;
- (c) may specify the maximum number of children in any age group to whom it applies;
- (d) may specify the child or children to whom it applies; and
- (e) may specify the maximum period for which the person to whom it is granted may act as a foster parent in respect of—
  - (i) any child or children; or
  - (ii) where it specifies the child or children to whom it applies—the child or any of the children so specified.

(2) Schedule I applies to a fostering authority.

### **Unauthorised foster placements prohibited**

**44. (1)** If—

- (a) a person places a child in the care of another person (other than the holder of a fostering authority) for the purpose of the child's being fostered by the other person; and
- (b) the other person has the care of the child (whether or not for fee, gain or reward) for a period, or for periods in the aggregate, exceeding 50 days in the period of 12 months after the child was placed in the person's care,

the person who so placed the child is guilty of an offence.

(2) Subsection (1) does not apply to or in respect of—

- (a) the placement of a child by an authorised private fostering agency;
- (b) the placement of a child by, or with the written approval of, the Minister or the Director-General; or



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- (c) the placement of a child in the care of a person to whom the child is related.

**Lump sum payments for care of children**

**45. (1)** Except pursuant to an order of a court specifying the terms on which the person may do so, a person shall not, in consideration of the receipt by the person of any sum of money or other valuable consideration other than periodical payments of money—

- (a) calculated at not more than the rate per week prescribed by the regulations; and
- (b) made for not more than 4 weeks in advance,

act as a foster parent to any child unless the child is being cared for at the place where a guardian of the child resides.

**(2)** Subsection (1) does not apply to or in respect of—

- (a) the person in charge of a non-Government children's home for the time being approved by order of the Minister for the purposes of this subsection; or
- (b) the person in charge of a facility.

**(3)** The Director-General shall, if requested to do so by any person wishing to place a child in a non-Government children's home or in the care of the holder of a fostering authority, accept from that person a sum of money from which shall be made such payments, not exceeding periodical payments of money calculated in accordance with subsection (1) (a), as may be agreed upon to the person in charge of that home or to the holder of the fostering authority, as the case may be.

**(4)** A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

**Proceedings for offences**

**46.** Proceedings for an offence under section 42 or 44 shall not be commenced otherwise than by, or with the written approval of, the Director-General.

DIVISION 5—*General***Reports**

47. (1) The Director-General shall submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the activities of each licensee under a licence for a child care service or a residential child care centre.

(2) A report shall deal with such matters as the Minister directs and with such other matters as the Director-General considers appropriate to include in the report.

**Exemptions**

48. (1) The Minister may, by notice in writing served on a person, exempt the person, either absolutely or subject to conditions, from the operation of section 31 (1), (2), (3) or (4), 34 (1) or (2), 35 (1) or (2), 40 (1), (2), (3) or (4), 42 (1) or (3) or 45 (1).

(2) A person on whom a notice has been served under this section is exempted from the operation of any provision specified in the notice, but only while the person does not contravene or fail to comply with any condition so specified to which the exemption is subject.

(3) The regulations may make provision for or with respect to the exemption of persons from the operation of the provisions referred to in subsection (1).

**Revocation of exemptions**

49. (1) If the Minister intends to revoke an exemption given under section 48 (1), the Minister shall cause to be served on the person to whom the exemption was given a notice in writing stating that, when 28 days have expired after service of the notice, the Minister intends to revoke the exemption on the grounds specified in the notice unless it has been established to the Minister's satisfaction that the exemption should not be revoked.

(2) When 28 days have expired after a notice has been served on a person under this section, the Minister may, after considering any submissions made to the Minister during that period by the person on whom the notice was served, revoke the exemption by a further notice served on that person.

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## PART 4

## EMPLOYMENT OF CHILDREN

**Children not to be employed in certain cases unless licensed**

**50. (1)** A person shall not—

- (a) employ a child who is not licensed under a children's employment licence;
- (b) cause or procure such a child to be employed; or
- (c) being a person having the care of such a child, consent to the child's being employed or allow the child to be employed,

for the purpose of the child's taking part in an entertainment or exhibition or offering any thing for sale.

Penalty: \$1,000.

**(2)** Subsection (1) does not apply to or in respect of the employment of a child—

- (a) if the child is of or above the age of 15 years;
- (b) if the child is under the age of 15 years but is the holder of a certificate of exemption (granted in respect of the child by or with the authority of the Minister for Education) exempting the child from attendance at school for the purpose of enabling the child to take employment;
- (c) if the child is employed for the purpose of an occasional entertainment or exhibition the net proceeds of which are to be wholly applied for the benefit of a school or charitable object; or
- (d) if the employment of the child is exempted from the operation of subsection (1) by the regulations.

**(3)** Subsection (1) does not, to the extent of the exemption, apply to or in respect of any person exempted from the operation of that subsection under subsections (4) and (5).

**(4)** The Minister may, by notice in writing served on a person, exempt the person, either absolutely or subject to conditions, from the operation of subsection (1).

**(5)** A person on whom a notice has been served pursuant to subsection (4) is exempted from the operation of subsection (1), but only while the person does not contravene or fail to comply with any condition specified in the notice to which the exemption is subject.

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**(2) Where a child is employed—**

- (a) to take part in an entertainment or exhibition and, by the nature of the entertainment or exhibition, the child is in danger of suffering death or injury; or
- (b) to take part in preparing, training or rehearsing for such an entertainment or exhibition,

and an accident causing actual bodily harm occurs to the child, the employer of the child, whether a parent of the child or not, is guilty of an offence.

(3) Where the employer of a child referred to in subsection (2) is not a parent of the child, the court before which the employer is convicted of the offence referred to in that subsection may award, as compensation for the bodily harm so caused, an amount (not exceeding the amount prescribed by the regulations) to be paid by the employer to the child or to some other person, named by the court, on behalf of the child.

(4) The recovery of compensation awarded under subsection (3) does not affect any other remedy available to the child, but any compensation so awarded shall be taken into account in any other proceedings by or on behalf of the child for or in respect of the same bodily harm.

**Licences to employ children for certain purposes**

**53. (1)** In this section, a reference to a child does not include a reference to—

- (a) a child who is of or above the age of 15 years; or
- (b) a child who is under the age of 15 years but is the holder of a certificate of exemption (granted in respect of the child by or with the authority of the Minister for Education) exempting the child from attendance at school for the purpose of enabling the child to take employment.

(2) The Director-General may, on application made by or on behalf of a child, grant a licence authorising the child to be employed for the purpose of taking part in any entertainment or exhibition or offering any thing for sale, being an entertainment, exhibition or thing specified or of a kind specified in the licence.

(3) Subject to subsection (6), a licence shall be in force—

- (a) for such times and during such periods as may be prescribed by the regulations; and

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- (b) subject to such conditions as may be prescribed by the regulations and to such additional conditions as the Director-General may, in a particular case, determine.
- (4) The times for which a licence is in force, the periods during which it is in force and the conditions to which it is subject shall be endorsed on the licence.
- (5) A licence shall not be granted under subsection (2) unless the Director-General is satisfied that the child is fit to be employed and that proper provision has, in the manner specified in the application, been made to safeguard the health, welfare and education of the child.
- (6) A licence shall not authorise a child to be employed between the hours of 10 p.m. on any day and 6 a.m. on the following day.
- (7) A licence may, at any time, be varied or cancelled by the Director-General.

### **Occupational health and safety legislation**

**54.** Nothing in this Part limits the effect of the Occupational Health and Safety Act 1983 or the associated occupational health and safety legislation within the meaning of that Act.

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## PART 5

### CHILDREN IN NEED OF CARE

#### DIVISION 1—*Preliminary*

#### **Objects of Part**

**55.** The objects of this Part are to ensure that children in need of care are provided with assistance and supportive services, the provision of that assistance and those services being based on the premises that—

- (a) the welfare and interests of children are to be given paramount consideration;
- (b) children are entitled to special protection and to opportunities and facilities to enable them to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity;

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- (c) children, for the full and harmonious development of their personalities, need love and understanding and, towards that end, should, wherever possible, grow up in the care and under the responsibility of their parents, but if that is not possible, in an environment of affection and moral and material security and, in the case of children of tender years, should not, except in exceptional circumstances, be separated from their parents;
- (d) continuing contact between children and their parents should be encouraged in situations where, pursuant to legal proceedings, children have been separated from their parents;
- (e) children should be protected against all forms of neglect, cruelty and exploitation;
- (f) responsibility for the welfare of children belongs primarily to their parents, but if not fulfilled devolves upon the community; and
- (g) except in exceptional circumstances or pursuant to legal proceedings, there should be no interruption of relationships between children and their parents contrary to the wishes of children and their parents.

**Interpretation**

**56.** In this Part—

“care application” means an application under section 57.

**DIVISION 2—*Care applications*****Care applications**

**57. (1)** An application for the making of an order under section 72 in respect of a child may be made—

- (a) by the Director-General; or
- (b) by any parent of the child who has the custody of the child if it is alleged that the child is in need of care on the grounds that there is a substantial and presently irretrievable breakdown in the relationship between the child and that parent.

**(2)** Such an application shall specify the grounds on which it is alleged that the child is in need of care.

**(3)** Such an application shall not be made by the Director-General unless the Director-General is satisfied that no adequate alternative means are available to provide for the welfare of the child.