THE NEW SOUTH WALES COMMUNITY WELFARE ACT 1982 AND FOSTER PARENTS

The Foster Care Association of New South Wales 1983 Conference: 'The Foster Family of the 80's'

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INTRODUCTION

The Community Welfare Act 1982 was passed by the New South Wales Parliament and received Royal Assent on 25 May 1982. However, it is not yet in force: the Act itself provides that it will come into force on a day appointed by the Governor and notified by proclamation. This means it can come into force when the government decides that it should. It is possible for parts of it to be brought into force at different times.

The Act is long and complex. Rather than attempt a general overview of it, this paper will consider what the Act says on issues of special concern to foster parents.

CATEGORIES OF FOSTER PARENTS

It may be useful to explain that, in law, the answer to many questions about foster parents depends on what *kind* of foster parents they are. There seem to be three main situations.

(i) 'Voluntary' placements

Some people have children placed with them either directly by the parents or through some third party or organisation. There is no court order, and no intervention by the Department of Youth and Community Services ('the Department'). Under the general law, there is nothing wrong with a parent making such arrangements. The courts have held that a parent may ask another person to look after a child, even indefinitely, and unless the circumstances are unfavourable, this will not constitute abandonment or neglect of the child by the parent. The result of the arrangement in law, however, is that while the foster parent may have 'care and control' of the child, the parent technically remains the guardian and remains entitled to custody. In fact, it is impossible for a parent voluntarily to transfer his or her guardianship of a child during the parent's life: this can only happen in three ways: (a) by a court order, (b) by the Department under the child welfare legislation and (c) by operation of the parent's will, when it contains a clause appointing someone a guardian.

Again, under the general law, there is nothing wrong with the parent making an agreement to pay for the child's maintenance while in the care of the foster parent: the foster parent could sue for the money if it was not paid. What the parent cannot do is get rid of guardianship. Thus, even if the contract included a clause in which the parent promised forever not to ask for the child's return, this would not stop the parent doing so. If at a later time the parent asked for the child back, the court would say that its task was to make whatever order was best for the child, even if that meant that the parent was allowed to go back on the clause in the contract.

Under a simple voluntary placement, then, the foster parent does not acquire any rights to the child. But there is nothing to stop the foster parent making an application for custody: if this happens, then the court will make whatever order seems best for the child. We will examine later the statutory provisions which makes it an offence to be a foster parent in some circumstances without a licence from the Department.

(ii) Custody orders

Foster parents might have a custody order made in their favour. Various courts can make such orders: the Family Court in the case of custody disputes involving 'children of a marriage'; the N.S.W. Supreme Court (and in some circumstances other N.S.W. courts) in relation to ex-nuptial children, and the children's court, under the child welfare legislation. When such an order is made, the rights and duties of the foster parent will depend on the terms of the order. For example, the order might have a condition that regular access be allowed to a parent. Also, the general position is that the natural parent, the foster parent and other people can always go back to the court which made the order and ask for a different order, on the basis that the situation has changed.

These custody orders do not generally say anything about money: the courts don't have power to order that the foster parent be paid for looking after the child. Payment is a matter for the Department. There may be some circumstances when the court could order that the parent should maintain the child by paying money to the foster parent, but it is my impression that this happens rarely if at all, and I will not pursue it here.

(iii) State Wardship

The third and most important situation is where the child is a state ward. This is governed by the child welfare legislation, which will be examined below. Broadly, under the present law the authority over a state ward lies entirely with the Minister (in practice, usually the Department), although the new Act gives foster parents considerably more power.

In any case, where legal questions arise relating to foster children, it is essential to know which of these categories applies.

LICENSING OF FOSTER PARENTS

Both the Child Welfare Act 1939 (the present Act) and the Community Welfare Act 1982 contain provisions about the licensing of foster parents. Much of the detail is contained in the regulations. I will not examine the regulations here, though, because regulations under the new Act have not yet been published.

The Child Welfare Act 1939

The licensing provisions are in Part 7, sections 28-38C. It is provided that 'no person shall conduct or control a . . . private foster home' unless both the person and the premises are licensed by the Minister (s.29(1)). Since these powers of the Minister are delegated to departmental officers, I will from here on refer to the Department, even though the Act refers to the Minister). Breach of this provision is an offence for the foster parent, and the penalty is a fine of $500 and then $200 for each day after conviction during which the offence continues (s.33). This is not the only consequence. Any child in the care of an unlicensed foster parent is deemed to be 'neglected', and so the children's court can make orders that the child be placed elsewhere, made a state ward, and so on (s.34).

The key question of course is what is a 'private foster home'. That's easy: It is the premises at which a 'private foster parent' receives or retains any child (s.28). So, who is a 'private foster parent'? Here is the definition, in all its glory:

> 'Private foster parent' means any person who, whether for fee, gain or reward or not, receives and retains in his care for any periods exceeding in the aggregate fifty days in any period of twelve months, one or more but less than six children residing with him for the purpose of being cared for, nursed or maintained but does not include a person who is related to all of those children.'

Some comments on this definition:—

* It doesn't include short periods of care (less than 50 days in a year): you can still arrange for your children to be cared for by a nice neighbour while you go on holiday.
* It doesn't include care by relatives — there is a legal recognition of the extended

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family, which is assumed not to require the same level of public accountability. (Incidentally, Aboriginal representatives have criticised the narrowness of the definition, arguing persuasively that, in their communities, there is a much wider notion of the extended family, which should be outside the licensing system.)

* There are a series of exemptions, as follows:

(2) The provisions of this Part shall not apply to a person in whose care a child has been placed —

(a) by the Minister or by the Director or an officer pursuant to Part V of this Act;

(b) by the Aborigines Welfare Board pursuant to the Aborigines Protection Act, 1909, as amended by subsequent Acts; (the Board was abolished in 1969)

(c) by order of a competent court or, pursuant to the Testator's Family Maintenance and Guardianship of Infants Act, 1916, as amended by subsequent Acts, by deed or will; or

(d) by the Director, a person acting on behalf of the Director, the principal officer of a private adoption agency or a person authorised in writing by such principal officer where the child has been placed in acordance with the provisions of the Adoption of Children Act, 1965.

* Child means a person under 16 years.

* The definition does not include cases where there are six or more children, because that would come within the definition of 'children's depot, home or hostel', which also requires a licence.

There are provisions for the Minister to exempt people from the obligation to have a licence (s.29A), and to vary conditions on which a licence is held (s.30). There are also provisions for appeals against the Department's revocation of licences (s.31), but, curiously, not against its refusal to grant one. There are also powers of entry into premises (s.35).

The Community Welfare Act 1982.

The new Act makes some changes in the scheme (Part 7, Div.3 & 4). Foster parents (who are similarly defined) must have a 'fostering authority' (the new word for licence), or they commit an offence (s.70). However, this does not apply where the child was placed by an authorised private fostering agency. This amounts to a devolution of supervisory functions from the department to the fostering agencies: the Department's supervision remains in an indirect form, of course, since it licenses the *agencies*. The definition of fostering does not now refer to the number of children, but a fostering authority is limited to five children (s.71).

Details about obtaining a licence are tucked away in Schedule 3: they are more elaborate than under the present Act. I include them in the Appendix in case anyone wants to study them closely. A significant change is that there is now an appeal, to a new body called the Community Welfare Appeals Tribunal, against decisions of the Department to refuse an authority as well as decisions to revoke it (s.285).

It is now also an offence to *place* a child with an unauthorised foster parent (s.47). Interestingly, there is now no provision that a child in an unauthorised foster placement is deemed to be in need of care (although there is such a provision for children in unlicensed child care centres (s.65)). I think this change is good. There is no reason to assume that a child in unauthorised foster care is at risk; if the child is at risk, then an application can be made that the child comes within the ordinary definition of being in need of care, on the basis of the circumstances, not the bare fact of being in unlicensed unauthorised care: see s.44(4). 'Child' now includes everyone under 18 (s.4), and the definition of 'relative' is substantially the same (to the dismay of the Aboriginal representatives), except that, absurdly, it is defined to include an unrelated person who is the guardian, or has care or custody through a court order (s.44(2)).

AUTHORITY OVER THE CHILD: STATE WARDS

Child Welfare Act 1939:

As mentioned above, when a child is a state ward the basic position is that the Minister is the guardian and has complete power to make decisions relating to the child's life (ss.9, 23). This was confirmed and illustrated in the 1960's, when the High Court of Australia dealt with an application by a father for custody of his son, who had been made a state ward by order of the children's court. The High Court held at the Supreme Court had no jurisdiction (power) to make a custody order, since the Act gave total power over the child to the Minister: *Minister for the Interior v Neyens* (1964) 113 C.L.R. 441. Whether the child was to be returned to the father was entirely a matter for the Minister.

Similarly, the fate of Stephen McGuire was in law, a matter for the Minister, then Rex Jackson. You may recall the public debate about the child, who had been placed at an early age with foster parents and whose mother, who lived in South Australia, was applying for his return. The case only got to court in the end because the Minister decided to relinquish his statutory guardianship so that the Supreme Court would have jurisdiction. In the result the Court found that the child's welfare would best be served by remaining with the foster parents: *Tull v McGuire* (1981) F.L.C. 91-098. But the court could not have decided the case at all unless the Minister had allowed it to, by relinquishing guardianship. As far as I know, no Minister has done this before or since.

Another case should be mentioned: *K v Minister for Youth and Community Services* (1982) 8 F.L.R. 756. In that case, a state ward became pregnant and wanted an abortion. The Minister, then Mr. Stewart, refused consent, apparently because of his personal beliefs on abortion. An application was made to the Supreme Court for an order authorising the abortion (which was assumed to be a lawful one). To everyone's surprise, the Court held that, in spite of the Neyens decision, it had jurisdiction, and it proceeded to make the order sought. This decision might not be upheld in a future case, however, since the judge's reasoning is controversial. The decision is based on the view that Neyens case only applies to some kinds of decisions made about state wards, and not others. I will not go into the reasoning here, but I simply note that the

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decision casts doubt on what everybody thought was the law, namely that the Minister had a general unchallengeable power to make decisions about state wards.

The Community Welfare Act 1982:

Under the new Act, although the Minister will continue to be guardian of wards, and will have all the powers necessary to make arrangements about where and how they are to live, foster parents and other people will be able to challenge the department's decisions.

There are two types of challenge possible. First, the Supreme Court can deal with any applications for custody or related matters, such as access or the provision of information. Natural parents as well as foster parents can make such applications. There are no restrictions on the orders that the Court can make (ss.113, 105).

The second kind of challenge is to the new Community Welfare Appeals Tribunal. However, this is limited to decisions by the Minister as to who should have custody of a ward, and a refusal to terminate his guardianship of the ward (s.285(1)(h) and (i)). Thus it does not include questions about access, the provision for information, or other aspects of the child's life with the people caring for the child.

There is a problem about the scope of the Supreme Court's powers, where the child is a 'child of a marriage'. Applications relating to custody etc. of children of a marriage go, in some circumstances, to the Family Court of Australia. (The circumstances in which they do will be much wider when some pending amendments to the Family Law Act go through.) If the Family Court has jurisdiction, then the Supreme Court does not: Family Law Act 1975, s.8. Unfortunately, there is nothing in the Community Welfare Act to say that the Minister's wardship does not stop the *Family Court* from having jurisdiction. It seems that if a parent wants to apply for custody of a 'nuptial' child who is a state ward, there may be no way of doing it: the Supreme Court can't hear it because it is a matter that must go to the Family Court, and the Family Court can't hear it because the Community Welfare Act makes no provision for it to do so. (See *R v Lambert* 1980 32 A.L.R. 505). I will spare you a more detailed discussion of this jurisdictional nightmare, and will simply observe that the problem could easily be solved by including the words 'or the Family Court of Australia' in one or two sections of the Act.

Apart from this last problem, then, the new Act implements a very important change in the legal regime governing state wards. For the first time decisions are, in effect, *shared* between the Department and other people close to the child, at least in the sense that the Department's decisions can be challenged. It will be fascinating to see how the courts — and the Tribunal, if we ever get it — handle the new regime. They may take a cautious view, in effect saying that only in clear cases will they reach a decision different from that of the Department, which has, the courts might assume, more expertise about children and their needs than the court itself. This is somewhat like the position taken by the English courts in working out when they will make decisions which override the decisions of the local authorities: the English case law will probably be taken as a useful guide by the New South Wales Courts, although the legislative provisions in England are different from those in New South Wales.

CUSTODY

The new Act will make little if any difference to decisions in custody cases. In Australian law, custody decisions are governed by the principle that the child's welfare is the 'paramount consideration' (Family Law Act 1975, s.64; N.S.W. Infants Custody and Settlements Act 1899 s.17 (the wording is slightly different here)). As explained in the last section, what the Act will do is make it more possible for state wards to have their custody determined by the courts rather than by the Department.

There are many cases in which there is a contest between foster parents and natural parents for the custody of children. *Tull v McGuire* is only one of them, and not of any special importance. Neither it nor any other case really establishes the principle of 'psychological parenthood' as some would have liked it to (see J. Goldstein, A. Freud and Solnit, *Beyond the Best Interests of the Child*).

There are at least two reasons for this. One is that the courts are supposed to work out what is best for the child on the basis of the evidence before them in that particular case. In *Tull v McGuire* there was quite a lot of evidence (not altogether accepted by the court) about bonding and related theories about children. In another case, if that kind of evidence is not available, the result might be different. This is a problem in the system, since it is expensive, boring and unreasonable to expect that child development experts should have to trot out the same stuff each time a case comes up. And, of course, judges have their own bundle of assumptions and values about children, which they bring to bear in particular cases. These assumptions are influenced by evidence that they may have heard in other cases, as well as their upbringing, what they read in the papers, and other influences on them. They are generally aware, I think, of the outlines of bonding theory and that seductive cliche, 'psychological parenthood'. But, as the system now operates, it is much easier for them to base their decisions on it if there is specific expert evidence about it in the case being decided.

The other factor counting against the sort of theory that would help foster parents win custody cases is that the judges attach quite a lot of importance to natural parenthood. There seem to be two aspects to this, and the two often get tangled up with each other. One is the idea that natural parents are in general a better bet for children than other people: biological parenthood is a reasonably good indicator of commitment and love. In a contest between biological parents and others, courts have a tendency to start off by asking the other people to show why the court should do something other than place the child with biological parents. The second aspects is not really to do with child development at all, but fairness to parents. This is the view that often natural parents have lost their children through no fault of their own (e.g. through illness or poverty), and that it is unfair to them to place their children with other people, at least when the natural parents are capable of caring for their children adequately. Now, in theory, this is quite irrelevant, since the child's welfare is paramount, not notions of fairness to parents. But I suspect that judges sometimes have in mind some notion of parental rights (even at an unconscious level) when they assume, in a way that sometimes enrages child care workers, that a placement with natural parents is likely to promote the children's welfare better than a placement with foster parents.

This is not the place to discuss all the cases that deal with these difficult issues. I would just say that in most cases where the competition is between foster parents and natural parents, the courts are well aware of the competing tugs between natural parenthood on one hand and the importance of continuity and security in children's development on the other. At a very crude level, I would say that if the child has been placed at an early age with foster parents and has been with them for more than four years or so with no contact with the natural parents, then the foster parents have a good chance of retaining custody. If the period is much shorter, or if there has been significant continuing contact with the natural parents, then it becomes more likely that the biological parents may win. Even when they don't, courts are likely to make access orders in favour of biological parents whereas they are more reluctant to make access orders in favour of former foster parents after a child has been returned to biological parents. But such generalisations are of limited use, since so much depends on the particular facts and, I must add, the particular judge.

ADOPTION

I include this only for completeness. The new Act has nothing to do with adoption. Foster parents cannot themselves apply for adoption of their foster children. They have to persuade an adoption agency to make application on their behalf: Adoption of Children Act 1965, s.18. While the new Act has given foster parents more powers to challenge the Department in the context of custody and related matters, they are still legally powerless under the laws relating to adoption.

PAYMENT

Child Welfare Act 1939

The Minister is authorised to 'pay foster parents such rates as may be prescribed' (s.23(1)(c)). 'Foster parent' means any person with whom a child is 'boarded-out' (s.4). 'Boarded-out' means 'placed in the care of some foster parent for the purpose of being nursed, maintained' etc. (s.4). It seems clear, therefore, that the Department has power to pay foster parents, whether or not the child is a state ward. Equally, there is nothing in the Act to create an obligation on the Department to pay foster parents.

Community Welfare Act 1982

Again, there are ample powers, but no obligations, to pay foster parents under Part IV of the Act, sections 25-27.

MEDICAL TREATMENT

There are detailed provisions relating to vaginal and anal examinations of children, but they relate to children in institutional care, not foster care: s.49 (note the distinction between 'authorities' and 'licences' — see s.44(1)). However, the section dealing with ordinary medical and dental treatment does include foster children (s.50(2)(e) and (f)). The section provides for the consent of a 'prescribed person', which is as effective for foster children as is the consent of a parent or guardian of children in their own homes (s.50(3)).

The section is remarkably complicated, and I would hate to read it in a hurry, especially feeling anxious about a sick child. It's difficult enough to understand in the best of circumstances. However, here is my attempt to summarise it:—

* When the foster child is a state ward.

  Consent can be given by either the foster parent or the Minister in the case of treatment not involving surgery, but only by the Minister in cases involving surgery.
* When the child was placed by an Authorised Fostering Agency in the care of an authorised foster parent.

  The foster parent may consent to treatment not involving surgery. Where surgery is required, and the parent or guardian cannot be found, or it is impracticable to obtain the parent or guardian's consent, then consent may be given by the principal officer of the agency that placed the child.
* When the child is in the care of an authorised foster parent, but was not placed by an authorised agency.

  The foster parent may consent to treatment not involving surgery. Where surgery is required, and the parent or guardian cannot be found or it is impracticable to obtain the parent or guardian's consent, the Director of the Department may consent.
* When the child is in the care of anyone other than a parent or guardian but not an authorised foster parent (e.g. by a court custody order).

  Consent may be given by the person having care of the child in the case of non-surgery, and by the Director in the case of surgery.

The Act goes on to say, in effect, that it only operates to *add to* the people who can authorise medical treatment. It does not make illegal treatment that is lawful, for example, because it is given in emergency when nobody's consent can be obtained in time (s.50(4)).

CONCLUSIONS

As a practical matter, what difference will the new Act make to foster parents? Despite the difference in wording and the differences in many areas of child welfare, I think that the Act will make only one change of real importance to foster parents. But that change could prove to be fundamental. The change is that for the first time there will be legal avenues for foster parents to challenge departmental decisions and make claims to custody, access and the like to state wards.

These provisions may shift the balance of power between foster parents and the Department. They may create more litigation, which would be a pity. More optimistically, they may prove to be a strong incentive to the Department to justify and explain its decisions to foster parents (and to other people) in order that they will refrain from taking legal action. These technical avenues of appeal may therefore create a system in which there is great pressure on the department to be aware of the needs and claims of foster parents, if only to avoid being taken to court.

One of the consequential changes may be a greater role for fostering agencies and organisations of foster parents. Since foster parents will have more legal powers, they will need good advice about how to exercise those powers. Perhaps foster parent organisations have an important role in helping foster parents understand these new powers and exercising them, with care but also with courage, to bring about a system which is more flexible and sensitive to the needs of foster children.

APPENDIX: NEW SOUTH WALES COMMUNITY WELFARE ACT 1983 SCHEDULE 3

(Secs. 64, 69, 71, 277.)

Provisions Relating to Certain Licences and Authorities Interpretation: Sch. 3.

1. In this Schedule —

'approved person', in relation to —

(a) a licence for a child care service, means the authorised supervisor under the licence;

(b) a fostering agency authority, means the principal officer under the authority; or

(c) a licence for a residential child care centre, an intellectually handicapped persons centre or a residential centre for handicapped persons, means the licensed manager under the licence;

'authority' means a fostering agency authority or a fostering authority.

Eligible applicants.

2. A person is not eligible to make an application for a licence for a residential child care centre, an intellectually handicapped persons centre or a residential centre for handicapped persons unless he is the proprietor of the premises in respect of which the licence is applied for.

Grant of licences or authorities.

3. (1) Where a person makes an application to the Minister for a licence or authority, the Minister shall cause an inquiry to be made with respect to the applciation by officers and, in the case of an application for a licence for a residential centre for handicapped persons, by representatives from the Health Commission of New South Wales and a report on the application to be made and furnished to him by an officer.

(2) Upon receipt of the report, the Minister shall —

(a) grant the licence or authority applied for to the applicant; or

(b) cause to be served on the applicant for the licence or authority a notice stating that, when 28 days have expired after service of the notice, the Minister intends to refuse the licence or authority on the grounds specified in the notice unless it has been established to his satisfaction that the licence or authority should not be refused.

(3) When 28 days have expired after a notice has been served under subclause (2)(b) on an applicant for a licence or authority, the Minister shall, after considering any submissions made to him during that period by the applicant —

(a) grant the licence or authority applied for to the applicant; or

(b) refuse the licence or authority and cause to be served on the applicant a notice stating the grounds on which the licence or authority has been refused.

(4) Without limiting the Minister's power to refuse a licence, the Minister may refuse a licence on the ground that, in the locality in which it is proposed —

(a) to provide the child care service;

(b) to conduct the residential child care centre;

(c) to conduct the intellectually handicapped persons' centre; or

(d) to conduct the residential centre for handicapped persons

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there are already available adequate child care services, residential child care centres, intellectually handicapped persons centres or residential centres for handicapped persons, as the case may be, of a similar kind to that in relation to which the licence is applied for.

Change of approved persons under licences or fostering agency authorities.

4. (1) A licensee or holder of a fostering agency authority may apply in or to the effect of the prescribed form for the Minister's consent to the replacement of the approved person under the licence or authority by another person.

(2) When he receives an application under subclause (1), the Minister shall, by notice served on the applicant, the approved person and the other person specified in the application —

(a) if he considers the other person suitable to act as the approved person under the licence or fostering agency authority — consent to the other person becoming the approved person under the licence or authority; or

(b) refuse the application.

(3) When the Minister has consented under subclause (2) to another person becoming the approved person under a licence or fostering agency authority —

(a) any person who was the approved person under the licence or authority immediately before the consent was given ceased to be the approved person under the licence or authority; and

(b) the other person shall be deemed to be the person specified under section 64(1)(c) or (2)(c), 69(1)(b) or 277(1)(d), as the case may be, in the licence or authority.

(4) A notice served for the purpose of giving a consent under subclause (2) shall specify any conditions, other than prescribed conditions, which are in force when the notice is served and to which the licence or fostering agency authority to which it relates is subject.

Duration of licences and fostering agency authorities.

5. Subject to this Schedule, a licence or fostering agency authority shall be in force for such period, not exceeding 3 years, as is specified in the licence or authority, commencing on the date it is granted or such later date as is specified in the licence or authority, as the case may be, and, if an application for a further licence or fostering agency authority in relation to the same child care service, residential child care centre, intellectually handicapped persons centre, residential centre for handicapped persons or private fostering agency, as the case may be, as that to which the licence or authority relates is made by the licensee under the licence or the holder of the authority within that period, until the application is finally dealt with.

Conditions of licence or authority.

6. A licence or authority is subject —

(a) to any condition prescribed for licences or authorities or for a class of licences or authorities to which it belongs; and

(b) to any other condition in force for the time being, being a condition that the Minister thought fit to impose on the licence or authority and that was —

(i) specified in the licence or authority when it was granted; and

(ii) subsequently imposed on the licence or authority under clause 7.

Revocation, variation or addition of conditions on licences and authorities.

7. (1) If he intends to revoke or vary any condition of a licence or authority to impose a further condition on a licence or on an authority, the Minister shall cause to be served on —

(a) the licensee under the licence or the holder of the authority; and

(b) the approved person, if any, under the licence of authority,

a notice stating that, when 28 days have expired after service of the notice, the Minister intends to revoke or vary a condition of the licence or authority specified in the notice or to impose on the licence or authority a further condition specified in the notice, as the case may be, unless it has been established to his satisfaction that he should not do so.

(2) When 28 days have expired after notices have been served under subclause (1), the Minister may, after considering any submissions made to him during that period by the person or persons on whom the notices were served —

(a) revoke or vary the condition specified in the notices; or

(b) impose the further condition, specified in the notice, on the licence or authority to which the notices relate,

by a further notice served on that person or those persons.

(3) Notwithstanding subclauses (1) and (2), where the licensee under a licence or the holder of an authority has requested that a condition of the licence or authority be revoked or varied or that a further condition be imposed on the licence or authority, the Minister may, by notice served on the licensee or the holder of the authority and the approved person, if any, under the licence or authority —

(a) revoke or vary the condition; or

(b) impose the further condition,

as the case may require.

Application for variation of matters specified in a fostering authority.

8. Any matter specified in a fostering authority pursuant to section 71(1)(b)-(e) shall, for the purposes of clause 7, be deemed to be a condition of the fostering authority.

Suspension and revocation of licence or authority.

9. (1) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a licence, are that —

(a) the licensee under the licence has requested that the licence be suspended or revoked;

(b) either the licensee or the approved person under the licence is no longer a fit and proper person to be concerned in the provision of the child care service or the conduct of the residential child care centre, intellectually handicapped persons centre or residential centre for handicapped persons to which the licence relates;

(c) either of those persons has contravened or failed to comply with a provision of this Act or of the regulations that applies to him;

(d) in the case of a licence for a residential child care centre, an intellectually handicapped persons centre or a residential centre for handicapped persons —

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(i) the licensed premises do not comply with a provision of this Act or of the regulations or a condition of the licence that applies to them;

(ii) the licensed premises are not being used as a residential child care centre, an intellectually handicapped persons centre or a residential centre for handicapped persons, as the case may be;

(iii) the licensee (not being a person deemed to have been granted the licence under section 64 (3) or 277 (2)) is not the proprietor of the licensed premises; or

(iv) the licensed manager does not conduct the residential child care centre, the intellectually handicapped persons centre or the residential centre for handicapped persons, as the case may be;

(e) in the case of a licence for a child care service, any premises on which the child care service is provided do not comply with any provision of this Act or of the regulations or a condition of the licence that applies to them; or

(f) in the case of a licence for a child care service, the authorised supervisor under the licence does not have the overall supervision of the provision of the child care service to which the licence relates.

(2) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a fostering agency authority, are that —

(a) the authorised private fostering agency under the authority has requested that the authority be suspended or revoked;

(b) either the authorised private fostering agency or the principal officer under the authority is no longer fit and proper to be concerned in the carrying on of private fostering services; or

(c) either of those persons has contravened or failed to comply with a provision of this Act or of the regulations that applies to him.

(4) If he intends to suspend or revoke a licence or an authority, the Director shall cause to be served on —

(a) the licensee under the licence or the holder of the authority; and

(b) the approved person, if any, under the licence or authority,

a notice stating that, when 28 days have expired after service of the notice, the Director intends to suspend the licence or authority for a period (not exceeding 6 months) specified in the notice or to revoke the licence or authority, as the case may be, on the prescribed grounds specified in the notice, unless it has been established to his satisfaction that he should not do so.

(5) When 28 days have expired after the notice or notices has or have been served under subclause (4), the Director may, after considering any submissions made to him during that period by the person or persons on whom the notices were served —

(a) suspend the licence or authority to which the notice or notices relates or relate for the period (not exceeding 6 months) specified in the notice or notices; or

(b) revoke the licence or authority to which the notice or notices relates or relate,

by a further notice served on that person or those persons, which further notice shall specify the prescribed grounds on which the licence or authority is suspended or revoked, as the case may be.

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