



Queensland

# **Child Employment Act 2006**

**Act No. 2 of 2006**





Queensland

# Child Employment Act 2006

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Queensland

## **Child Employment Act 2006**

### **Act No. 2 of 2006**

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**An Act to safeguard children working in Queensland, and for other purposes**

**[Assented to 22 February 2006]**

**The Parliament of Queensland enacts—****Part 1 Preliminary****1 Short title**

This Act may be cited as the *Child Employment Act 2006*.

**2 Commencement**

This Act, other than part 7,<sup>1</sup> commences on 1 July 2006.

**3 Dictionary**

The dictionary in the schedule defines particular terms used in this Act.

**4 Purpose of this Act**

- (1) The purpose of this Act is to safeguard children working in Queensland.
- (2) This is to be achieved by—
  - (a) ensuring that work does not interfere with children's schooling; and
  - (b) preventing children performing work that may be harmful to their health or safety or physical, mental, moral or social development.

**5 Children to whom this Act applies**

This Act applies to all children.

*Note—*

The *Acts Interpretation Act 1954*, section 36 defines *child*, in this context, to mean an individual who is under 18.

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<sup>1</sup> Part 7 (Amendment of Industrial Relations Act 1999)



## 6 Meaning of *parent* of a child

- (1) A *parent*, of a child, is any of the following persons—
  - (a) the child's mother;
  - (b) the child's father;
  - (c) a person who exercises parental responsibility for the child.
- (2) However, a person standing in the place of a parent of a child on a temporary basis is not a parent of the child.
- (3) A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.
- (4) A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.
- (5) Despite subsections (1), (3) and (4), if—
  - (a) a person is granted guardianship of a child under the *Child Protection Act 1999*; or
  - (b) if paragraph (a) does not apply, a person who otherwise exercises parental responsibility for a child under a decision or order of a federal court or a court of a State;then a reference in this Act to a parent of a child is a reference only to a person mentioned in paragraph (a) or (b).

## 7 Meaning of *school-aged child*

A *school-aged child* is a child who—

- (a) is under 16 years of age; and
- (b) is required to be enrolled for an educational program with a State educational institution or a non-State school under the *Education (General Provisions) Act 1989*.

*Note—*

A child may not be required to be enrolled for an educational program if the child is the subject of a dispensation granted under the *Education (General Provisions) Act 1989*, section 115.<sup>2</sup>

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<sup>2</sup> *Education (General Provisions) Act 1989*, section 115 (Dispensation from compliance with compulsory enrolment and attendance provisions)

## 8 Meaning of *work* in relation to a child

- (1) **Work**, in relation to a child, means—
- (a) work under a contract of service; or
  - (b) work under a contract, whether or not the contract is a contract of service, or at piecework rates, to perform work, for labour only or substantially for labour only; or
  - (c) work under a contract to perform work, whether or not the contract is a contract of service, unless the child—
    - (i) is paid to achieve a stated result or outcome; and
    - (ii) has to supply all, or substantially all, of the plant and equipment, or tools of trade, needed to perform the work; and
    - (iii) is, or would be, liable for the cost of fixing a fault with the work performed; or
  - (d) work under a contract, whether or not the contract is a contract of service, to perform work, unless a personal services business determination is in effect for the child under the *Income Tax Assessment Act 1997* (Cwlth), section 87-60;<sup>3</sup> or
  - (e) work that includes the supervision of other workers, whether or not the child is known as a supervisor, leading hand or other title; or
  - (f) participating or assisting in any business carried on for profit, whether or not the child receives payment or other reward for the child's participation or assistance; or
  - (g) unpaid or voluntary work.
- (2) **Work** does not include the following—
- (a) domestic chores;
  - (b) collections work;
  - (c) work that is part of—

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3 *Income Tax Assessment Act 1997* (Cwlth), section 87-60 (Personal services business determinations for individuals)



- (6) Also, an employer does not commit an offence against subsection (4) if, for a child or work prescribed under a regulation, the employer supervises the child in the way prescribed under the regulation for the work.

*Note—*

See the *Education (General Provisions) Act 1989*, section 119<sup>4</sup> for other provisions restricting a school-aged child's ability to work.

- (7) In this section—

*an Act*, in subsection (5), does not include a federal award, federal agreement or industrial instrument, as defined under the *Industrial Relations Act 1999*.

*Note—*

This definition displaces the application of the *Acts Interpretation Act 1954*, section 7 to the extent of the instruments mentioned in the definition.

## 10 Authority needed before school-aged or young children can work

- (1) An employer must not require or permit a school-aged or young child to perform work unless the employer has—
- (a) a parent's consent form for the school-aged or young child; or
  - (b) if the child is a school-aged child and does not have a parent's consent form—a special circumstances certificate authorising the school-aged child to perform work when the school-aged child is not required to attend school.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply if—
- (a) the employer is a parent of the school-aged or young child; or
  - (b) the school-aged or young child started work for the employer before the commencement of this section.

<sup>4</sup> *Education (General Provisions) Act 1989*, section 119 (Employment of children of compulsory school age)

(3) In this section—

*parent's consent form*, for a school-aged or young child, means an approved form, signed by a parent of the school-aged or young child, that includes—

- (a) the school-aged or young child's date of birth; and
- (b) the name of the school-aged or young child's employer or proposed employer; and
- (c) a statement that the parent consents to the school-aged or young child performing work for the employer; and
- (d) for a school-aged child—information about when the school-aged child is required to attend school.

## 11 School-aged children must not work during school hours

- (1) An employer must not require or permit a school-aged child to perform work when the school-aged child is required to attend school—
- (a) as stated in the parent's consent form; or
  - (b) if the school-aged child does not have a parent's consent form and is authorised to work under a special circumstances certificate when the school-aged child is not required to attend school—as stated in the special circumstances certificate.

Maximum penalty—100 penalty units.

- (2) A parent of a school-aged child who is performing work must, within 14 days after becoming aware of a change in the hours when the school-aged child is required to attend school, if the parent consents to the school-aged child continuing in the employment—
- (a) complete a parent's consent form; and
  - (b) give the parent's consent form to the school-aged child's employer.

*Note—*

A failure to comply with subsection (2) is not an offence against this Act. However, the *Education (General Provisions) Act 1989*, section 119 creates offences for parents, as defined under that Act, who permit a school-aged child to be employed when the child is required to attend

school or who give false information to an employer about when the child is required to attend school.

- (3) Subsections (1) and (2) do not apply if the employer is a parent of the school-aged child.
- (4) It is enough for subsection (2) if 1 parent of the school-aged child who consents to the school-aged child continuing in the employment completes a parent's consent form and gives it to the school-aged child's employer.

## **12 Chief executive may authorise a child to do particular work**

- (1) A child, or an adult on the child's behalf, may apply to the chief executive, in writing, for a certificate under this section (*special circumstances certificate*) for the child.
- (2) The application must—
  - (a) state, in enough detail to allow the chief executive to properly consider the application, what is sought to be authorised by the special circumstances certificate; and
  - (b) if the child is a school-aged child, state when the child is required to attend school; and
  - (c) be supported by—
    - (i) a parent of the child, unless the child does not have a parent or lives independently from his or her parents; and
    - (ii) if the application is made by an adult—the child; and
    - (iii) if the person making the application is not the child's employer—the child's employer or proposed employer; and
    - (iv) the information required under a regulation; and
    - (v) any other information the chief executive reasonably requires to decide the application.
- (3) A special circumstances certificate may authorise—
  - (a) a child—

- (i) to do work a regulation states a child may not do; or
  - (ii) to work in a way a regulation states a child may not work; or
  - (iii) to work when a regulation states a child may not work; or
  - (iv) to work without supervision by an adult; or
  - (v) if the child is a school-aged child who does not have a parent or lives independently from his or her parents—to work without having a parent’s consent form when the school-aged child is not required to attend school; or
- (b) an employer to permit a child—
- (i) to do work a regulation states a child may not do; or
  - (ii) to work in a way a regulation states a child may not work; or
  - (iii) to work when a regulation states a child may not work; or
  - (iv) to work without supervision by an adult; or
  - (v) if the child is a school-aged child who does not have a parent or lives independently from his or her parents—to work without having a parent’s consent form when the school-aged child is not required to attend school.
- (4) The chief executive may grant a special circumstances certificate for a child only if the chief executive is satisfied, on reasonable grounds, that, having regard to the child’s particular circumstances, the work—
- (a) will not interfere with the child’s schooling; and
  - (b) will not be harmful to the child’s health or safety or physical, mental, moral or social development.
- (5) The chief executive may impose conditions on the special circumstances certificate and may review the special circumstances certificate at any time the chief executive considers appropriate.

- (6) A regulation may prescribe matters the chief executive must take into account when considering whether to grant a special circumstances certificate.
- (7) An employer who requires or permits a child to work in contravention of a special circumstances certificate granted for the child commits an offence.

Maximum penalty for subsection (7)—100 penalty units.

### 13 **Chief executive may prohibit a child doing particular work or limit the work the child may do**

- (1) The chief executive may issue a signed notice (*work limitation notice*) for a particular child or a particular employer.
- (2) The work limitation notice may—
  - (a) prohibit—
    - (i) a child doing stated work for an employer or proposed employer the child would otherwise be permitted to do; or
    - (ii) children doing stated work for a stated employer; or
  - (b) impose limitations on work—
    - (i) a child would otherwise be permitted to do for an employer or proposed employer; or
    - (ii) children may do for a stated employer.
- (3) The chief executive may issue a work limitation notice if the chief executive reasonably believes work stated in the work limitation notice—
  - (a) may interfere with the schooling of a child or children affected by the work limitation notice; or
  - (b) may be harmful to the health or safety or physical, mental, moral or social development of a child or children affected by the work limitation notice.
- (4) The chief executive—
  - (a) may issue a work limitation notice on application or on the chief executive's own initiative; and



- (b) must give an issued work limitation notice to the employer or proposed employer affected by the work limitation notice.
- (5) However, the chief executive must not issue a work limitation notice to an employer or proposed employer (the *employer*) without first—
  - (a) giving the employer written notice of the application or proposal to issue a work limitation notice; and
  - (b) inviting the employer to make a written submission about why the work limitation notice should not be issued.
- (6) A written submission mentioned in subsection (5) must be given to the chief executive within 7 days after receiving the notice or the further time the chief executive allows.
- (7) The chief executive must consider a written submission made under subsection (6).
- (8) The chief executive may review a work limitation notice at any time the chief executive considers appropriate.
- (9) A regulation may prescribe matters the chief executive must take into account when considering whether to issue a work limitation notice.
- (10) An employer who requires or permits a child to work in contravention of a work limitation notice issued for the child or employer commits an offence.

Maximum penalty for subsection (10)—100 penalty units.

## **14 Certificate or notice to be given or refusal advised**

- (1) If the chief executive decides to grant a special circumstances certificate or to issue a work limitation notice, the chief executive must give an affected person a copy of the special circumstances certificate or the work limitation notice.
- (2) If the chief executive decides not to grant a special circumstances certificate, the chief executive must give an affected person written notice of the decision.
- (3) If the chief executive decides not to issue a work limitation notice after receiving an application to issue the work

limitation notice, the chief executive must give written notice of the decision to any affected person who applied for its issue and the employer.

(4) In this section—

*affected person* means—

- (a) a child affected by the special circumstances certificate or work limitation notice; or
- (b) if a parent of the child made the application—the parent; or
- (c) the child’s employer or proposed employer; or
- (d) another person who the chief executive reasonably believes has a sufficient interest in the matter.

## **15 Chief executive to give reasons if asked**

An affected person may ask the chief executive for an information notice about the decision within 21 days after being given notice of the decision.

# **Part 3 Enforcement**

## **Division 1 Functions of inspector**

### **16 Inspector’s functions**

An inspector’s functions are—

- (a) to monitor compliance with this Act; and
- (b) to investigate and, when necessary, take action to deal with alleged contraventions of this Act; and
- (c) to inform children, parents and employers of their rights and obligations under this Act.

## Division 2 Powers of inspectors

### 17 Inspector's powers

- (1) When performing functions under this Act, an inspector has all the powers of an inspector under the *Industrial Relations Act 1999*.
- (2) An inspector also has the powers stated in this division.

### 18 Power to seize evidence

- (1) An inspector may seize a thing at a workplace the inspector enters under this part or the *Industrial Relations Act 1999* if the inspector reasonably believes—
  - (a) the thing is evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to continue or repeat the offence.
- (2) Also, an inspector may seize a thing at a workplace the inspector enters under this part or the *Industrial Relations Act 1999* if the inspector reasonably believes the thing has just been used in committing an offence against this Act.

### 19 Securing seized things

Having seized a thing, an inspector may—

- (a) move the thing from the workplace where it was seized (the *place of seizure*); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

- sealing a thing and marking it to show access to it is restricted
- sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted

**20 Tampering with seized things**

If an inspector restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an inspector's approval.

Maximum penalty—40 penalty units.

**21 Receipt for seized thing**

- (1) As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally the thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value.

**22 Forfeiture of seized thing**

- (1) A seized thing is forfeited to the State if the inspector who seized the thing—
  - (a) can not find its owner, after making reasonable inquiries; or
  - (b) can not return it to its owner, after making reasonable efforts; or
  - (c) reasonably believes it is necessary to keep the thing to prevent it being used to commit an offence against this Act.
- (2) Subsection (1)(a) does not require the inspector to make inquiries if it would be unreasonable to make inquiries to find the owner.

- (3) Subsection (1)(b) does not require the inspector to make efforts if it would be unreasonable to make efforts to return the thing to its owner.
- (4) If the inspector decides to forfeit a thing under subsection (1)(c), the inspector must tell the owner of the decision and the reasons for the decision by written notice.
- (5) Subsection (4) does not apply if—
  - (a) the inspector can not find its owner, after making reasonable inquiries; or
  - (b) it is impracticable or would be unreasonable to give the notice.
- (6) Regard must be had to a thing's nature, condition and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if making inquiries or efforts—what inquiries or efforts, including the period over which they are made, are reasonable.

## **23 Return of seized thing**

- (1) If a seized thing has not been forfeited, the inspector must return it to its owner—
  - (a) at the end of 6 months; or
  - (b) if a proceeding for an offence involving it is started within 6 months, at the end of the proceeding and any appeal from the proceeding.
- (2) However, unless the thing has been forfeited, the inspector must immediately return a thing seized as evidence to its owner if the inspector stops being satisfied its continued retention as evidence is necessary.

## **24 Access to seized thing**

- (1) Until a seized thing is forfeited or returned, an inspector must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

## Division 3                      Proceedings

### 25            Proceedings for offences

- (1) A prosecution for an offence against this Act must be by way of summary proceedings before an industrial magistrate.
- (2) A prosecution for an offence against this Act must be commenced within the later of the following—
  - (a) 1 year after the offence is committed;
  - (b) 6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.
- (3) The *Industrial Relations Act 1999* applies, with necessary changes, in relation to a proceeding before an industrial magistrate for a charge of an offence against this Act.

*Note—*

Under the *Acts Interpretation Act 1954*, section 7, in an Act, a reference to an Act includes a reference to the statutory instruments made or in force under the Act.

### 26            Evidentiary provisions

In a proceeding under this Act—

- (a) the appointment as inspector of a person claiming to be, or stated to be, an inspector and the authority of an inspector to take proceedings, or do any act, must be presumed, until the contrary is proved; and
- (b) a document appearing to be a copy of a special circumstances certificate or work limitation notice granted or issued by the chief executive under this Act is evidence of what it states; and
- (c) the authority of a person to accept service of a document on behalf of another must be presumed in the absence of evidence to the contrary.

## Part 4 Appeals

### 27 Appeal from decision of the chief executive

- (1) An affected person who is dissatisfied with a decision of the chief executive may appeal against the decision to the industrial commission.

*Example for subsection (1)—*

A person may be dissatisfied with a decision of the chief executive because the person believes it was not made in accordance with the guidelines mentioned in section 31(1).

- (2) The *Industrial Relations Act 1999* applies, with necessary changes, in relation to the appeal.
- (3) However, the appeal must be started—
  - (a) if the person has asked for an information notice under section 15—within 21 days after the person is given the information notice; or
  - (b) otherwise—within 21 days after the person is given notice of the decision.
- (4) However, the industrial commission may extend the time for starting an appeal.
- (5) A defect in the information notice does not affect the person's right to appeal against the decision.

### 28 Nature of appeal

- (1) An appeal to the industrial commission is by way of rehearing on the record.
- (2) However, the industrial commission may hear evidence afresh, or hear additional evidence, if the industrial commission considers it appropriate to effectively dispose of the appeal.

### 29 Decision on appeal

- (1) The industrial commission may—
  - (a) confirm the decision appealed against; or

- (b) allow the appeal, set aside the decision being appealed and substitute another decision; or
  - (c) allow the appeal and amend the decision; or
  - (d) allow the appeal, suspend the operation of the decision and remit the matter, with or without directions, to the chief executive to act according to law.
- (2) Without limiting the industrial commission's powers under the *Industrial Relations Act 1999*, in deciding the appeal the industrial commission has the same powers as the chief executive.

### **30 Appeal from decision of an Industrial Magistrates Court**

A person who is dissatisfied with the decision of an Industrial Magistrates Court in a proceeding for an offence against this Act may appeal to the Industrial Court.

## **Part 5 General**

### **31 Chief executive to consult with representative bodies about guidelines for particular decisions**

- (1) The chief executive may issue guidelines for deciding whether to grant a special circumstances certificate or to issue a work limitation notice.
- (2) When developing or reviewing guidelines under subsection (1), the chief executive may consult with any entity the chief executive reasonably believes may help in the achievement of the purposes of this Act.

### **32 Protection from liability**

- (1) An official is not civilly liable for an act done, or omission made, honestly and on reasonable grounds under this Act.
- (2) If subsection (1) prevents a civil liability attaching to the person, the liability attaches instead to the State.



**33 Executive officers must ensure corporation complies with Act**

- (1) The executive officers of a corporation must ensure the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove that—
  - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
  - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.
- (5) In this section—

*executive officer*, of a corporation, means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned or takes part in the management of the corporation.

**34 Responsibility for acts or omissions of representatives**

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and

- (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—
- representative* means—
- (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.
- state of mind*, of a person, includes—
- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

### **35 False or misleading statements to officials**

- (1) A person must not state anything to an official the person knows is false or misleading in a material particular.
- Maximum penalty—40 penalty units.
- (2) It is enough for a complaint for an offence against subsection (1) to state the statement made was 'false or misleading' to the person's knowledge, without specifying which.

### **36 False or misleading documents**

- (1) A person must not give to an official a document containing information the person knows is false or misleading in a material particular.
- Maximum penalty—40 penalty units.
- (2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the official, to the best of the person's ability, how it is false or misleading; and
  - (b) gives the correct information to the official if the person has, or can reasonably obtain, the correct information.
- (3) It is enough for a complaint for an offence against subsection (1) to state the document was 'false or misleading' to the person's knowledge, without specifying which.

### **37 Delegations**

- (1) The chief executive may delegate the chief executive's powers under this Act to an appropriately qualified officer of the department.
- (2) In this section—
- appropriately qualified* includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

a person's classification level in the department

### **38 Approved forms**

The chief executive may approve forms for use under this Act.

### **39 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) For example, a regulation may—
- (a) regulate work conditions for children; or
  - (b) regulate work conditions for children in particular types of businesses, including in the entertainment industry; or
  - (c) prescribe matters for which fees are payable under this Act and the fees that are payable for the matters; or
  - (d) provide for the records that must be kept, and for how long and where the records must be kept; or

- (e) impose a penalty of not more than 40 penalty units for a contravention of a provision of the regulation.

## **Part 6                      Amendment of Education legislation**

### **Division 1                Amendment of Education (General Provisions) Act 1989**

#### **40            Act amended in this division**

This division amends the *Education (General Provisions) Act 1989*.

#### **41            Amendment of s 119 (Employment of children of compulsory school age)**

Section 119(1), from ‘during’ to ‘school age’—  
*omit, insert—*

‘the parent’s child who is of compulsory school age when the child is required to attend school for the educational program in which the child is enrolled’.

#### **42            Insertion of new pt 14**

After part 13—  
*insert—*

## **‘Part 14                    Declaratory provision for Child Employment Act 2006**

#### **‘171          Further amendment, or repeal, of Education (General Provisions) Regulation 2000**

‘The amendment of the *Education (General Provisions) Regulation 2000* by the *Child Employment Act 2006* does not

affect the power of the Governor in Council to further amend that regulation or to repeal it.’.

## **Division 2                      Amendment of Education (General Provisions) Regulation 2000**

### **43            Regulation amended in this division**

This division amends the *Education (General Provisions) Regulation 2000*.

### **44            Omission of s 20 (Hours during which child of age of compulsory attendance not to be employed—Act, s 119)**

Section 20—  
*omit.*

## **Part 7                              Amendment of Industrial Relations Act 1999**

### **45            Act amended in this part**

This part amends the *Industrial Relations Act 1999*.

### **46            Amendment of s 13 (Payment for annual leave)**

Section 13(5), definition *default average commission*, third dot point—

*omit, insert—*

- ‘• multiplied by the number of days starting on the day the leave commences and ending on the day before the employee is due to return to work.’.

### **47            Amendment of s 17 (Definitions for pt 2)**

Section 17—

*insert—*

*‘parental leave entitlement* means the parental leave entitlement mentioned in section 18(2), (3) or (4).

*short term casual employee* means a casual employee, other than a long term casual employee.’.

#### **48 Amendment of s 18 (Entitlement)**

Section 18(5)—

*omit, insert—*

- ‘(5) However, parental leave must not extend—
- (a) beyond 1 year after the child was born or adopted; or
  - (b) if an application for an extension of parental leave under section 29A is agreed to—beyond 2 years after the child was born or adopted.’.

#### **49 Replacement of s 29 (Extending period of parental leave)**

Section 29—

*omit, insert—*

#### **‘29 Extending period of parental leave by notice**

- ‘(1) An employee may extend the period of parental leave once only by written notice given to the employer at least 14 days—
- (a) before the start of the parental leave; or
  - (b) if the parental leave has been started—before the parental leave ends.
- ‘(2) The notice must state when the extended period of parental leave ends.
- ‘(3) The total period of parental leave can not be extended under subsection (1) beyond the total period mentioned in section 18(5)(a).

**‘29A Extending period of parental leave by agreement**

- ‘(1) A pregnant employee entitled to maternity leave under section 18(2), or an employee who is taking maternity leave, may apply to the employer for an extension of the maternity leave for an unbroken period of up to 104 weeks in total.
- ‘(2) An employee entitled to parental leave for the birth of a child of the employee’s spouse under section 18(3), or who is taking parental leave for the birth, may apply to the employer for either or both of the following—
  - (a) an extension of the short parental leave for an unbroken period of up to 8 weeks in total;
  - (b) an extension of the long parental leave for an unbroken period of up to 96 weeks in total.
- ‘(3) An employee entitled to parental leave for the adoption of a child under section 18(4), or who is taking adoption leave for the adoption, may apply to the employer for either or both of the following—
  - (a) an extension of the short adoption leave for an unbroken period of up to 8 weeks in total;
  - (b) an extension of the long adoption leave for an unbroken period of up to 96 weeks in total.
- ‘(4) An employee may not make more than 1 application under subsection (1), (2) or (3) within any 12 month period, unless the employer agrees.

**‘29B Employee on parental leave may apply to work part-time**

- ‘(1) An employee on parental leave may apply to the employer to return to work on a part-time basis.
- ‘(2) An employee may not make more than 1 application under this section within any 12 month period, unless the employer agrees.

**‘29C Application for extension or part-time work**

- ‘(1) An application mentioned in section 29A or 29B must—

- (a) be in writing; and
  - (b) be made—
    - (i) for an application for an extension of short parental leave or short adoption leave—at least 2 business days before the leave ends; or
    - (ii) for an application for an extension of maternity leave, long parental leave or long adoption leave—at least 4 weeks before the leave ends; or
    - (iii) for an application to return to work on a part-time basis—at least 7 weeks before the leave ends; and
  - (c) state that it is an application for an extension of parental leave under section 29A or an application to return to work on a part-time basis under section 29B, as appropriate; and
  - (d) state the dates the extension, or return to work on a part-time basis, being applied for is to start and end; and
  - (e) state the impact refusal of the application might have on the employee and the employee's dependants; and
  - (f) be accompanied by a statutory declaration by the employee stating—
    - (i) for an application for an extension of maternity leave, long parental leave or long adoption leave—the employee is seeking the extension so the employee can continue to be the child's primary caregiver; or
    - (ii) for an application to return to work on a part-time basis—the employee is seeking to work on a part-time basis so the employee can continue to be the child's primary caregiver when not at work.
- '(2) The period in relation to which an application under section 29B may be made can not extend beyond the day the child in relation to whom parental leave was taken is required to be enrolled for compulsory schooling under the *Education (General Provisions) Act 1989*.
- '(3) A person may apply under section 29A or 29B even if the person started parental leave before the commencement of this section.



**‘29D Employer to give proper consideration to application for extension or part-time work**

- ‘(1) In deciding whether to agree to an application for an extension of the period of parental leave under section 29A or an application to return to work on a part-time basis under section 29B, the employer must consider the following—
- (a) the particular circumstances of the employee that give rise to the application, particularly circumstances relating to the employee’s role as the child’s caregiver;
  - (b) the impact refusal of the application might have on the employee and the employee’s dependants;
  - (c) the effect that agreeing to the application would have on the conduct of the employer’s business, including, for example—
    - (i) any additional cost the employer would incur; and
    - (ii) the employer’s capacity to reorganise work arrangements; and
    - (iii) the availability of competent replacement staff; and
    - (iv) any loss of efficiency in the conduct of the employer’s business; and
    - (v) the impact of the employee’s absence or temporary absence on the delivery of customer service.
- ‘(2) The employer must not unreasonably refuse an application under section 29A or 29B.
- ‘(3) The employer must advise the employee, in writing, of the employer’s decision—
- (a) if the application is for an extension of short parental leave or short adoption leave—as soon as possible after receiving the application but before the short parental leave or short adoption leave ends; or
  - (b) for any other application—within 14 days after receiving the application.
- ‘(4) If the employer refuses the application, the employer must provide the employee with written reasons for refusing the application.’

**50 Amendment of s 33 (Employer's obligations)**

- (1) Section 33, heading, 'obligations'—  
*omit, insert—*  
**'obligation to advise about parental leave entitlements'.**
- (2) Section 33, 'this part'—  
*omit, insert—*  
**'this division'.**

**51 Insertion of new ss 38A–38C**

Chapter 2, part 2, division 2, after section 38—  
*insert—*

**'38A Employer's obligation to advise about significant change at the workplace**

- '(1) This section applies—
  - (a) if an employer decides to implement significant change at a workplace; and
  - (b) whether or not the decision was made before the commencement of this section if the decision had not been implemented at the commencement.
- '(2) The employer must take reasonable action to advise each employee who is absent from the workplace on parental leave about the proposed change before it is implemented.
- '(3) The advice must inform the employee of the change and any effect it will have on the position the employee held before starting parental leave, including, for example, its status or the level of responsibility attaching to the position.
- '(4) The employer must give the employee a reasonable opportunity to discuss any significant effect the change will have on the employee's position.

**‘38B Employee’s obligations to advise employer about particular changes**

- ‘(1) An employee who is absent on parental leave must advise the employer of any change in the employee’s contact details, including any change of address.

*Note—*

Advice given under subsection (1) may be used by an employer for section 38A if a need arises to advise the employee about significant change at the workplace.

- ‘(2) An employee who is absent on parental leave must also take reasonable steps to advise the employer of any significant change affecting the following as soon as possible after the change happens—
- (a) the length of the employee’s parental leave;
  - (b) the date the employee intends to return to work;
  - (c) an earlier decision to return to work on a full-time basis or to apply to return to work on a part-time basis.

**‘38C Review of ss 29A–29D**

- ‘(1) The full bench must review the operation of sections 29A, 29B, 29C and 29D<sup>5</sup>—
- (a) on its own initiative; or
  - (b) on the Minister’s direction.
- ‘(2) In the absence of a direction from the Minister, the full bench must start a review on its own initiative within 3 years after the commencement of this section.
- ‘(3) In undertaking a review, the full bench must consider, in particular—
- (a) whether the sections are meeting the reasonable needs of employees; and

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<sup>5</sup> Sections 29A (Extending period of parental leave by agreement), 29B (Employee on parental leave may apply to work part-time), 29C (Application for extension or part-time work) and 29D (Employer to give proper consideration to application for extension or part-time work)

(b) the impact the operation of the sections is having on the ability of employers to conduct their businesses efficiently.

‘(4) The full bench must report the result of a review, and make recommendations, to the Minister.’.

## 52 Replacement of s 39 (Entitlement)

Section 39—

*omit, insert—*

### ‘39 Employee’s entitlement to carer’s leave

‘(1) An employee may use up to 10 days of sick leave on full pay (*carer’s leave*) in each year to care for and support members of the employee’s immediate family or household—

(a) when they are ill; or

(b) because an unexpected emergency arises.

*Example for paragraph (b)—*

unexpected failure of child care arrangements

‘(2) If the employee has exhausted his or her entitlement under subsection (1), the employee may take up to an additional 2 days unpaid carer’s leave each time the employee needs to care for and support members of the employee’s immediate family or household—

(a) when they are ill; or

(b) because an unexpected emergency arises.

‘(3) The employee may take additional unpaid carer’s leave if the employer agrees.

‘(4) An employee can not take carer’s leave if another person has taken leave to care for the same person unless there are special circumstances requiring more than 1 person to care for the person.

‘(5) Carer’s leave may be taken for part of a day.

‘(6) In this section—

*employee* does not include casual employee.

*sick leave* includes sick leave accrued before the commencement of this section.

**‘39A Long term casual employee’s entitlement to carer’s leave**

- ‘(1) A long term casual employee is entitled to 10 days unpaid leave (also *carer’s leave*) in each year to care for and support members of the employee’s immediate family or household—
  - (a) when they are ill; or
  - (b) because an unexpected emergency arises.
- ‘(2) The long term casual employee may take additional unpaid carer’s leave if the employer agrees.
- ‘(3) A long term casual employee can not take carer’s leave if another person has taken leave to care for the same person unless there are special circumstances requiring more than 1 person to care for the person.
- ‘(4) Carer’s leave may be taken for part of a day.
- ‘(5) The employer must not fail to re-engage a long term casual employee only because the long term casual employee has taken carer’s leave under this section.
- ‘(6) However, the rights of an employer not to re-engage a long term casual employee are not otherwise affected.

**‘39B Short term casual employee’s entitlement to carer’s leave**

- ‘(1) A short term casual employee is entitled to leave work or to be unavailable to attend work for up to 2 days (also *carer’s leave*) each time the employee needs to care for and support members of the employee’s immediate family or household—
  - (a) when they are ill; or
  - (b) because an unexpected emergency arises; or
  - (c) because of the birth of a child.
- ‘(2) The short term casual employee may leave work or be unavailable to attend work for reasons mentioned in subsection (1) for additional periods if the employer agrees.

- ‘(3) A short term casual employee can not take carer’s leave if another person has taken leave to care for the same person unless there are special circumstances requiring more than 1 person to care for the person.
- ‘(4) Carer’s leave may be taken for part of a day.
- ‘(5) The employer must not fail to re-engage a short term casual employee only because the short term casual employee has taken carer’s leave under this section.
- ‘(6) However, the rights of an employer not to re-engage a short term casual employee are not otherwise affected.
- ‘(7) Leave taken under this section is unpaid.

**‘39C Employees etc. to provide supporting information to employer**

- ‘(1) If an employee is taking carer’s leave to care for and support a member of the employee’s immediate family or household who is ill, the employee must, if required by the employer, produce a doctor’s certificate or statutory declaration evidencing that the member is ill with an illness requiring care by another.
- ‘(2) An employee must, if practicable, give the employer—
  - (a) notice of the intention to take carer’s leave before taking the leave; and
  - (b) the name of the person requiring care and the person’s relationship to the employee; and
  - (c) the reason for taking the leave; and
  - (d) the period that the employee estimates he or she will be absent; and
  - (e) if the reason for taking the leave is because an unexpected emergency has arisen, the nature of the emergency.
- ‘(3) If it is not practicable for the employee to notify the employer of the intention to take carer’s leave before taking the leave, the employee must notify the employer at the first reasonable opportunity.’

**53 Amendment of s 40 (Entitlement)**

- (1) Section 40(1)—  
*omit, insert—*
- ‘(1) This section does not apply to pieceworkers.’.
- (2) Section 40(2), after ‘casual employee’—  
*insert—*  
‘or short term casual employee’.
- (3) Section 40(4) and (5)—  
*renumber* as section 40(5) and (6).
- (4) Section 40—  
*insert—*
- ‘(4) A short term casual employee is entitled to be unavailable to attend work—
- (a) for up to 2 days on unpaid bereavement leave on the death of a member of the person’s immediate family or household; and
- (b) if the employee reasonably requires extra time to travel to and from the funeral or other ceremony for the death—an amount of unpaid bereavement leave equal to the time reasonably required for the travel.’.
- (5) Section 40—  
*insert—*
- ‘(7) The employer must not fail to re-engage a casual employee only because the casual employee has taken bereavement leave under this section.
- ‘(8) However, the rights of an employer not to re-engage a casual employee are not otherwise affected.’.

**54 Amendment of s 71A (Minimum period of notice required from employee under particular instrument, federal award or federal agreement)**

- (1) Section 71A(2) and (3)—  
*renumber* as section 71A(3) and (4).

(2) Section 71A—

*insert—*

‘(2) However, this section does not apply to an employee, apprentice or trainee mentioned in section 72(3) or (7).’.

(3) Section 71A(4), as renumbered, ‘subsection (2)’—

*omit, insert—*

‘subsection (3)’.

## 55 **Amendment of s 73 (When is a dismissal unfair)**

Section 73(2)—

*insert—*

‘(ka) a reason mentioned in section 39B(5) or 40(7);’.

## 56 **Amendment of s 350 (Appointment of inspectors)**

Section 350(4)—

*insert—*

‘(d) the *Child Employment Act 2006*.’.

## 57 **Amendment of s 352 (Powers)**

Section 352—

*insert—*

‘(4) For the purposes of an inspector exercising powers under this Act while acting as an inspector under the *Child Employment Act 2006*—

(a) a reference in this Act to an **employee** includes a child to whom that Act applies; and

(b) a reference in this Act to an **employer** includes a person who engages, or arranges for, a child to whom that Act applies to perform work at the direction of the person, whether the child works for gain or reward or on a voluntary basis.’.



**58 Insertion of new ch 20, pt 5**

Chapter 20—

*insert—***‘Part 5 Transitional provision for Child Employment Act 2006****‘739 Provision for agreed extensions of parental leave**

‘(1) This section applies if, before the commencement of new section 29, an employer and an employee agreed that the employee could extend the employee’s period of parental leave beyond the total period allowed under old section 18.

‘(2) The agreement continues to have effect according to its terms.

‘(3) In this section—

*new section 29* means section 29 as inserted by the *Child Employment Act 2006*, section 49.

*old section 18* means section 18 as in force immediately before the commencement of the *Child Employment Act 2006*, section 48.’.

**59 Amendment of sch 5 (Dictionary)**

Schedule 5—

*insert—*

‘*parental leave entitlement*, for chapter 2, part 2, see section 17.

‘*short term casual employee*, for chapter 2, part 2, see section 17.’.

## Schedule                      Dictionary

### section 3

***affected person*** see section 14.

***apprenticeship*** has the meaning given by the *Vocational Education, Training and Employment Act 2000*.

***business*** includes a trade or occupation.

***collections work*** means the collecting of donations of money or articles for any appeal for support for any purpose under the *Collections Act 1966*.

***employer*** means a person who engages a child, or arranges for a child, to perform work at the direction of the person, whether the child works for gain or reward or on a voluntary basis.

***information notice***, for a decision of the chief executive, means a signed notice stating the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) the person to whom the notice is given may appeal against the decision to the industrial commission within 21 days, but the industrial commission may extend the time for starting an appeal.

***inspector*** means an inspector under the *Industrial Relations Act 1999*.

***official*** means—

- (a) the chief executive; or
- (b) an inspector.

***parent***, of a child, see section 6.

***parent's consent form***, for a school-aged or young child, see section 10(3).

***reasonably believes*** means believes on reasonable grounds.

## Schedule (continued)

***required to attend school***, in relation to a school-aged child, means required to attend school for the educational program in which the school-aged child is enrolled.

***school-aged child*** see section 7.

***school-aged or young child*** means a school-aged child or a young child.

***special circumstances certificate*** see section 12.

***traineeship*** has the meaning given by the *Vocational Education, Training and Employment Act 2000*.

***vocational placement*** has the meaning given by the *Vocational Education, Training and Employment Act 2000*.

***work***, in relation to a child, see section 8.

***work experience*** has the meaning given by the *Education (Work Experience) Act 1996*.

***work limitation notice*** see section 13.

***workplace*** means a place in or on which an inspector reasonably suspects work is, has been, or is about to be carried on.

***young child*** means a child who is not old enough to be enrolled for compulsory schooling under the *Education (General Provisions) Act 1989*.