

First print



New South Wales

Children (Care and Protection) Amendment (Disallowed Regulation) Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Children (Care and Protection) Act 1987* to overcome certain unintended legal consequences flowing from the disallowance of the *Centre Based and Mobile Child Care Services Regulation 1996*.

The Bill also makes a consequential amendment to the *Centre Based and Mobile Child Care Services Regulation (No 2) 1996*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clauses 3 and 4 are formal provisions giving effect to the amendments to the *Children (Care and Protection) Act 1987* and the *Centre Based and Mobile Child Care Services Regulation (No 2) 1996* set out in Schedules 1 and 2.

Clause 5 makes it clear that the amendment to the *Centre Based and Mobile Child Care Services Regulation (No 2) 1996* does not prevent the subsequent amendment or repeal of that Regulation.

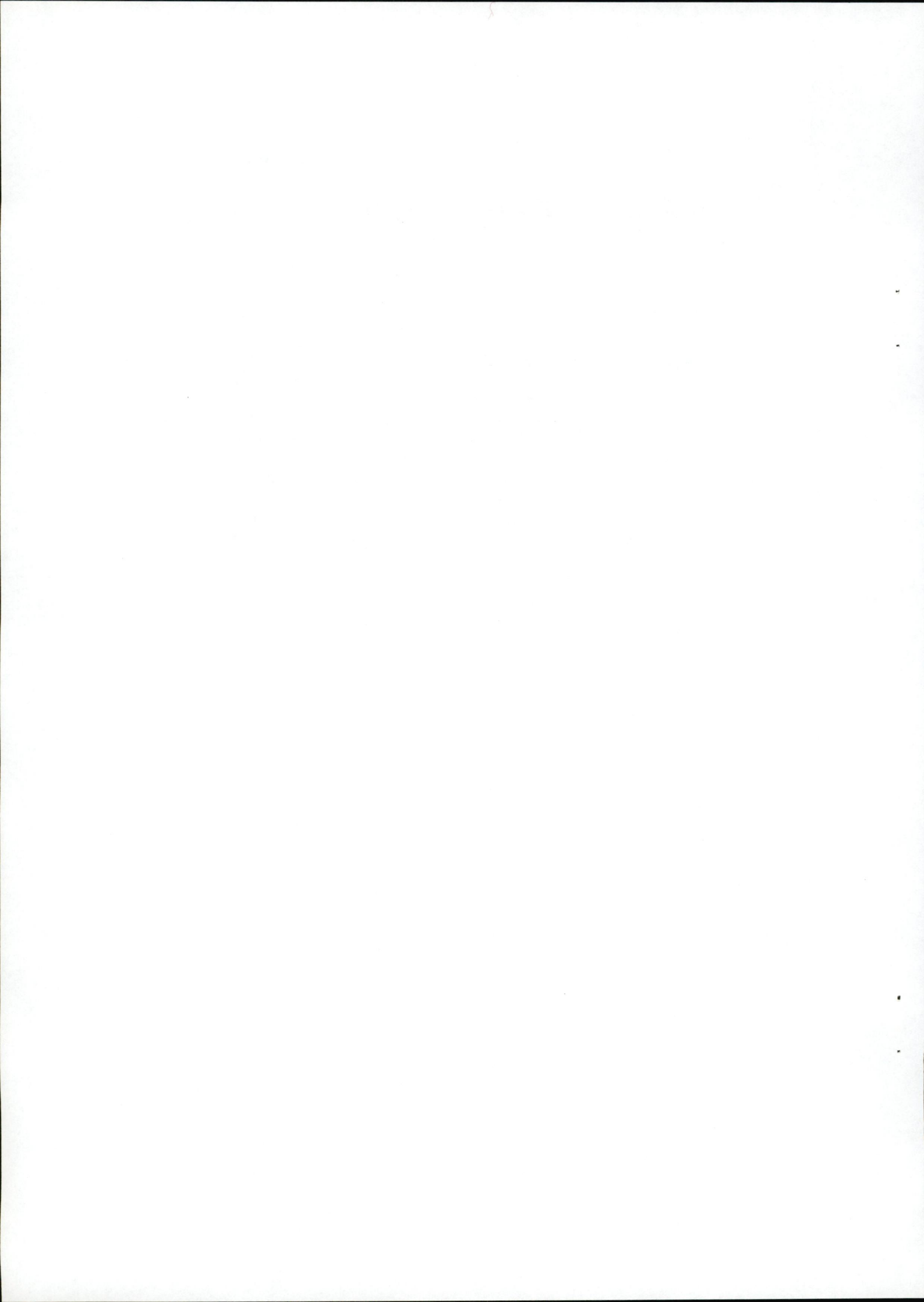
Schedule 1 Amendment of Children (Care and Protection) Act 1987

The *Centre Based and Mobile Child Care Services Regulation 1996* replaced the *Centre-based Child Care Services Regulation 1989* and the *Mobile Child Care Services Regulation 1989*. The disallowance of the 1996 Regulation by resolution of the Legislative Council on 23 October 1996 together with the repeal (by the operation of section 10 of the *Subordinate Legislation Act 1989*) of the 1989 Regulations it replaced had the effect of removing from force any existing licences for the child care services prescribed as child care services under clause 3 of the Regulation. The subsequent rescission of the disallowance enabled a new Regulation (the *Centre Based and Mobile Child Care Services Regulation (No 2) 1996*) to be made but did not have the effect of restoring the licences. The new Regulation therefore included provisions (Part 6) to temporarily exempt former licensees (and authorised supervisors under the licences concerned) from the operation of certain offence provisions of the *Children (Care and Protection) Act 1987* so long as they continued to comply with the legislative provisions that would apply to them if the licences were still in force.

The proposed amendments to the Act replace those exemptions with a provision that treats the licences as having continued in force and validates any action taken during the period following the disallowance that might have been validly done if the licences had not been removed from force. It thus fully restores the status of such licensees and authorised supervisors to the status they had before the disallowance. Provision is also included to enable savings and transitional regulations to be made as a consequence of the amendments.

Schedule 2 Amendment of Centre Based and Mobile Child Care Services Regulation (No 2) 1996

The proposed amendment is consequential on the amendments to the *Children (Care and Protection) Act 1987* described above. Part 6 of the Regulation will be superfluous once those amendments take effect. However, a new Part 6 is inserted in the Regulation to preserve the effect of clause 40 (2), which ensures that existing licensees of the child care services concerned are not required to comply (during the period the licences remain in force) with certain of the new licensing standards imposed by the Regulation so long as they continue to comply with the licensing standards under the *Centre-based Child Care Services Regulation 1989* or *Mobile Child Care Services Regulation 1989* that formerly applied to them.





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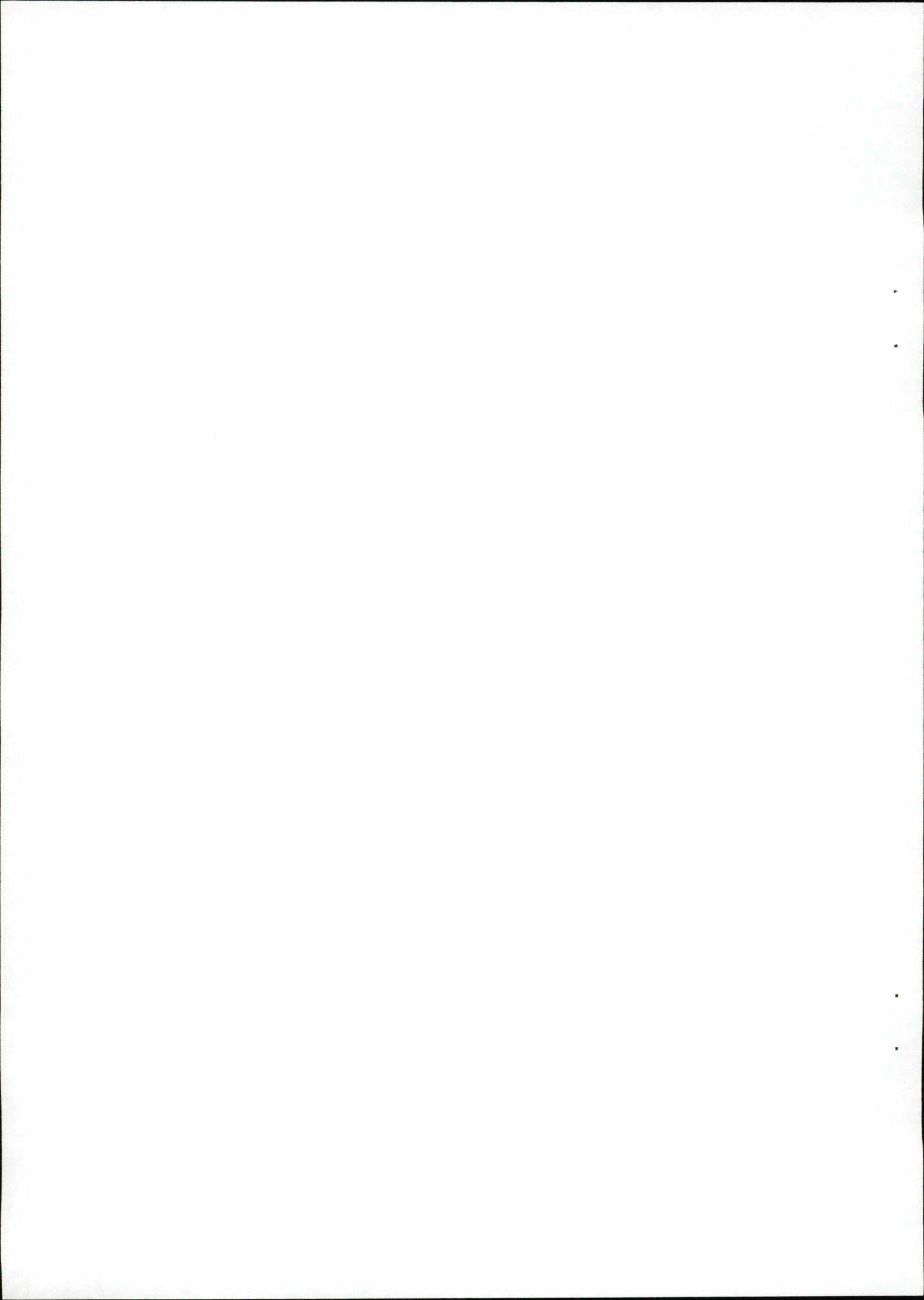
Children (Care and Protection) Amendment (Disallowed Regulation) Bill 1996

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Children (Care and Protection) Amendment (Disallowed Regulation) Bill 1996

No. , 1996

A Bill for

An Act to amend the *Children (Care and Protection) Act 1987* to restore to force certain licences for child care services affected by the disallowance of a Regulation made under that Act and to validate certain actions following that disallowance; and to make a consequential amendment to the *Centre Based and Mobile Child Care Services Regulation (No 2) 1996*.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Children (Care and Protection) Amendment (Disallowed Regulation) Act 1996*.

2 Commencement

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This Act commences on the date of assent.

3 Amendment of Children (Care and Protection) Act 1987 No 54

The *Children (Care and Protection) Act 1987* is amended as set out in Schedule 1.

4 Amendment of Centre Based and Mobile Child Care Services Regulation (No 2) 1996

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The *Centre Based and Mobile Child Care Services Regulation (No 2) 1996* is amended as set out in Schedule 2.

5 Effect of amendment of Regulation

The amendment of the *Centre Based and Mobile Child Care Services Regulation (No 2) 1996* by this Act does not prevent the subsequent amendment or repeal of that Regulation.

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Schedule 1 Amendment of Children (Care and Protection) Act 1987

(Section 3)

[1] Schedule 3, heading

Omit the heading.

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Insert instead “**Schedule 3 Savings, transitional and other provisions**”.

[2] Schedule 3, clause 1

Insert at the end of clause 1 (1):

Children (Care and Protection) Amendment (Disallowed Regulation) Act 1996

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[3] Schedule 3, Part 4

Insert after Part 3:

Part 4 Provisions consequent on disallowance of Centre Based and Mobile Child Care Services Regulation 1996

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7 Definitions

In this Part:

affected authorised supervisor means a person who, immediately before 23 October 1996, was the authorised supervisor of an affected service.

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affected licence means a licence for an affected service that was in force immediately before 23 October 1996.

affected licensee means a person who, immediately before 23 October 1996, was a licensee of an affected service.

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affected service means a service within the meaning of the disallowed Regulation.

disallowed Regulation means the *Centre Based and Mobile Child Care Services Regulation 1996* published in Gazette No 99 on 30 August 1996 commencing at page 5132.

8 Saving of affected licences 5

(1) An affected licence is taken to be a licence for the child care service to which it relates granted under clause 3 of Schedule 1 and to be in force (unless sooner suspended or revoked under this Act) for the remainder of the period that it would have been in force had the disallowed Regulation not ceased to have effect. 10

(2) Accordingly, the affected licensee who held the licence and the affected authorised supervisor specified (or deemed to be specified) in it immediately before the disallowed Regulation ceased to have effect are, for the purposes of this Act and the regulations, the licensee and authorised supervisor of that service during the remainder of the period. 15

9 Validation

Any act, matter or thing done by an affected licensee or affected authorised supervisor, the Director-General, an officer or any other person during the period beginning on 23 October 1996 and ending with the date of commencement of clause 8 that would have been validly done had clause 8 been in force when it was done is taken to have been validly done. 20 25

**Schedule 2 Amendment of Centre Based and
Mobile Child Care Services Regulation
(No 2) 1996**

(Section 4)

Part 6

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Omit the Part. Insert instead:

Part 6 Miscellaneous

37 Transitional provision relating to licensing standards

(1) In this clause:

repealed 1989 Regulation means:

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- (a) the *Centre-based Child Care Services Regulation 1989*, or
- (b) the *Mobile Child Care Services Regulation 1989*.

(2) For the purposes of this Regulation, the licensee of a service for which a licence was in force immediately before 23 October 1996 does not fail to comply with a licensing standard set out in clause 1 (1)–(5), 2 (3), 3, 4 (2) or (4), 5 (3), 6 (2), 11 or 14 (3) of Schedule 1 during the period after the commencement of this clause that the licence remains in force if the licensee complies with the standards set out in a repealed 1989 Regulation that would be applicable if he or she were a licensee within the meaning of that Regulation and that Regulation were still in force.

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Children (Care and Protection) Amendment (Disallowed Regulation) Act 1996 No 110

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New South Wales

Children (Care and Protection) Amendment (Disallowed Regulation) Act 1996 No 110

Act No 110, 1996

An Act to amend the *Children (Care and Protection) Act 1987* to restore to force certain licences for child care services affected by the disallowance of a Regulation made under that Act and to validate certain actions following that disallowance; and to make a consequential amendment to the *Centre Based and Mobile Child Care Services Regulation (No 2) 1996*. [Assented to 2 December 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Children (Care and Protection) Amendment (Disallowed Regulation) Act 1996*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Children (Care and Protection) Act 1987 No 54

The *Children (Care and Protection) Act 1987* is amended as set out in Schedule 1.

4 Amendment of Centre Based and Mobile Child Care Services Regulation (No 2) 1996

The *Centre Based and Mobile Child Care Services Regulation (No 2) 1996* is amended as set out in Schedule 2.

5 Effect of amendment of Regulation

The amendment of the *Centre Based and Mobile Child Care Services Regulation (No 2) 1996* by this Act does not prevent the subsequent amendment or repeal of that Regulation.

Schedule 1 Amendment of Children (Care and Protection) Act 1987

(Section 3)

[1] Schedule 3, heading

Omit the heading.

Insert instead “**Schedule 3 Savings, transitional and other provisions**”.

[2] Schedule 3, clause 1

Insert at the end of clause 1 (1):

Children (Care and Protection) Amendment (Disallowed Regulation) Act 1996

[3] Schedule 3, Part 4

Insert after Part 3:

Part 4 Provisions consequent on disallowance of Centre Based and Mobile Child Care Services Regulation 1996

7 Definitions

In this Part:

affected authorised supervisor means a person who, immediately before 23 October 1996, was the authorised supervisor of an affected service.

affected licence means a licence for an affected service that was in force immediately before 23 October 1996.

affected licensee means a person who, immediately before 23 October 1996, was a licensee of an affected service.

affected service means a service within the meaning of the disallowed Regulation.

disallowed Regulation means the *Centre Based and Mobile Child Care Services Regulation 1996* published in Gazette No 99 on 30 August 1996 commencing at page 5132.

8 Saving of affected licences

- (1) An affected licence is taken to be a licence for the child care service to which it relates granted under clause 3 of Schedule 1 and to be in force (unless sooner suspended or revoked under this Act) for the remainder of the period that it would have been in force had the disallowed Regulation not ceased to have effect.
- (2) Accordingly, the affected licensee who held the licence and the affected authorised supervisor specified (or deemed to be specified) in it immediately before the disallowed Regulation ceased to have effect are, for the purposes of this Act and the regulations, the licensee and authorised supervisor of that service during the remainder of the period.

9 Validation

Any act, matter or thing done by an affected licensee or affected authorised supervisor, the Director-General, an officer or any other person during the period beginning on 23 October 1996 and ending with the date of commencement of clause 8 that would have been validly done had clause 8 been in force when it was done is taken to have been validly done.

**Schedule 2 Amendment of Centre Based and
Mobile Child Care Services Regulation
(No 2) 1996**

(Section 4)

Part 6

Omit the Part. Insert instead:

Part 6 Miscellaneous

37 Transitional provision relating to licensing standards

(1) In this clause:

repealed 1989 Regulation means:

- (a) the *Centre-based Child Care Services Regulation 1989*, or
- (b) the *Mobile Child Care Services Regulation 1989*.

(2) For the purposes of this Regulation, the licensee of a service for which a licence was in force immediately before 23 October 1996 does not fail to comply with a licensing standard set out in clause 1 (1)–(5), 2 (3), 3, 4 (2) or (4), 5 (3), 6 (2), 11 or 14 (3) of Schedule 1 during the period after the commencement of this clause that the licence remains in force if the licensee complies with the standards set out in a repealed 1989 Regulation that would be applicable if he or she were a licensee within the meaning of that Regulation and that Regulation were still in force.

[Minister's second reading speech made in—
Legislative Council on 13 November 1996
Legislative Assembly on 13 November 1996]

BY AUTHORITY

