

Information Sheet – Disciplinary Action under the Child Care Act 2001

What is the role of the Education and Care Unit?

The Department of Education, (DoE) Tasmania is responsible for the administration of the *Child Care Act 2001* and the *Education and Care Services National Law (Tasmania) 2011*. Under the *Child Care Act 2001*, the Education and Care Unit (ECU) licences child care services in conjunction with the relevant Standards for Centre Based Care, Home Based Care and Approved Registration Bodies (In Home Child Care).

The ECU may investigate complaints when concerns are raised about the actions, activities or facilities of child care services that may impact on the quality of care provided for young children.

Issues may be raised by parents, staff, neighbours or other persons involved with a service. Similarly, authorised officers may observe, while carrying out a licensing or support visit, situations that indicate possible contraventions of the legislation or standards. Authorised officers endeavour to deal with complaints and concerns in a manner that ensures the safety of children in order to achieve satisfactory outcomes for children, parents and service operators.

At times, further investigation by authorised officers is required. Part 5 of the Act (Inspections) outlines the authority of officers and the parameters around inspections of child care services.

The ECU seeks to work co-operatively with licensees of child care services in resolving issues, acknowledging that contraventions are sometimes incurred through lack of

knowledge and are therefore not deliberate. In most instances, successful outcomes can be achieved through a process of discussion and negotiation.

The Secretary of DoE has the authority under the Act to pursue disciplinary action and may choose to do so in the following types of scenarios:

- Where negotiation between the ECU and the service is unsuccessful;
- If the licensee is no longer a fit and proper person to hold a licence; or
- Where a contravention, or a number of contraventions of legislation or standards has occurred.

What is disciplinary action?

Disciplinary action under section 25 of the Act may include the:

- Issuing of a letter of censure;
- Imposition of a fine not exceeding 20 penalty points;
- Amendment of a licence;
- Suspension of a licence; or
- Cancellation of a licence.

Fines may also be issued under Parts 2 (Child Care to be Licensed), 4 (Duties and Offences) and 5 (Inspections) of the Act. It should be noted that all offences in the Act, apart from those where section 25 is applicable, are summary offences and therefore, DoE may seek action through the Magistrates Court. The Act also specifies areas where fines are payable by others involved in the service, for example the responsible person, not just the licensee.

In an emergency situation, the Secretary (or delegate) may suspend a licence or a registration for a period not exceeding seven (7) days—section 45. The Secretary (or delegate) under section 46 may also apply to a magistrate for an order preventing a person from providing child care or otherwise caring for or looking after a child, where that person has been charged with an offence against the Act, regulations or Standards

What disciplinary action will be implemented?

In the majority of instances, contraventions to Standards will be dealt with through an action plan nominating the timeframe for the Standard to be met.

Section 40 of the Act, enables authorised officers to give written directions, outlining measures to ensure that identified contraventions of the Act, Standards or conditions of licence are resolved. This will be used where it is considered that the contraventions do not warrant disciplinary action. It is a requirement that persons who are given written directions, comply with those directions.

You will know whether the documentation provided to you includes written directions because it will state that they are directions pursuant to section 40 of the Act.

It is intended that it will only be in more serious cases where disciplinary action may be implemented.

Will I be warned if disciplinary action is to be instigated?

Yes. Apart from actions in an emergency situation, only a letter of censure is able to be issued without first providing the opportunity to the licensee to make submissions regarding the matter. You will be invited by letter to make submissions and if, after considering those submissions, it is determined that disciplinary action is required, you will again be notified in writing.

What is taken into account when determining the seriousness of a contravention of the Act or standards?

Generally, the nature of the disciplinary action, and the amount of a fine (as applicable) will be determined by a number of factors. These include, but are not limited to:

- The section of the Act that applies (e.g. the Act may specify a maximum number of penalty units for a fine);
- The seriousness of the contravene itself;
- The experience of the licensee and other personnel involved;

- Whether the contravention was deliberate or in ignorance; and
- A history of any previous contraventions.

Do I have a right to appeal?

Yes, in some cases. Section 50 of the Act outlines those decisions which are reviewable decisions.

These include:

- The refusal to grant or renew a licence;
- The cancellation of a licence;
- The suspension of a licence;
- The imposition under section 25 of a fine exceeding 5 penalty points;
- A letter of censure that requires the holder of a licence to dismiss or suspend the employment of an employee; or suspend the employment of an employee; or suspend or cancel the registration of a registered carer.

Therefore, not all fines or all letters of censure are reviewable decisions. If you wish to appeal, you will need to do so through the Administrative Appeals Division of the Magistrate's Court.

For further information, please view;

https://www.magistratescourt.tas.gov.au/about_us/administrative_appeals_division