The Children’s Legislation Amendment Act 2008 received Royal Assent on 3 June 2008. The Act amends the Child Wellbeing and Safety Act 2005 and Children’s Services Act 1996, raising minimum standards and reducing the risk of harm to children being cared for in the absence of their parents. Some of the provisions in the Act have now commenced. The remaining new provisions will come into effect with the new Regulations by no later than 25 May 2009. Details of the provisions which have already come into force are included on the Children’s Services Legislation Fact Sheet No.1.

As a staff member of a licensed children’s service, it’s important that you are aware of the changes and how they may impact on you.

The Act requires proprietors and staff members to take every reasonable precaution to ensure that children are protected from harm and from any likely hazard to cause injury. (For more information see overleaf)
The inclusion of harm in section 26 is new. Harm to a child may include, but is not limited to, serious incidents which could lead to trauma, injury requiring the attention of a medical practitioner or death. Taking precautions to protect children from harm in this context includes precautions against harm arising in educational and care settings from physical, sexual, emotional or psychological abuse and neglect.

**Failure to take every reasonable precaution to protect a child in your care from hazards or harm attracts a fine to a maximum of 120 penalty units.**

**Disciplining a child in a way which is unreasonable in the circumstances attracts a fine up to a maximum of 120 penalty units.**

**Inadequate supervision of a child in your care attracts a fine up to a maximum of 120 penalty units.**

The Act strengthens and clarifies the powers of the regulator and allows for Children’s Services Advisors to ask questions and **obtain information from past or present staff members** about serious incidents. Evidence may be required to be given on oath or affirmation. **You will not be excused from answering a question on the grounds of self-incrimination, but what you say cannot be used against you except in proceedings under this new section.**

**Failure to give information when requested, to the extent you are capable, attracts a fine up to a maximum of 120 penalty units.**

**Knowingly giving false or misleading information attracts a fine up to a maximum of 120 penalty units.**

Your employer has been provided with more detailed information about changes in the legislation. Further information can be obtained from: [www.office-for-children.vic.gov.au/earlychildhood](http://www.office-for-children.vic.gov.au/earlychildhood)
The Victorian Government is implementing measures to integrate and deliver better services for children and their families.
As part of Victoria’s plan to integrate the provision of early childhood education and care services, as well as raise the quality of services for children, the Government has introduced amending legislation to change the Children’s Services Act 1996 and the Child Wellbeing and Safety Act 2005.


**What is changing?**

The Government is providing for minimum quality standards across all childhood settings.

The bulk of the changes are to the Children’s Services Act 1996, which will:

1. Bring family day care services and outside school hours care services into the regulatory framework;
2. Alter the licensing process for children’s services;
3. Enhance the enforcement powers of the regulator; and
4. Improve the clarity and efficiency of the Act.

The Child Wellbeing and Safety Act 2005 is also amended to include the principle that all children in Victoria should be able to enrol in a kindergarten program. It is a priority of the Victorian Government to make kindergarten accessible to all four-year-olds.

**Will the changes affect me?**

The changes to the Children’s Services Act 1996 will affect all children’s services across Victoria. Therefore, it is important for all licensees to develop a good understanding of how and when their services will be impacted. Some changes are immediate, while others will come later but no later than 25 May 2009.

**What changes are immediate?**

**Hazards and harm**

Section 26 of the Act has been amended to require proprietors and staff members of services to take every reasonable precaution to protect children not only from any hazard likely to cause injury, but also from harm. The addition of ‘harm’ is new.

Harm to a child may include, but is not limited to, serious incidents which could lead to trauma, injury requiring the attention of a medical practitioner, or death. Taking precautions to protect children from harm in this context includes taking precautions against harm arising in educational and care settings from physical, sexual, emotional or psychological abuse and neglect. Harm may also arise from inappropriate discipline of the child, or a child leaving the service unsupervised or unauthorised.

The penalty for failure to take every reasonable precaution to protect a child from hazards, including harm, has been increased to 120 penalty units.

**Secretary’s powers**

A new section 42A has been inserted into the Act giving the Secretary of the Department of Education and Early Childhood Development the power to obtain information, documents and evidence relating to a contravention of a serious offence from any person who is or has been a licensee, nominee or a staff member of a children’s service. Evidence may be
required to be given on oath or affirmation. It is an offence to refuse or fail to comply with a notice under this section to the extent the person is capable of complying with it, or to knowingly provide false or misleading information or evidence, or to obstruct or hinder the Secretary in exercising a power under this section.

A person is not excused from answering a question, providing information or producing or permitting the inspection of a document on the grounds of self-incrimination. However, in the case of a natural person, the information is not admissible in evidence against that person in any criminal proceedings other than proceedings under this section, or in the case of a body corporate, in criminal proceedings other than proceedings under the Act.

A person may be prosecuted for refusal to comply with the new section and be liable for a penalty of up to 120 penalty units.

**Emergency plan**

A new section 43A has been inserted into the Act, allowing the Secretary to issue a notice to take emergency action if satisfied that a children’s service is operating in a manner that poses a risk to the health, welfare or safety of a child being cared for or educated by the service. A proprietor must comply with a direction made under this section. The penalty for a breach is up to 120 penalty units.

**Penalties**

Penalties have increased across the Act. The new maximum penalties for offences range between 60 and 240 penalty units:

- Carrying on an unlicensed children’s service, 240 penalty units;
- Advertising an unlicensed children’s service, 120 penalty units;
- Failure to protect children from hazards and harm, 120 penalty units;
- Inadequate supervision of children, 120 penalty units;
- Inappropriate discipline of children, 120 penalty units;
- Failure to keep premises clean and in good repair, 120 penalty units;
- Contravention of a licence condition or restriction, 120 penalty units;
- Failure to notify a change of directors, 60 penalty units;
- Failure to notify a licence variation, 60 penalty units;
- Failure to notify licence cancellation, 60 penalty units;
- Contravention of Secretary’s order to non-complying services, 120 penalty units.

The value of a penalty unit in the 2007/08 financial year is $110.12. This will increase to $113.42 in the 2008/09 financial year.

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**What changes will come later?**

Changes that will affect services later include:

- Licensing of children’s services;
- Changes to provisions regarding child-staff ratios, programming, administration of medication, and serious incident notification;
- Publication of information about children’s services.

These and remaining new provisions will come into effect by no later than 25 May 2009. In the lead up to commencement, a comprehensive information and training program will allow already regulated services to adapt to the changes, and inform the services that are entering the regulatory regime of their rights and responsibilities.

**What will happen to my current licence?**

The legislation allows existing licences to operate for their full term. These amendments will not impact on your current licence.

**Key features of the new licensing system**

The key features of the new licensing system, which will only affect licences that are granted or renewed after the 25 May 2009:

- Replacement of the approval in principle step with a new approval of premises step;
- Updating of the fit and proper person assessment process;
- Allowing for licences to be cancelled at the request of the licensee, or if the licensee is no longer operating the service;
• Removal of the ability to transfer a licence;
• Allowing for the recess of a licence; and
• Allowing for new licence types.

Licences under the new system will operate for five years rather than three years. This will assist to reduce the regulatory burden on licensees.

Are the Regulations changing too?
The Children’s Services Regulations 1998 remain in force until 25 May 2009. New regulations are being drafted to replace the current ones from that date.

The elevation of specific staffing, programming, and health and welfare provisions from the Regulations to the Act reflects the Government’s commitment to improving the quality of early childhood services, and recognises that they are critical elements in the quality of the care and education provided to children.

Over the coming months a Regulatory Impact Statement (RIS) together with proposed new regulations will be released for comment. The RIS and proposed regulations will be publicised and there will be an appreciable period for comments to be made.

How can I be sure that my service is meeting the required standards?
The Departmental publication Children’s services guide: A guide to managing and operating a licensed children’s service in Victoria, provides owners, licensees, proprietors, managers and staff of children’s services with an overview of the requirements of the Act and Regulations.

Updating of the guide and practice notes, targeted training, and information sessions are part of the overall communication strategy for rolling out the new legislation.

Any questions about complying with the required standards should be directed to a Departmental Children’s Services Adviser.

Where can I get further information and advice?
Information and guidance on the rest of the new provisions will be provided to the sector prior to the commencement date for those provisions. Information posted on the Departmental website and training will be available. Fact sheets and printed material will also be mailed out to services.