

Version No. 015
Child Employment Act 2003
No. 81 of 2003

Version incorporating amendments as at
28 June 2012

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1 Purposes	1
2 Commencement	2
3 Definitions	2
4 What is employment?	7
5 What is light work?	10
6 Supervisors include tutors and chaperones in entertainment	11
7 Act binds the Crown	11
PART 2—EMPLOYMENT OF CHILDREN	12
Division 1—When may children be employed?	12
8 When may a child be employed?	12
9 Employment without a permit	12
10 Minimum age for employment	13
11 Employment of children during school hours	13
12 Prohibited employment	14
Division 2—Permits for children to engage in employment	15
13 Application for a permit	15
13A Multiple children or occasions of employment	17
14 Investigation of an application for a permit	18
15 <i>Repealed</i>	19
16 Determining an application for a permit	19
16A Supplementary permits	20
17 Permit conditions	22
18 Secretary may vary or cancel a permit	22
18A Variations that may be made to a permit	23
18B Record keeping by employers	24
19 Supervision of children in employment	25

<i>Section</i>	<i>Page</i>
Division 2A—Working with Children Act 2005	27
19A Application of Working with Children Act 2005	27
19B Exemptions from working with children check	29
Division 3—General conditions of employment	32
20 Condition 1—light work	32
21 Condition 2—hours of work	32
22 Condition 3—rest breaks	33
23 Contravention of conditions	33
Division 4—Employment in family businesses	34
24 When may a child be employed in a family business?	34
25 Provisions that do not apply to employment in family businesses	34
26 Supervision in family businesses	35
Division 5—Employment in entertainment	35
27 When may a child be employed in entertainment?	35
28 Provisions that do not apply to employment in entertainment	35
29 Mandatory code of practice	35
30 What will the mandatory code contain?	36
31 How is the mandatory code made?	36
32 Effect of the mandatory code	36
33 Variation and revocation of the mandatory code	36
34 Availability of the mandatory code	37
 PART 3—RESTRICTIONS ON ACTIVITIES NOT CONSTITUTING EMPLOYMENT	 38
35 Restriction on certain activities	38
36 Non-profit organisations—restricted hours for outdoor activities	38
 PART 4—COMPLIANCE	 39
Division 1—Child employment officers	39
37 What are the functions of child employment officers?	39
38 Appointment of child employment officers	39
39 Identity cards	39
40 Police to assist child employment officers	40
41 When may powers be exercised?	40
42 Power of entry	41
43 Powers on entry	43
43A Power to give directions	44
44 Power to require information or documents	44
45 Retention of documents	45
46 Confidentiality	45

<i>Section</i>	<i>Page</i>
Division 2—Offences	46
47 Failing to produce documents, hindering child employment officers and giving them false information	46
48 Protection against self-incrimination	47
49 Impersonating child employment officers	48
49A Who can prosecute under this Act?	48
49B Judicial notice of signatures	49
50 Proceedings for offences to be brought in Industrial Division of the Magistrates' Court	49
50A Offences by bodies corporate	49
50B Conduct by officers, employees or agents	50
51 Offences by unincorporated associations	51
 PART 5—GENERAL	 52
52 Delegation	52
53 Regulations	52
 PART 6—REPEALS, AMENDMENTS AND TRANSITIONAL PROVISIONS	 54
54 Existing permits and applications	54
55 Existing police checks and declarations	54
56–58 <i>Repealed</i>	57
=====	
 ENDNOTES	 58
1. General Information	58
2. Table of Amendments	59
3. Explanatory Details	61

Version No. 015
Child Employment Act 2003

No. 81 of 2003

Version incorporating amendments as at
28 June 2012

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are to—

- (a) regulate the employment of children under the age of 15 years;
- (b) protect those children from performing work that could be harmful to their health or safety, their moral or material welfare or development or the attendance at school of those children or their capacity to benefit from instruction;
- (c) provide a system of permits to allow the employment of children under the age of 15 years;
- (d) allow children under the age of 15 years to work in family businesses without a permit;
- (e) provide for the supervision of children in employment by persons with a current assessment notice under the **Working with Children Act 2005**;
- (f) set out general conditions of employment for children under the age of 15 years;
- (g) provide for a mandatory code of practice for the employment of children under the age of 15 years in the entertainment industry;

S. 1
substituted by
No. 26/2010
s. 4.

- (h) prohibit the employment of children under the age of 15 years in certain kinds of work;
- (i) empower the Governor in Council to declare kinds of employment prohibited for children under the age of 15 years;
- (j) set out offences;
- (k) provide for the appointment of child employment officers and the powers of those officers to ensure compliance with the Act.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 July 2004, it comes into operation on that day.

3 Definitions

In this Act—

assessment notice means an assessment notice given under the **Working with Children Act 2005** to an applicant for a working with children check under Part 2 of that Act;

child means a person under 15 years of age;

child employment officer means a person appointed under section 38;

* * * * *

S. 3 def. of *assessment notice* inserted by No. 26/2010 s. 5(1).

S. 3 def. of *declaration of suitability* repealed by No. 26/2010 s. 5(4).

S. 3 def. of *Department* amended by No. 43/2012 s. 3(Sch. item 4.1).

Department means Department of Business and Innovation;

door-to-door selling, in relation to a child, means selling by the child of any goods or services at any premises other than premises occupied by the child's employer, and includes the child making an unsolicited consumer agreement within the meaning of the Australian Consumer Law (Victoria) with a purchaser, but does not include selling by the child of goods or services to raise funds for a non-profit organisation if the child is directly engaged by that organisation;

S. 3 def. of *door-to-door selling* amended by Nos 26/2010 s. 5(2), 72/2010 s. 48(Sch. item 4).

employ has the meaning given by section 4;

employer has the meaning given by section 4;

employment has the meaning given by section 4;

entertainment means any form of entertainment and includes—

S. 3 def. of *entertainment* amended by No. 26/2010 s. 5(3).

- (a) singing, dancing or acting;
- (b) playing a musical instrument;
- (c) appearing in a radio, television, film or Internet program or production, or any similar program or production;
- (d) modelling;
- (e) appearing in promotional events or advertising;
- (f) working as a photographic subject, whether still or moving;
- (g) working in or in relation to a circus;
- (h) taking part in a performance that is recorded for use in a subsequent entertainment or exhibition;
- (i) working in musical theatre, plays, operas or other live entertainment;
- (j) performing in a shopping centre;

s. 3

- (k) preparatory activities to the entertainment except—
- (i) screen tests before the child is booked for the entertainment; and
 - (ii) casting walk-ons;

Examples

Examples of preparatory activities include wardrobe fittings, rehearsals, shoots, promotional activities, sound recordings and re-shoots.

S. 3 def. of *extended family member* repealed by No. 26/2010 s. 5(4).

* * * * *

family business, in relation to a child, means a business, trade or occupation carried on by a parent or guardian of the child;

S. 3 def. of *guardian* inserted by No. 26/2010 s. 5(1).

guardian, in relation to a child, means a person who has been granted (whether alone or with another person or persons) guardianship of the child under the **Children, Youth and Families Act 2005** or any other Act or law of a State or Territory or the Commonwealth;

inland waters means—

- (a) any swamp or lake;
- (b) any waterway, channel or anabranch from its mouth to its source and any inlet, backwater or lagoon connected with it;
- (c) any other lagoon, backwater, anabranch or billabong;
- (d) any reservoir, dam, tank, channel or works for water storage or distribution;

- (e) any other waters declared by regulations under the **Fisheries Act 1995** to be inland waters for the purposes of that Act;

light work has the meaning given by section 5;

lock-up stage means the stage when a building's external wall cladding and roof covering is fixed, the flooring is laid and external doors and external windows are fixed (even if those doors or windows are only temporary);

mandatory code means the code of practice made under section 29 for the employment of children in entertainment;

non-profit organisation means an organisation established for any cultural or charitable purpose, the constitution of which prohibits the distribution of profits to the individual members of the organisation;

officer—

S. 3 def. of *officer* inserted by No. 26/2010 s. 5(1).

- (a) in relation to a body corporate that is a corporation within the meaning of the Corporations Act, has the same meaning as in section 9 of that Act; and
- (b) in relation to any other body corporate, means any person (by whatever name called) who is concerned or takes part in the management of the body corporate;

parent has the same meaning as in the **Children, Youth and Families Act 2005**;

S. 3 def. of *parent* amended by No. 48/2006 s. 42(Sch. item 5).

permit means a permit issued under Division 2 of Part 2;

Child Employment Act 2003
No. 81 of 2003
Part 1—Preliminary

s. 3

S. 3 def. of
police check
repealed by
No. 26/2010
s. 5(4).

person includes an unincorporated association;

* * * * *

prohibited employment means any kind of
employment that is prohibited by section 12;

public place means any open place that is used
by the public, or to which the public has
access, whether or not on payment of money,
whether or not the place is ordinarily so used
and whether or not the public consists only
of a limited class of people;

Examples

Examples of public places include—

- (a) streets, roads, footpaths and passages (whether
or not on private property);
- (b) forecourts of public and commercial buildings;
- (c) carparks;
- (d) parks, gardens and recreation reserves;
- (e) racecourses and sports grounds;

S. 3 def. of
*registered
pharmacist*
substituted by
No. 80/2004
s. 150(Sch. 2
item 1),
amended by
No. 97/2005
s. 182(Sch. 4
item 8),
substituted by
No. 13/2010
s. 51(Sch.
item 10).

registered pharmacist means a person registered
under the Health Practitioner Regulation
National Law to practise in the pharmacy
profession (other than as a student);

school day has the same meaning as in the
Education and Training Reform Act 2006;

S. 3 def. of
school day
amended by
No. 24/2006
s. 6.1.2(Sch. 7
item 4.1(a)).

school hours means the hours that a school
requires a child to attend on any school day;

school term means—

S. 3 def. of
school term
amended by
No. 24/2006
s. 6.1.2(Sch. 7
item 4.1(b)).

- (a) in relation to a Government school
within the meaning of the **Education
and Training Reform Act 2006**—
the term as set by the Minister
administering Part II of that Act;
- (b) in relation to any other school—the
term as set by the school;

Secretary means Secretary to the Department;

sell includes offer for sale and expose for sale;

street trading means selling anything in a public
place.

4 What is employment?

S. 4
amended by
No. 24/2006
s. 6.1.2(Sch. 7
item 4.2),
substituted by
No. 26/2010
s. 6.

- (1) For the purposes of this Act, a child is engaged in
employment if the child performs work—
 - (a) under a contract of service or a contract for
services (whether written or unwritten); or
 - (b) in a business, trade or occupation carried on
for profit under any other arrangement
whether or not the child receives payment or
other reward for performing that work.
- (2) In determining whether a child is performing work
under an arrangement referred to in subsection
(1)(b), the factors that may be taken into account
include—

-
- (a) whether the parties intend that the work would constitute employment;
 - (b) whether the work would commonly attract payment;
 - (c) whether the primary purpose of the child's work is for another person to derive a profit;
 - (d) whether the child is subject to the direction of any person who will derive a profit from the child's work.
- (3) Employment does not include—
- (a) participating in a church or religious service or program;
 - (b) participating in a project or entertainment the net proceeds of which are applied for the benefit of a church or other religious body or institution established for public worship;
 - (c) participating in a project or entertainment for the benefit or as part of the activities of the school at which the child is enrolled if the child is under the direction or control of the school;
 - (d) participating in an apprenticeship, a traineeship or practical training under the **Education and Training Reform Act 2006**;
 - (e) undertaking domestic or tutoring activities on an occasional or casual basis at residential premises if no person other than the child will seek or obtain a financial benefit for that employment or engagement;
 - (f) appearing in or being interviewed in a recording—
 - (i) of a news or current affairs item if the child is the subject of the news or current affairs item and the child is not
-

-
- presenting the item and does not appear in the item in a scripted or rehearsed way; or
- (ii) if the child is in a public place and is providing a spontaneous reply or opinion in response to a question;
 - (g) door-to-door fundraising for a non-profit organisation if the child is directly engaged by that organisation;
 - (h) performing work in relation to a sporting activity (including coaching, refereeing or umpiring) except in relation to martial arts, horse riding, gym instruction and any other sporting activity with a high risk of injury that is prescribed by the regulations;
 - (i) any other activity or arrangement prescribed by the regulations not to be employment.
- (4) For the purposes of this Act, a person is taken to employ a child and to be an employer of the child if the child is engaged in employment and—
- (a) the person engages the child under a contract of service or a contract for services (whether written or unwritten) or other arrangement; or
 - (b) the work of the child is for the benefit of that person, whether or not it is also performed for the benefit of another person.
- (5) Despite the exclusion of certain sporting activities from employment by subsection (3)(h), performing work in relation to martial arts, horse riding, gym instruction and any other sporting activity with a high risk of injury to a child that is prescribed by the regulations is to be taken to be employment under this Act.
-

- (6) Despite subsection (4), a person is not to be taken to employ a child or to be an employer of a child if that person is in a class of persons prescribed by the regulations not to be an employer for the purposes of this Act.

S. 5
substituted by
No. 26/2010
s. 7.

5 What is light work?

- (1) For the purposes of this Act, *light work* means work or any other activity that—
- (a) is not likely to be harmful to a child's health, safety or moral or material welfare or development; and
 - (b) is not such as to prejudice the child's attendance at school or the child's capacity to benefit from instruction.
- (2) For the purposes of subsection (1), the following types of work or activity are to be considered likely to be harmful to a child's health or safety unless the risk of harm arising from the work or activity is managed to minimise the risk—
- (a) repetitive bending, twisting or lifting;
 - (b) manually lifting heavy items;
 - (c) working with or near cooking or any other equipment that may produce high temperatures;
 - (d) working with sharp instruments or equipment, power operated tools and any other dangerous equipment;
 - (e) working near moving vehicles;
 - (f) working at heights;
 - (g) working with uncontrolled animals;
 - (h) working in extreme weather conditions.

-
- (3) Subsection (2) does not limit the types of work or activity that may be considered light work under this section.
- (4) In determining whether or not any work or activity is light work or is likely to be harmful to a child's health, safety or moral or material welfare or development, consideration must be given to—
- (a) the child's age, sex and physical and emotional development and maturity; and
 - (b) the nature and management of the work or activity and the nature and environment of the workplace where the work or activity is, or is to be, performed.

6 Supervisors include tutors and chaperones in entertainment

S. 6
amended by
No. 26/2010
s. 8.

A reference in this Act to a person who has or will have supervision of a child includes, in the case of employment in entertainment, a person who tutors or chaperones, or will tutor or chaperone, the child in that employment.

7 Act binds the Crown

This Act binds the Crown in right of Victoria and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

PART 2—EMPLOYMENT OF CHILDREN

Division 1—When may children be employed?

8 When may a child be employed?

A child may be employed—

- (a) in accordance with a permit and with the prior written consent of the parent or guardian of the child; or
- (b) in a family business, in accordance with Division 4.

Note

A child may also be employed in accordance with a work experience arrangement under Part 5.4 of the **Education and Training Reform Act 2006**—see section 5.4.11 of that Act.

9 Employment without a permit

- (1) A person must not employ a child unless a permit has been issued for the employment.

Penalty: 100 penalty units in the case of a body corporate;

60 penalty units in any other case.

- (2) A parent or guardian of a child must not allow the child to engage in employment unless a permit has been issued for the employment.

Penalty: 10 penalty units.

- (3) Subsections (1) and (2) do not apply to the employment of a child in a family business.

Note

This section also does not apply to the employment of a child in accordance with a work experience arrangement under Part 5.4 of the **Education and Training Reform Act 2006**—see section 5.4.11 of that Act.

S. 8
amended by
No. 24/2006
s. 6.1.2(Sch. 7
item 4.3),
substituted by
No. 26/2010
s. 9.

S. 9(1)
amended by
No. 26/2010
s. 10(a).

Note to s. 9
substituted by
No. 24/2006
s. 6.1.2(Sch. 7
item 4.4),
amended by
No. 26/2010
s. 10(b).

10 Minimum age for employment

- (1) Subject to subsection (2), the minimum age for the employment of a child is—
 - (a) 11 years of age for any of the following employment—
 - (i) delivering newspapers;
 - (ii) delivering pamphlets or other advertising material;
 - (iii) making deliveries for a registered pharmacist; and
 - (b) 13 years of age for any other employment.
- (2) There is no minimum age for the employment of a child in a family business or in entertainment.
- (3) A person must not employ a child who is below the minimum age for employment.

Penalty: 100 penalty units in the case of a body corporate;
60 penalty units in any other case.

11 Employment of children during school hours

- (1) A person must not employ a child during school hours on any school day unless the Minister has granted the child an exemption from attendance at school under section 2.1.5 of the **Education and Training Reform Act 2006**.

S. 11(1)
amended by
No. 58/2007
s. 50.

Penalty: 100 penalty units in the case of a body corporate;
60 penalty units in any other case.

-
- (2) A parent or guardian of a child must not allow the child to engage in employment if the nature and extent of the employment is such as to prejudice the child's attendance at school or their capacity to benefit from instruction.

Penalty: 60 penalty units.

12 Prohibited employment

- (1) A person must not employ a child in any of the following kinds of employment—
- (a) door-to-door selling;
 - (b) employment on a fishing boat, other than a boat operating on inland waters;
 - (c) employment on a building or construction site (whether commercial or residential) at any time before the buildings on the site are at lock-up stage;
 - (d) any kind of employment declared under subsection (2) to be prohibited employment for the purposes of this subsection.

Penalty: 100 penalty units in the case of a body corporate;

60 penalty units in any other case.

- (2) The Governor in Council, by order published in the Government Gazette, may declare a kind of employment to be prohibited employment for the purposes of subsection (1).
- (3) The Governor in Council, by order published in the Government Gazette, may from time to time amend or revoke a declaration made under subsection (2).

Division 2—Permits for children to engage in employment

13 Application for a permit

S. 13
substituted by
No. 26/2010
s. 11.

- (1) A person who proposes to employ a child may apply to the Secretary for a permit for the child to engage in employment.
- (2) An application for a permit must—
 - (a) be in a form approved by the Secretary; and
 - (b) state the name, date of birth, home address and home telephone number of the child; and
 - (c) state—
 - (i) the name, telephone number and business address of the child's prospective employer including any business or other trading name of that employer; and
 - (ii) the name of the child's parent or guardian and the home address and home telephone number of the child's parent or guardian, if different from the address or telephone number of the child; and
 - (iii) the name and address of the child's school; and
 - (iv) in the case of a permit for employment in entertainment, the name of any talent or casting agent through which the employment of the child is arranged; and
 - (d) contain a statement by the child's prospective employer giving details of—
 - (i) the intended workplace of the child and the business, trade or occupation carried on at the workplace; and

-
- (ii) the duties it is intended that the child will perform; and
 - (iii) the intended hours of employment of the child and the intended dates of commencement and completion of that employment; and
 - (iv) whether any of the employment will be within a school term and, if so, whether any of it will be within school hours; and
- (e) in the case of a permit for employment in entertainment, contain an undertaking that the prospective employer will ensure that—
- (i) the parent or guardian of the child has sufficient information about the following before giving consent to his or her child's employment—
 - (A) the name and contact details of the employer referred to in paragraph (c)(i) and the employer's representative referred to in paragraph (f); and
 - (B) details of the employment referred to in paragraph (d); and
 - (ii) the parent or guardian of the child consents in writing to his or her child's employment before the employment commences; and
 - (iii) if any of the employment of the child will occur during school hours, that an exemption from school attendance will be granted under section 11 to the child before the employment that occurs during school hours commences; and
-

-
- (f) if the proposed employer is not a natural person, contain the name and contact details of an officer or other representative of the body corporate; and
 - (g) be signed—
 - (i) if the prospective employer is a natural person, by the prospective employer; and
 - (ii) if the prospective employer is not a natural person, by a natural person referred to in paragraph (f); and
 - (iii) unless the application is for employment in entertainment, by the parent or guardian of the child; and
 - (iv) unless the application is for employment in entertainment, by or on behalf of the child's school if any of the proposed employment will occur during school hours; and
 - (h) contain any other information relating to the employment that the Secretary reasonably believes is appropriate and is published on a website maintained by the Department.
- (3) If the child is not required to attend any school, the application must contain a statement to that effect and give the reason why the child is not required to attend any school.
 - (4) The Secretary may refuse to consider an application if it does not comply with this section.

13A Multiple children or occasions of employment

- (1) If a prospective employer proposes to employ more than one child to work in entertainment and the employment of those children relates to the same form of entertainment or type of work, the employer may apply to the Secretary for a single

S. 13A
inserted by
No. 26/2010
s. 12.

permit in relation to those children for the employment specified in the application.

- (2) If a prospective employer proposes to employ a child on more than one occasion and the employment relates to the same type of work, the employer may apply to the Secretary for a single permit for that child for the employment specified in the application for those occasions.
- (3) The Secretary may issue a permit in accordance with an application referred to in this section.
- (4) If the Secretary receives an application referred to in subsection (1) the Secretary—
 - (a) may exercise his or her powers in relation to the application and the issue of the permit as if each child named in the application were the only child referred to in the application or any permit issued; and
 - (b) must perform his or her duties to give written notice to the employer, parent or guardian or school of a child as if each child referred to in the application were the only child referred to in the application or any permit issued.

14 Investigation of an application for a permit

- (1) On receiving an application for a permit, the Secretary—
 - (a) must cause to be carried out all investigations and inquiries that he or she considers necessary to enable the proper consideration of the application; and
 - (b) may require the applicant or the parent or guardian of the child to provide further information relevant to the application in the form and manner required by the Secretary.

S. 14(1)(b)
amended by
No. 26/2010
s. 13(1).

- (2) The Secretary may refuse to consider an application if the applicant or parent or guardian does not provide any further information required under subsection (1)(b) within a reasonable time after the requirement is made.

S. 14(2)
amended by
No. 26/2010
s. 13(2).

* * * * *

S. 15
repealed by
No. 26/2010
s. 14.

16 Determining an application for a permit

S. 16
substituted by
No. 26/2010
s. 15.

- (1) The Secretary may grant a permit if the Secretary is satisfied that—
- (a) the health, safety, education and moral and material welfare of the child will not suffer from the proposed employment; and
 - (b) the child will not be subjected to any form of exploitation in the course of the proposed employment; and
 - (c) the proposed employment is not prohibited employment; and
 - (d) the child is of or over the minimum age permitted by section 10 for the proposed employment.
- (2) If the Secretary is not satisfied of the matters referred to in subsection (1), the Secretary must refuse the application.
- (3) If the Secretary grants an application for a permit, he or she must—
- (a) issue a permit to the applicant; and
 - (b) send a copy of the permit to the child's parent or guardian and the child's school.

-
- (4) The Secretary is not required to send a copy of the permit to the child's school if the child is exempted from the requirement to attend any school or the proposed employment will not occur during school hours.
- (5) A permit—
- (a) must state the employment authorised by the permit; and
 - (b) in the case of a permit for employment that occurs during school hours, is valid for the period not exceeding 12 months specified in it unless varied or cancelled under section 18; and
 - (c) in any other case, is valid for the period not exceeding 24 months specified in it unless varied or cancelled under section 18.

S. 16A
inserted by
No. 26/2010
s. 16.

16A Supplementary permits

- (1) Despite section 13, this section applies if—
- (a) a proposed employer has applied for a permit to employ a child to work on more than one occasion in entertainment; and
 - (b) the proposed employment relates to the same form of entertainment or the same type of work; and
 - (c) the proposed employer has not provided information about all of the occasions of employment, or the Secretary requires additional information about those occasions of employment.
- (2) A permit may be granted subject to the following conditions—
- (a) that the applicant will provide any additional information in relation to an occasion of employment that is required by the Secretary

under this section before the occasion of employment commences; and

- (b) the permit does not take effect with regard to an occasion of employment until the grant of a supplementary permit by the Secretary in respect of the additional information.
- (3) The Secretary may grant a supplementary permit on receipt of any additional information required under subsection (2) and that information may be specified in the supplementary permit.
- (4) The Secretary has all of the powers in section 14 in relation to a consideration of additional information required under this section as if the information were contained in the application for the original permit.
- (5) The Secretary may refuse to grant a supplementary permit if the Secretary is not provided with any additional information required under this section at least 48 hours before the commencement of the occasion of employment to which the additional information relates.
- (6) A supplementary permit is subject to any conditions that could have been imposed on the original permit that are determined by the Secretary and specified in the supplementary permit.
- (7) A supplementary permit may revoke or vary any conditions that were imposed on the original permit and that are no longer necessary or appropriate because of the grant of the supplementary permit.
- (8) If a permit and any supplementary permit are granted in accordance with this section, those permits are to be treated as one permit granted by the Secretary under this Act as at the date of the original permit.

- (9) The Secretary may grant more than one supplementary permit in relation to a permit.

17 Permit conditions

- (1) A permit is subject to any conditions determined by the Secretary and specified in the permit.
- (2) In particular, the following conditions may be imposed on a permit—
- (a) conditions limiting employment under the permit to a particular workplace or locality;
 - (b) conditions limiting employment under the permit to a particular activity, event, performance or production;
 - (c) conditions in respect of hours of work and rest breaks.
- (3) Nothing in subsection (2) limits the kinds of conditions that may be imposed on a permit.
- (4) A person who employs a child under a permit must not contravene a condition of the permit.

Penalty: 100 penalty units in the case of a body corporate;

60 penalty units in any other case.

18 Secretary may vary or cancel a permit

- (1) In addition to the powers under subsection (2), the Secretary may vary or cancel a permit at any time.
- (2) The Secretary must cancel a permit if—
- (a) the health, safety, education or the moral or material welfare of the child is suffering or is likely to suffer from the employment; or
 - (b) the child is being or is likely to be subjected to any form of exploitation in the course of the employment; or
 - (c) the employment is prohibited employment.

S. 18
substituted by
No. 26/2010
s. 17.

-
- (3) In considering whether to vary or cancel a permit, the Secretary may cause to be carried out any investigation or inquiry that the Secretary considers necessary to enable the proper consideration of the variation or cancellation.
 - (4) If the Secretary varies or cancels a permit, the Secretary must give written notice to—
 - (a) the employer or prospective employer of the child to whom it applies; and
 - (b) the child's parent or guardian; and
 - (c) the child's school.
 - (5) The Secretary is not required to send a copy of the notice to the child's school if—
 - (a) the variation does not relate to the child's hours of work; or
 - (b) the child is exempted from the requirement to attend any school; or
 - (c) none of the proposed employment will occur during school hours.
 - (6) A variation or cancellation of a permit takes effect on the giving of written notice of the variation or cancellation to the employer or prospective employer of the child.

18A Variations that may be made to a permit

- (1) A variation of a permit under section 18 may include any of the following—
 - (a) variation of the period of the permit;
 - (b) variation of an existing condition on the permit;
 - (c) removal of a condition on the permit;
 - (d) addition of a condition or any further condition on the permit;

S. 18A
inserted by
No. 26/2010
s. 18.

- (e) variation of any particular of the employment specified in the permit.

Example

A change to the hour that a child is to finish work on a particular day.

- (2) The Secretary must not vary a permit unless the Secretary is satisfied that the health, safety, education and the moral and material welfare of the child will not suffer from the variation.

S. 18B
inserted by
No. 26/2010
s. 18.

18B Record keeping by employers

- (1) An employer must keep a record of the written consent of the parent or guardian of a child to the child's employment by that employer in accordance with subsection (3).
- (2) An employer must keep a record of an exemption from attendance at school for a child employed by that employer in accordance with subsection (3).
- (3) The employer must keep the written record—
- (a) in a form approved by the Secretary; and
 - (b) for a period of 12 months after the expiry of the permit to which the record relates, or for any other prescribed period.
- (4) Subsection (1) does not apply if—
- (a) the permit application for the employment was signed by the parent or guardian of the child; or
 - (b) the employer provided a copy of the written consent of the parent or guardian to the Secretary together with the employer's permit application for the employment.

-
- (5) Subsection (2) does not apply if—
- (a) the permit application for the employment was signed by or on behalf of the child's school; or
 - (b) the employer provided a copy of the exemption to the Secretary together with the employer's permit application for the child's employment.

19 Supervision of children in employment

S. 19
substituted by
No. 26/2010
s. 19.

- (1) An employer of a child must ensure that the child is—
- (a) supervised at all times by a person who has a current assessment notice or is exempt from the requirement to have a current assessment notice under section 19B; and
 - (b) directly and adequately supervised by a person referred to in paragraph (a) at all times in the employment, having regard to the following—
 - (i) the nature and environment of the workplace, including the number of children employed at any one time in the workplace; and
 - (ii) the nature of the work performed by the child; and
 - (iii) the child's age, sex and physical and emotional development and maturity.

Penalty: 100 penalty units in the case of a body corporate;
60 penalty units in any other case.

Note

Section 19A of this Act extends the application of the **Working with Children Act 2005** to the supervision of children in employment under this Act. Section 33 of the

Working with Children Act 2005 as applied by this Act requires the supervisor of a child to have a current assessment notice under that Act. Section 35 of the **Working with Children Act 2005** as applied by this Act makes it an offence for a person to engage another person to supervise a child in employment without a current assessment notice. The exemptions from the requirement to have a current assessment notice under Part 3 of the **Working with Children Act 2005** do not apply to supervisors of child employees but are replaced by the exemptions set out in section 19B of this Act.

- (2) An employer must keep a written record of the name of any person who supervises a child in the course of the child's employment and the number of any current assessment notice for that person in accordance with subsection (3).
- (3) The employer must keep the written record—
 - (a) for a period of 12 months after the expiry of the permit to which the record relates; or
 - (b) for any other prescribed period.
- (4) A prospective employer or employer of a child must, on request by the parent or guardian of a child or a child employment officer, provide to the parent or guardian or the child employment officer the name of any person who supervises, or that the employer knows will supervise or has supervised, the child in the course of the child's employment and the number of the person's current assessment notice.

Penalty: 100 penalty units in the case of a body corporate;
60 penalty units in any other case.
- (5) Subsection (4) does not apply to an employer who does not have a written record of the information requested because of the expiry of the period set out in subsection (3).

- (6) Nothing in this section applies to the employment of a child in a family business.

Division 2A—Working with Children Act 2005

Pt 2 Div. 2A
(Heading and
ss 19A, 19B)
inserted by
No. 26/2010
s. 20.

19A Application of Working with Children Act 2005

S. 19A
inserted by
No. 26/2010
s. 20.

- (1) The **Working with Children Act 2005** extends and applies to the supervision of a child in employment that requires a permit under this Act as if that supervision were child-related work for the purposes of the **Working with Children Act 2005**.
- (2) The **Working with Children Act 2005** applies to the supervision of a child referred to in subsection (1) with the following modifications—
- (a) sections 9(1)(b) and 9(8)(b) do not apply to exclude work experience arrangements referred to in section 5.4.11(4) of the **Education And Training Reform Act 2006** from the operation of the Act as applied by the **Child Employment Act 2003**;
- (b) section 16(4)(c) applies with the words "or the **Child Employment Act 2003**" inserted after "this Act";
- (c) section 20(1) applies with the following paragraph inserted after "listed"—
- "; and
- (d) in the case of a person supervising a child referred to in section 19A(1) of the **Child Employment Act 2003**, the employer of the child";

s. 19A

S. 19A(2)(da)
inserted by
No. 51/2010
s. 25(1).

- (d) section 21 applies with the following subsection **substituted** for section 21(6)—
- "(6) For the purposes of Part 4, a person supervising a child referred to in section 19A(1) of the **Child Employment Act 2003** who has been given an interim negative notice under section 16 is not to be regarded as having a current assessment notice in respect of that supervision.";
- (da) section 21A applies with the expression "Despite section 21(6)," **omitted**;
- (e) Part 3 does not apply;
- (f) section 33(2)(b) applies with the words "section 19B of the **Child Employment Act 2003**" **substituted** for "Part 3" (where first occurring);
- (g) section 33(2)(a), (2)(c) and (2A) do not apply to a person who is supervising a child referred to in section 19A(1) of the **Child Employment Act 2003**;
- (h) section 34(2A) does not apply;
- (i) section 35(2)(b) applies with the words "section 19B of the **Child Employment Act 2003**" **substituted** for "Part 3";
- (j) section 35(2)(a), (2)(c), (3) and (3A) do not apply to a person who is supervising a child referred to in section 19A(1) of the **Child Employment Act 2003**;
- (k) section 36(2)(b) applies with the words "section 19B of the **Child Employment Act 2003**" **substituted** for "Part 3";

- (l) section 36(2)(a) and (2A) do not apply to a person who is supervising a child referred to in section 19A(1) of the **Child Employment Act 2003**;
- (m) section 38 applies with the words "or the employment of a child referred to in section 19A(1) of the **Child Employment Act 2003**" inserted after "work", where twice occurring;
- (n) section 40(2)(a)(i) applies with the words "or the **Child Employment Act 2003**" inserted after "this Act";
- (o) section 40(2) applies with the following paragraph inserted after paragraph (a)—
 - "(aa) to the Secretary of the Department of Business and Innovation for considering an application under the **Child Employment Act 2003** or determining compliance with that Act; or".
- (3) Sections 33 and 35 to 37 of the **Working with Children Act 2005** apply to the supervision of a child referred to in subsection (1) in or at a service, body, place or activity as if it were child-related work despite the supervision occurring before the relevant date in relation to that service, body, place or activity under that Act.

S. 19A(2)(o) amended by No. 43/2012 s. 3(Sch. item 4.2).

19B Exemptions from working with children check

- (1) The following persons are exempt from the requirements of the **Working with Children Act 2005** as applied and modified by this Act to have a current assessment notice under the **Working with Children Act 2005** and to undergo a working with children check under Part 2 of that Act in respect of their supervision of a child referred to in section 19A(1)—

S. 19B inserted by No. 26/2010 s. 20.

s. 19B

- (a) a person who supervises a child who is closely related to him or her;
- (b) a person who is a registered teacher under the **Education and Training Reform Act 2006**;

Note

Section 2.6.28 of the **Education and Training Reform Act 2006** provides that a teacher whose registration is suspended is deemed not to be registered for the period of that suspension.

- (c) a person who is a member of the force within the meaning of the **Police Regulation Act 1958** and who has taken and subscribed the oath referred to in section 13(1) of that Act (other than a member who is suspended from duty under that Act);

S. 19B(1)(ca)
inserted by
No. 51/2010
s. 25(2).

- (ca) a person who is a member of the Australian Federal Police within the meaning of the Australian Federal Police Act 1979 of the Commonwealth (other than a member who is suspended from duty under that Act);

- (d) a person who is not an Australian citizen and not ordinarily resident in Australia in respect of the supervision of a child if he or she does not ordinarily engage in that work in Victoria.

- (2) For the purposes of subsection (1)(a), a person is closely related to a child if the person is the child's—
 - (a) parent, step-parent or guardian;
 - (b) grandparent;
 - (c) uncle or aunt;

(d) brother or sister (including half-brother, half-sister, step-brother, step-sister, brother-in-law or sister-in-law)—

and includes, in the case of domestic partners, a person who would be closely related to the child if the domestic partners were married to each other.

(3) A person who supervises a child in employment (other than teaching in a school) and who relies on an exemption under subsection (1)(b) in respect of that supervision must notify any person by whom he or she is employed in that supervision in writing of the suspension or cancellation of the person's registration under the **Education and Training Reform Act 2006** within 7 days after receiving notice of the suspension or cancellation.

Penalty: 60 penalty units.

(4) A person referred to in subsection (1)(c) who supervises a child in employment (other than as a member of the force) and who relies on an exemption under subsection (1)(c) in respect of that supervision must notify any person by whom he or she is employed in that supervision in writing of the suspension or dismissal of the person as a member of the force under the **Police Regulation Act 1958** within 7 days after receiving notice of the suspension or dismissal.

Penalty: 60 penalty units.

(5) A person referred to in subsection (1)(ca) who supervises a child in employment (other than as a member of the Australian Federal Police) and who relies on an exemption under subsection (1)(ca) in respect of that supervision must notify any person by whom he or she is employed in that supervision in writing of the suspension or termination of the employment of the person as a member of the Australian Federal Police within

S. 19B(5)
inserted by
No. 51/2010
s. 25(3).

7 days after receiving notice of the suspension or termination.

Penalty: 60 penalty units.

Division 3—General conditions of employment

20 Condition 1—light work

A child may only be employed to perform light work.

21 Condition 2—hours of work

- (1) A child may be employed—
 - (a) for a maximum of 3 hours per day and 12 hours per week at any time during school term; and
 - (b) for a maximum of 6 hours per day and 30 hours per week at any time outside school term.

Note

A child must not be employed during school hours—see section 11.

- (2) The hours in subsection (1)(b) are inclusive of rest breaks.
- (3) A child must not be employed to perform work on any day—
 - (a) earlier than 6 a.m. or sunrise (whichever is later) or later than 6 p.m. or sunset (whichever is earlier) if the child is employed in street trading;
 - (b) earlier than 6 a.m. or later than 9 p.m. in any other case.

Note

This section does not apply to the employment of a child in a family business or in entertainment—see sections 25(a) and 28(1)(a).

22 Condition 3—rest breaks

- (1) A child who is employed must be given a rest break of at least 30 minutes after every 3 hours of work.
- (2) The rest break may be paid or unpaid.
- (3) A child who is employed must be given a break of at least 12 hours between finishing one shift of work and commencing the next.

Note

This section does not apply to the employment of a child in a family business or in entertainment—see sections 25(b) and 28(1)(b).

23 Contravention of conditions

- (1) A person who employs a child must not contravene a condition set out in this Division that applies to that employment.

Penalty: 100 penalty units in the case of a body corporate;

60 penalty units in any other case.

- (2) A condition in section 21 or 22 does not apply to the employment of a child to the extent that the Secretary specifies in the permit for that employment or by notice in writing to the employer.

- (3) The Secretary must not specify that a condition does not apply unless the Secretary has regard—

- (a) to the effect of the proposed change on the child's health or safety or moral or material welfare or development or the child's attendance at school or capacity to benefit from instruction; and

S. 23
amended by
No. 26/2010
s. 21 (ILA
s. 39B(1)).

S. 23(2)
inserted by
No. 26/2010
s. 21.

S. 23(3)
inserted by
No. 26/2010
s. 21.

- (b) the views of the parent or guardian of the child and the employer or prospective employer of the child.

Note

Section 5.4.11 of the **Education and Training Reform Act 2006** has the effect that conditions in this Division do not apply to a child employed in certain work experience arrangements.

Division 4—Employment in family businesses

24 When may a child be employed in a family business?

- (1) A child may be employed in or in relation to a family business without a permit.
- (2) Nothing in subsection (1) allows a child to be employed in prohibited employment.

Note

Also, the child can only be employed to perform light work and cannot be employed during school hours—see sections 11 and 20.

25 Provisions that do not apply to employment in family businesses

The following provisions of this Act do not apply to the employment of a child in or in relation to a family business—

- (a) section 21 (hours of work);
- (b) section 22 (rest breaks).

Note

There is also no minimum age for the employment of children in a family business—see section 10(2).

26 Supervision in family businesses

A parent or guardian must not employ a child in or in relation to a family business unless the child is directly supervised in that employment by a parent or guardian.

Penalty: 60 penalty units.

Division 5—Employment in entertainment

27 When may a child be employed in entertainment?

A child may be employed in entertainment in accordance with a permit and with the prior written consent of the parent or guardian of the child.

S. 27
amended by
No. 26/2010
s. 22.

28 Provisions that do not apply to employment in entertainment

- (1) The following provisions of this Act do not apply to the employment of a child in entertainment—
 - (a) section 21 (hours of work);
 - (b) section 22 (rest breaks).

Note

There is also no minimum age for the employment of children in entertainment—see section 10(2).

- (2) Despite subsection (1), the Secretary may take into account any provision referred to in that subsection in determining the conditions (if any) to be imposed on a permit for the employment of a child in entertainment.

29 Mandatory code of practice

- (1) The Minister must make a mandatory code of practice for the employment of children in entertainment.
- (2) The Minister is to make all reasonable efforts to make the code within 12 months after the commencement of this section.

-
- (3) Before making the code, the Minister must consult—
- (a) representatives of employers and employees in the entertainment industry; and
 - (b) any government agencies that the Minister considers have an interest in the entertainment industry.

30 What will the mandatory code contain?

- (1) The mandatory code is to contain provisions regulating the employment of children in entertainment.
- (2) The code may apply, adopt or incorporate (with or without modification) any document as in force at a particular time or as in force from time to time.

31 How is the mandatory code made?

- (1) The Minister makes the mandatory code by order published in the Government Gazette.
- (2) The code takes effect on the day the order is published or the later day specified in the order.

32 Effect of the mandatory code

A person who employs a child in entertainment must not contravene the mandatory code.

Penalty: 100 penalty units in the case of a body corporate;

60 penalty units in any other case.

33 Variation and revocation of the mandatory code

- (1) The Minister may, by order published in the Government Gazette, vary or revoke the mandatory code at any time.
- (2) If the Minister revokes the mandatory code, he or she must make another mandatory code within 6 months.

34 Availability of the mandatory code

The Secretary must ensure that copies of the mandatory code as varied from time to time are available for public inspection, without charge, at the principal office of the Department during ordinary office hours.

**PART 3—RESTRICTIONS ON ACTIVITIES NOT
CONSTITUTING EMPLOYMENT**

35 Restriction on certain activities

S. 35(1)
substituted by
No. 26/2010
s. 23.

- (1) A person must not cause or permit a child to engage in any activity that is not employment under section 4(3) except to the extent that the activity is light work.

Penalty: 100 penalty units in the case of a body corporate;

60 penalty units in any other case.

- (2) A parent or guardian of a child does not contravene subsection (1) only because he or she permits the child to engage in an activity that is being conducted or supervised by another person or body.

36 Non-profit organisations—restricted hours for outdoor activities

S. 36
amended by
No. 26/2010
s. 24.

A non-profit organisation must not cause or permit a child to engage in any activity that is not employment for the organisation in a public place or engage in door-to-door fundraising earlier than 6 a.m. or sunrise (whichever is later) or later than 6 p.m. or sunset (whichever is earlier), unless the child is accompanied by an adult.

Penalty: 100 penalty units in the case of a body corporate;

60 penalty units in any other case.

PART 4—COMPLIANCE

Division 1—Child employment officers

37 What are the functions of child employment officers?

- (1) The primary function of child employment officers is to provide information about the operation of this Act, the Mandatory Code and the regulations to employers, schools, children, parents and other interested members of the community.
- (2) Child employment officers also have the function of investigating applications for permits, ensuring compliance with this Act and the regulations and any other functions conferred by or under this or any other Act.

S. 37(1)
amended by
No. 26/2010
s. 25.

38 Appointment of child employment officers

- (1) The Secretary may, by instrument, appoint as a child employment officer for the purposes of this Act a person employed under Part 3 of the **Public Administration Act 2004**.
- (2) A child employment officer is subject to the Secretary's directions in the performance of his or her functions or in the exercise of his or her powers under this Act and the regulations.
- (3) A direction under subsection (2) may be of a general nature or may relate to a specified matter or to a specified class of matter.

S. 38
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 28),
substituted by
No. 26/2010
s. 26.

39 Identity cards

- (1) Each child employment officer must be issued with an identity card in the form approved by the Secretary.
- (2) The identity card must bear a photograph and the signature of the child employment officer.

-
- (3) A child employment officer must produce his or her identity card for inspection—
- (a) before exercising a power under this Part other than a requirement made by post, fax, e-mail or other electronic communication; and
 - (b) at any time during the exercise of a power under this Part, if asked to do so.

Penalty: 10 penalty units.

40 Police to assist child employment officers

- (1) A child employment officer may request the assistance of a member of the police force.
- (2) A member of the police force may assist a child employment officer to take any action authorised by this Part.

41 When may powers be exercised?

- (1) A child employment officer may exercise powers under this Part only to the extent that it is reasonably necessary to do so for the purpose of—
 - (a) investigating an application for a permit; or
 - (b) determining compliance with this Act or the regulations.
- (2) In exercising powers under this Part, a child employment officer must—
 - (a) cause as little inconvenience as possible; and
 - (b) not remain on premises any longer than is reasonably necessary.

42 Power of entry

- (1) At any time during ordinary working hours, a child employment officer may without force enter—
 - (a) any premises identified in an application for a permit as an intended workplace of a child; or
 - (b) any premises at which the officer has reasonable grounds for believing that work, or any activity to which Part 3 applies, is being or has been performed or engaged in by a child; or
 - (c) any premises, being a place of business at which the officer has reasonable grounds for believing that there are documents relevant to the purpose of determining compliance with this Act or the regulations.
- (2) If an owner or occupier of premises is present when a child employment officer exercises a power of entry under this section, the officer must—
 - (a) produce his or her identity card for inspection; and
 - (b) inform the owner or occupier of the purpose of the entry.
- (3) If a child employment officer exercises a power of entry under this section without the owner or occupier being present, the officer must—
 - (a) on leaving the premises, leave a notice setting out—
 - (i) the time of entry; and
 - (ii) the purpose of entry; and
 - (iii) a description of all things done while on the premises; and

-
- (iv) the time of departure; and
 - (v) the procedure for contacting the officer for further details of the entry; and
 - (b) post a copy of that notice—
 - (i) to the owner of the premises, if the identity and address of the owner are known to the officer; and
 - (ii) to the occupier of the premises, if the identity and address of the occupier are known to the officer.
 - (4) A child employment officer does not have authority to enter any part of premises used for residential purposes, unless—
 - (a) the officer has, before the entry and in addition to complying with subsection (2), informed the occupier that he or she may refuse to consent to the entry; and
 - (b) the occupier has consented to the entry.
 - (5) If an occupier consents to an entry under subsection (4), the child employment officer who requested consent must before entering the premises ask the occupier to sign an acknowledgment in the prescribed form stating—
 - (a) that the occupier has been informed of the purpose of the entry; and
 - (b) that the occupier has been informed that he or she may refuse to consent to the entry; and
 - (c) that the occupier has consented to the entry; and
 - (d) the date and time that the occupier consented.
-

-
- (6) An occupier who signs an acknowledgment must be given a copy of the signed acknowledgment before the child employment officer leaves the premises.
 - (7) If, in any proceeding, an acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry.
 - (8) Subsection (4) does not apply to any part of premises used both for residential purposes and for work. However, a child employment officer may only enter such premises under this section if an owner or occupier is present.

43 Powers on entry

On exercising a power of entry under section 42, a child employment officer may—

- (a) inspect any work, material, machinery, appliance, article, facility or other thing;
- (b) take samples of any goods or substances in accordance with the regulations;
- (c) interview the employer or any person who purports to have authority to act on behalf of the employer or any person who is employed or working at the workplace, and to require answers to questions put in the interview;
- (d) require a person having the custody of, or access to, a document relevant to the purpose of investigating an application for a permit or determining compliance with this Act or the regulations to produce the document to the officer within a reasonable period specified by the officer;
- (e) inspect, and make copies of or take extracts from, a document produced to him or her.

S. 43(c)
substituted by
No. 26/2010
s. 27.

s. 43A

S. 43A
inserted by
No. 26/2010
s. 28.

43A Power to give directions

- (1) A child employment officer may give a direction (either orally or in writing) to a person at premises referred to in section 42(1) if the child employment officer reasonably believes that it is necessary to do so because of an immediate and serious risk to the health or safety or the moral or material welfare of any child employed at the premises.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a direction given to the person under subsection (1).

Penalty: 100 penalty units in the case of a body corporate;

60 penalty units in any other case.

S. 44
substituted by
No. 26/2010
s. 29.

44 Power to require information or documents

- (1) For the purpose of determining whether this Act or the regulations have been complied with or of investigating an application for a permit, a child employment officer may by written notice require a person, within a reasonable period specified in the notice, to—
 - (a) give the child employment officer any information that the child employment officer requires; or
 - (b) produce to him or her a document in the custody or control of the person.
- (2) A child employment officer may inspect, and make copies of or take extracts from, a document produced to him or her under subsection (1).

45 Retention of documents

- (1) A child employment officer may retain a document produced to him or her for the period necessary for the purpose of performing functions and exercising powers as a child employment officer.
- (2) During the period that the child employment officer retains a document, he or she must permit the person otherwise entitled to its possession to inspect it and make copies of or take extracts from it.

46 Confidentiality

- (1) A child employment officer must not, except to the extent necessary to carry out his or her functions, give to any other person, whether directly or indirectly, any information acquired by the officer in carrying out those functions.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply to the giving of information—
 - (a) to a court or tribunal in the course of legal proceedings; or
 - (b) pursuant to an order of a court or tribunal; or
 - (c) to the extent reasonably required to enable the investigation or the enforcement of a law of Victoria or of any other State or Territory or of the Commonwealth; or
 - (d) with the written authority of the Secretary; or
 - (e) with the written authority of the person to whom the information relates.

Division 2—Offences

47 Failing to produce documents, hindering child employment officers and giving them false information

S. 47(1)
substituted by
No. 26/2010
s. 30(1).

- (1) A person must not, without reasonable excuse—
- (a) fail to comply with a request to produce documents or answer questions under section 43; or
 - (b) fail to comply with a notice to produce documents or provide information under section 44; or
 - (c) otherwise obstruct or hinder a child employment officer performing functions or exercising powers under this Act.

Penalty: 100 penalty units in the case of a body corporate.

60 penalty units in any other case.

S. 47(2)
amended by
No. 26/2010
s. 30(2).

- (2) A person must not—
- (a) give information to a child employment officer that the person knows to be false or misleading in a material particular; or
 - (b) produce a document to a child employment officer that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 100 penalty units in the case of a body corporate;

60 penalty units in any other case.

48 Protection against self-incrimination

- (1) It is a reasonable excuse for a natural person to refuse or fail to give information, produce a document or do any other thing that the person is required to do by or under this Act, if the giving of the information, production of the document or doing of the thing would tend to incriminate the person.
- (2) Despite subsection (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a record or other document that the person is required to keep by this Act or the regulations, if the production of the record or other document would tend to incriminate the person.
- (3) Before requiring a person to produce a document or answer questions under section 43 a child employment officer must—
 - (a) warn the person that a refusal or failure to comply with the requirement, without reasonable excuse, is an offence; and
 - (b) inform the person, if a natural person, that the person may refuse or fail to produce documents (other than a document referred to in subsection (2)) or to answer questions if providing the information would tend to incriminate the person.
- (4) A notice under section 44 must—
 - (a) warn the person that a refusal or failure to comply with the notice, without reasonable excuse, is an offence; and
 - (b) if directed to a natural person, inform the person that the person may refuse or fail to produce documents (other than a document referred to in subsection (2)) or to provide information if producing the document or

S. 48(3)
inserted by
No. 26/2010
s. 31.

providing the information would tend to incriminate the person.

- (5) A person is not liable to be prosecuted for an offence against section 47 if the child employment officer concerned failed to comply with section 39 or subsection (3) or (4).

49 Impersonating child employment officers

A person must not impersonate a child employment officer.

Penalty: 60 penalty units.

49A Who can prosecute under this Act?

- (1) A prosecution for an offence against this Act may only be brought by a person employed in the Department under Part 3 of the **Public Administration Act 2004** who is authorised by the Minister or the Secretary to bring a prosecution.
- (2) An authorisation—
- (a) must be in writing; and
 - (b) may be given generally, or only in relation to a particular case or cases, or a particular class of cases; and
 - (c) may be revoked by the person who gave it at any time by notice in writing.
- (3) The revocation of an authorisation does not affect any proceedings started by a person before that person's authorisation was revoked unless the notice of revocation states otherwise.
- (4) In a prosecution for an offence under this Act, a Court must presume, in the absence of evidence to the contrary, that the prosecutor is authorised to bring the prosecution.

S. 49A
inserted by
No. 26/2010
s. 32.

-
- (5) A prosecution may only be conducted by—
- (a) a person authorised by or under subsection (1) to bring the prosecution; or
 - (b) an Australian lawyer (within the meaning of the **Legal Profession Act 2004**) briefed by the person authorised to bring the prosecution.

49B Judicial notice of signatures

S. 49B
inserted by
No. 26/2010
s. 32.

All courts must take judicial notice of—

- (a) the signature of a person who is, or was at the time the signature purports to have been made, the Minister, the Secretary or an employee to whom section 49A(1) applies; and
- (b) the fact that a person listed in paragraph (a) held the position he or she purported to hold at the time the signature purports to have been made.

50 Proceedings for offences to be brought in Industrial Division of the Magistrates' Court

If a person is charged with an offence against this Act, the charge must be heard, and all penalties recovered, before the Magistrates' Court sitting as the Industrial Division.

50A Offences by bodies corporate

S. 50A
inserted by
No. 26/2010
s. 33.

- (1) If a body corporate contravenes any provision of this Act, each person who is an officer of the body corporate is to be taken to have contravened the same provision if the person knew of, or knowingly authorised or permitted, the contravention.
- (2) A natural person may be proceeded against and convicted or found guilty under a provision in accordance with subsection (1) whether or not the

body corporate has been proceeded against or convicted or found guilty under that provision.

- (3) Nothing in subsection (1) or (2) affects any liability imposed on a body corporate for an offence committed by the body corporate against this Act.

S. 50B
inserted by
No. 26/2010
s. 33.

50B Conduct by officers, employees or agents

- (1) For the purposes of any proceedings under this Act, any conduct engaged in on behalf of a body corporate is deemed to have been engaged in also by the body corporate if the conduct was engaged in by an employee, agent or officer of the body corporate within the scope of the actual or apparent authority of the employee, agent or officer.
- (2) If, in any proceedings under this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show—
- (a) that the conduct was engaged in by an officer or employee of the body corporate within the scope of the officer's or employee's actual or apparent authority and the officer or employee had that state of mind; or
 - (b) that the conduct was engaged in by an agent of the body corporate and—
 - (i) the agent acted at the specific direction or with the specific consent or agreement of the body corporate; or
 - (ii) the agent had that state of mind; or
 - (iii) the body corporate was aware of the agent's state of mind when the conduct was engaged in.

-
- (3) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the intention, opinion, belief or purpose.

51 Offences by unincorporated associations

Proceedings for an offence against this Act by an unincorporated association may be brought against any or all members of the committee of management or other governing body of the association.

PART 5—GENERAL

52 Delegation

The Secretary may, by instrument, delegate to a child employment officer any power of the Secretary under this Act except—

- (a) a power under section 38 or 39 (appointment of child employment officers and their identity cards); or
- (b) a power under section 46(2)(d) (authority to give information); or
- (c) this power of delegation.

53 Regulations

(1) The Governor in Council may make regulations for or with respect to—

- (a) requiring employers to keep records in relation to the employment of children;
- (aa) prescribing an activity or arrangement not to be employment;
- (ab) prescribing a person or class or classes of persons not to be employers;
- (ac) prescribing the periods for which employers must keep records in relation to the employment of children;
- (ad) providing for the imposition of fees for an application for a permit or supplementary permit;
- (ae) prescribing a sporting activity to be a sporting activity with a high risk of injury;

S. 53(1)(aa)
inserted by
No. 26/2010
s. 34.

S. 53(1)(ab)
inserted by
No. 26/2010
s. 34.

S. 53(1)(ac)
inserted by
No. 26/2010
s. 34.

S. 53(1)(ad)
inserted by
No. 26/2010
s. 34.

S. 53(1)(ae)
inserted by
No. 26/2010
s. 34.

-
- (b) prescribing any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
- (a) may be of general or limited application;
 - (b) may differ according to differences in time, place or circumstances;
 - (c) may impose a penalty, not exceeding 20 penalty units, for a contravention of the regulations.
-

PART 6—REPEALS, AMENDMENTS AND TRANSITIONAL PROVISIONS

54 Existing permits and applications

S. 54
repealed by
No. 28/2007
s. 3(Sch.
item 5),
new s. 54
inserted by
No. 26/2010
s. 35.

- (1) If a permit has been issued under section 16 before the commencement of section 15 of the **Child Employment Amendment Act 2010** the permit continues in force after that commencement in accordance with its terms and subject to this Act as in force after that commencement.
- (2) If an application for a permit under section 13 was received and not determined before the commencement of section 11 of the **Child Employment Amendment Act 2010**, that application must be determined in accordance with section 16, as amended by the **Child Employment Amendment Act 2010**, as if—
 - (a) the employer were the applicant; and
 - (b) the parent or guardian who made the application had consented to the application and the employer had provided a copy of the written consent of the parent or guardian to the Secretary together with the application for the permit.

55 Existing police checks and declarations

S. 55
repealed by
No. 28/2007
s. 3(Sch.
item 5),
new s. 55
inserted by
No. 26/2010
s. 35.

- (1) Despite the commencement of section 20 of the **Child Employment Amendment Act 2010**—
 - (a) a person who was named on a permit or a declaration of suitability in force immediately before that commencement as a person permitted to employ or supervise a child in employment is not liable to an offence under section 19(1)(a) of this Act or section 33 of the **Working with Children Act 2005** in respect of the supervision of that

-
- child for 12 months after the date the police check for that permit or declaration was issued for that employment or supervision;
- (b) a person who was named on a permit or a declaration of suitability in force immediately before that commencement as a person permitted to employ or supervise a child in employment is not liable to an offence under section 19(1)(a) of this Act or section 33 of the **Working with Children Act 2005** in respect of the supervision of the employment of any other child within 12 months after the date the police check for that permit or declaration was issued in respect of that employment or supervision if—
- (i) the police check was issued within one month before the supervision of that other child commenced; or
 - (ii) in the case where the police check was issued more than one month before the supervision of that other child commenced, within one month before that supervision commenced the person made a statutory declaration—
 - (A) under section 13(2)(d)(ii) as in force immediately before the commencement of section 20 of the **Child Employment Amendment Act 2010**; or
 - (B) setting out the matters in subsection (2) and, in the case of an employer who supervises a child, provided the statutory declaration to the Secretary before the supervision of that other child commenced or, in the case of a
-

supervisor who is employed,
provided the statutory declaration
to the employer before the
supervision of that other child
commenced.

- (2) A statutory declaration under subsection (1)(b)(ii)(B) must state—
- (a) that the person consented to a police check in connection with a permit referred to in subsection (1) within 12 months before the statutory declaration; and
 - (b) since the date of that consent the person has not been charged with any offence; and
 - (c) the name or business or trading name of the employer of that other child who is to be supervised.
- (3) An employer who receives a statutory declaration under subsection (1)(b)(ii)(B) from a supervisor must forward the statutory declaration to the Secretary before the supervision of that other child commences.
- (4) A person is not liable to an offence under section 35 of the **Working with Children Act 2005** in respect of the engagement of a person referred to in subsection (1) to supervise the child for the period of 12 months specified in that section.
- (5) A person is not liable to an offence under section 36 of the **Working with Children Act 2005** in respect of offering the services of a person referred to in subsection (1) to supervise the child for the period of 12 months specified in that section.

(6) Section 46(1) does not apply to a child employment officer who, at the request of an employer referred to in this section, provides advice to the employer as to whether subsection(1)(b) applies to a person referred to in that paragraph who is, or is to be, employed by that employer to supervise a child.

* * * * *

Ss 56, 57
repealed by
No. 28/2007
s. 3(Sch.
item 5).

* * * * *

S. 58
repealed by
No. 26/2010
s. 35.

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 9 April 2003

Legislative Council: 16 September 2003

The long title for the Bill for this Act was "to reform the law relating to the employment of children under the age of 15, to repeal Division 9 of Part III of the **Community Services Act 1970** and consequentially amend that Act and the **Education Act 1958** and for other purposes."

The **Child Employment Act 2003** was assented on 11 November 2003 and came into operation on 12 June 2004: Special Gazette (No. 61) 15 March 2004 page 1.

2. Table of Amendments

This Version incorporates amendments made to the **Child Employment Act 2003** by Acts and subordinate instruments.

Pharmacy Practice Act 2004, No. 80/2004

Assent Date: 16.11.04
Commencement Date: S. 150(Sch. 2 item 1) on 1.7.05: s. 2(3)
Current State: This information relates only to the provision/s amending the **Child Employment Act 2003**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 28) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Child Employment Act 2003**

Health Professions Registration Act 2005, No. 97/2005

Assent Date: 7.12.05
Commencement Date: S. 182(Sch. 4 item 8) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Child Employment Act 2003**

Education and Training Reform Act 2006, No. 24/2006

Assent Date: 16.5.06
Commencement Date: S. 6.1.2(Sch. 7 item 4) on 1.07.07: Government Gazette 28.6.07 p. 1304
Current State: This information relates only to the provision/s amending the **Child Employment Act 2003**

Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006

Assent Date: 15.8.06
Commencement Date: S. 42(Sch. item 5) on 23.4.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Child Employment Act 2003**

Statute Law Revision Act, No. 28/2007

Assent Date: 26.6.07
Commencement Date: S.3(Sch. item 5) on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Child Employment Act 2003**

Education and Training Reform Miscellaneous Amendments Act 2007, No. 58/2007

Assent Date: 27.11.07
Commencement Date: S. 50 on 1.7.07: s. 2(2)
Current State: This information relates only to the provision/s amending the **Child Employment Act 2003**

Child Employment Act 2003
No. 81 of 2003

Endnotes

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 10) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Child Employment Act 2003**

Child Employment Amendment Act 2010, No. 26/2010

Assent Date: 8.6.10
Commencement Date: Ss 4–35 on 31.12.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Child Employment Act 2003**

Working with Children Amendment Act 2010, No. 51/2010

Assent Date: 24.8.10
Commencement Date: S. 25 on 31.12.10: s. 2(4)
Current State: This information relates only to the provision/s amending the **Child Employment Act 2003**

Fair Trading Amendment (Australian Consumer Law) Act 2010, No. 72/2010

Assent Date: 19.10.10
Commencement Date: S. 48(Sch. item 4) on 1.1.11: Special Gazette (No. 502) 20.12.10 p. 1
Current State: This information relates only to the provision/s amending the **Child Employment Act 2003**

Statute Law Revision Act 2012, No. 43/2012

Assent Date: 27.6.12
Commencement Date: S. 3(Sch. item 4) on 28.6.12: s. 2(1)
Current State: This information relates only to the provision/s amending the **Child Employment Act 2003**

3. Explanatory Details

No entries at date of publication.