

# **Child Employment Bill 2005**

## **Explanatory Notes**

### **Objectives of the Legislation**

The objective of the Bill is to safeguard children working in Queensland. In achieving this, the Bill and a proposed Regulation will provide safeguards to ensure that work does not interfere with children's schooling and that children are prevented from performing work that may be harmful to their health or safety or their physical, mental, moral or social development.

The objective of the Part 7 amendments to the *Industrial Relations Act 1999* is to ensure that Queensland employees continue to enjoy a fair and balanced industrial relations system regardless of developments at the federal level by providing extended family provisions as minimum entitlements and to provide for some technical amendments.

### **Reasons for the Legislation**

During 2002-2004, the Commission for Children and Young People and Child Guardian (Children's Commission) undertook a review of child labour in Queensland. In April 2005 the Government responded to the recommendations of the Review. Generally, the Government supported the intent of the recommendations and approved the development of stand alone legislation to fill gaps where existing legislation is considered inadequate to protect children (i.e. persons under 18 years of age) at work.

The Bill and proposed Regulation will apply to all children under the age of 18. However, the bulk of the provisions relate to children who are of school age or younger (i.e. those less than 16 years of age or who have yet to complete year ten of their compulsory schooling).

The Bill and proposed Regulation will:

- prescribe the minimum ages for work and the types of work in which school-aged and young children can work;
- prescribe the number of hours and times at which work may be performed and other matters such as supervisory requirements at work for school-aged and young children;

- require parental consent to be given for school-aged and young children to work except where those children live independently from their parents;
- prohibit the employment of children when required to be at school;
- require employers to keep specific records about child employment; and
- make regulations about the work conditions for children in particular types of businesses, including in the entertainment industry.

The Bill and proposed Regulation will be supported by two new mandatory Codes of Practice which will be developed in the 12 months following the introduction of the Act. These relate to the employment of young people in the entertainment industry (including a prohibition on minors working in adult entertainment) and a specific workplace health and safety code for young workers.

The Bill also makes amendments to the *Industrial Relations Act 1999* as a consequence of an August 2005 decision of the Full Bench of the Australian Industrial Relations Commission (AIRC) in the Family Provisions test case. The AIRC decision was consistent with the Queensland government position as outlined in the Joint States and Territories submission made in the test case.

The amendments improve standards and entitlements for parental leave, carer's leave and bereavement leave. In recent years, there has been an increasing recognition of the importance of balancing work and family, partly inspired by the increasing number of women in the workforce and the ageing of the population. The Queensland Government has made a number of commitments aimed at helping Queenslanders balance work and family, including the introduction of legislation.

The Bill further enhances those entitlements and reflects the Queensland government's approach of legislating to improve work and family provisions.

The Bill has the advantage of providing broad coverage of all employees in Queensland and will provide fall-back protection for employees who are not employed by a constitutional corporation and so are not captured by the proposed federal legislation. The Bill also incorporates the family provisions which will form part of the proposed federal legislation.

The Bill also includes 2 minor amendments to the *Industrial Relations Act 1999* of a technical nature.

## **Costs for Government Implementation**

The Bill will introduce a new legislative and policy function for the Department of Industrial Relations including a new Act and proposed Regulation, a proposed workplace health and safety Code of Practice for Children and Young Workers and a proposed Code of Practice for child employment in the entertainment industry. This will require the Industrial Relations and Workplace Health and Safety inspectorates to conduct workplace audits, provide advice and information and monitor and enforce compliance.

It is estimated that there will be additional costs involved in the establishment of a specialized unit within the Department of Industrial Relations to implement, monitor and enforce the legislation. As a result, additional funding has been provided for those functions with all other costs of implementation to be met from internal departmental funds.

## **Fundamental Legislative Principles**

Clause 33 (Executive officers must ensure corporation complies with Act) in the Bill permits the prosecution of executive officers of a corporation where that corporation has committed an offence. The proposed provisions provide for a defence but effectively reverse the onus of proof. Such provisions are commonly included in contemporary legislation and are considered necessary for the effective enforcement of the legislation by preventing unscrupulous employers from hiding behind their employees or their status as a corporation. Having regard to the purpose and nature of the Bill, the provisions are not considered to be inappropriate.

The Bill is structured in a way that provides for breaches of a regulation made under it to be offences against the Act. It is presented in this way for a number of reasons. The department wants, so far as possible, to keep the prohibition or regulation of work practices in 1 document. It also requires flexibility and speed to respond to work issues that may arise in relation to children. This is best achieved by providing for prohibition or regulation of work practices in the regulation. However, the level of penalty that will attach to a breach of prohibited or regulated work practices has been set at 100 penalty units in the Bill. In the circumstances, it is considered that the approach adopted is the one best suited to meet the competing demands of flexibility and sufficient regard for the institution of Parliament.

## **Consultation**

Extensive consultation has taken place with key stakeholders from unions, employer organisations and government in the drafting and preparation of the Bill. They have expressed support for the Bill.

# **Notes on Provisions**

## **Part 1 Preliminary**

### **Short Title**

Clause 1 sets out the short title of the Act as the *Child Employment Act 2005*.

### **Commencement**

Clause 2 provides that the Act will commence on a day to be fixed by proclamation except for Part 7 ‘Amendment of *Industrial Relations Act 1999*’ which will commence on assent.

### **Dictionary**

Clause 3 provides for particular terms in the Act to be defined in a Dictionary in the Schedule to the Act.

### **Purpose of this Act**

Clause 4 provides that the purpose of the Act is to safeguard children working in Queensland by ensuring that work does not interfere with children’s schooling and that children are prevented from performing work that may be harmful to their health or safety or their physical, mental, moral or social development.

### **Children to whom this Act applies**

Clause 5 provides that the Act applies to all children under the age of 18 years

**Meaning of *parent* of a child**

Clause 6 defines the term ‘parent’ as a child’s mother or father or a person who exercises parental responsibility for the child. A person exercising parental responsibility for a child on a temporary basis is not a parent. The definition also provides that where a person has guardianship of a child under the *Child Protection Act 1999* then that person only is regarded as the parent of the child. Where guardianship under that Act has not been granted and a person has parental responsibility for a child by decision or order of a federal or State court, then that person only is the parent.

**Meaning of *school-aged child***

Clause 7 defines a school-aged child as being a child who is under 16 years of age and is required to be enrolled in an educational program with a State educational institution or a non-State school (i.e. compulsory schooling). As from 1.1.2006 the *Education (General Provisions) Act 1989* provides that a child is no longer of compulsory school age if the child has completed year ten.

A child who has completed compulsory schooling but is not yet 16 years of age is not a school-aged child. A child who is 16 years of age or older but has not yet completed compulsory schooling is not a school-aged child.

Children granted a dispensation from compulsory schooling under the *Education (General Provisions) Act 1989* are not school-aged children.

The term ‘school-aged child’ is frequently used in conjunction with the term ‘young child’. A young child is defined in the Dictionary as meaning a child who is not old enough to be enrolled for compulsory schooling. The terms are used in conjunction because restrictions and other provisions usually apply equally to each.

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

Clause 8 defines work done by a child. The definition encompasses:

- work done under a contract – whether or not it is a contract of service (i.e. employment) or at piecework rates - for labour only or substantially for labour only;
- work done as a supervisor;
- participating or assisting in a business carried on for profit whether or not payment or other reward is received by the child; and
- unpaid or voluntary work.

Work done as a bona fide independent subcontractor, as established by a number of exclusions in the definition, is not included.

Work done as domestic chores is not included in the definition.

Work that is collections work or that is part of an apprenticeship, traineeship, work experience or vocational placement is also not part of the definition. Each of these arrangements is defined in the Dictionary by reference to the legislation that governs them. The Bill is not intended to impose additional restrictions on work that is already governed by other legislation.

## **Part 2                      Restrictions to safeguard working children**

### **Restrictions on work performed by children**

Clause 9 provides that an employer must not require or permit a child to do work that is prohibited or restricted under the proposed Regulation unless the work is authorised under an Act or a special circumstances certificate.

The proposed Regulation will restrict work by school-aged and young children in relation to:

- the minimum ages for work and the types of work which may be performed ;
- the number of hours and times at which work may be performed; and
- other matters such as supervisory requirements at work.

The proposed Regulation will provide that the restrictions do not apply to a school-aged or young child working in a family business (i.e. a business or corporation that is wholly owned by a close adult relative).

The clause will also have application to restrictions or prohibitions in future regulations made in respect of particular types of businesses for which a regulation making head of power has been included at clause 39 of the Bill (e.g. the entertainment industry).

Offence penalties are prescribed in respect of an employer who permits or allows a child to work contrary to the proposed Regulation.

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

Clause 10 provides that an employer must not require or permit a school-aged or young child to work without a parent's consent form for the child or a special circumstances certificate (see clause 12) authorising the child to perform work, when they are not required to attend school.

This parent's consent form is a form approved by the chief executive of the Department of Industrial Relations. The parent's consent form must contain details about when the child is required to be at school, the child's date of birth, the name of the proposed employer and a statement that the parent consents to the work.

The requirement for a parent's consent form does not apply in respect of

- work where the employer is the parent of the child, or
- work commenced before the commencement of the Bill.

An offence penalty is prescribed in respect of an employer who requires or permits a school-aged or young child to work without first gaining a parent's consent form or a special circumstances certificate.

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

Clause 11 prescribes a penalty for an employer that requires or permits a school-aged child to work when they are required to be at school as detailed in the parent's consent form or special circumstances certificate.

A parent's consent form is required to be given to an employer within 14 days of a parent becoming aware of a change that occurs in the child's school hours. This requirement also applies where a consent form has not been previously given to the employer because the child commenced work before the commencement of the Bill.

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

Clause 12 sets out a process under which the chief executive (i.e. the Director-General of the Department of Industrial Relations - see s.33 (11) of the *Acts Interpretation Act 1954*) may grant a special circumstances certificate for a child.

A special circumstances certificate may authorise a child to perform work that they would otherwise not be permitted to do because of a restriction in the proposed Regulation. The special circumstances certificate may also

authorise a child who does not have a parent or who is living independently from their parents to work without having a parent's consent form when the child is not required to attend school. The special circumstances certificate also authorises an employer to permit a child to work under similar conditions.

An application for a special circumstances certificate may be made either by a child or an adult on behalf of the child but must be supported by the child affected by it, include all the information reasonably required by the chief executive and may be granted subject to specific conditions. A special circumstances certificate is reviewable at any time.

A special circumstances certificate may only be granted if there are reasonable grounds for a belief that the work will not interfere with the child's schooling or will not be harmful to their health or safety or their physical, mental, moral or social development.

An offence penalty is prescribed for an employer who requires or permits a child to work in contravention of a special circumstances certificate.

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

Clause 13 sets out a process by which the chief executive may issue a work limitation notice that prohibits or limits particular work that a child would otherwise be permitted to do. The work limitation notice is issued to an employer or proposed employer.

A work limitation notice may only be issued if there are reasonable grounds for a belief that the work will interfere with the child's schooling or will be harmful to their health or safety or their physical, mental, moral or social development.

The work limitation notice may be issued on the initiative of the chief executive or in response to an application but may only be issued after consideration of any submissions made by the employer or proposed employer to be affected by it.

A work limitation notice may be reviewed at any time.

An offence penalty is prescribed for an employer who requires or permits a child to work in contravention of a work limitation notice.



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

Clause 14 provides that the chief executive must give to all affected persons (i.e. the child, the child's parent, if they made the application, the child's employer or proposed employer and any other person believed to have sufficient interest in the matter) copies of a special circumstances certificate granted or work limitation notice issued.

Where a special circumstances certificate is not granted, written notice of the decision is to be given to the affected persons. Where the chief executive decides not to issue a work limitation notice, the applicant and the affected employer are to be given written notice of the decision.

**Chief executive to give reasons if asked**

Clause 15 provides that an affected person may ask the chief executive for an information notice about their decision within 21 days of being notified of it. The information notice is defined in the Dictionary as containing the reasons for the decision and the appeal rights of the affected person.

**Part 3 Enforcement****Division 1 Functions of inspector****Inspector's functions**

Clause 16 describes the functions of inspectors. These functions are monitoring compliance, investigating and taking action on contraventions and informing children and employers about the legislation.

The Dictionary defines inspector as meaning an inspector under the *Industrial Relations Act 1999*. Inspectors under that Act will also be inspectors under this Bill.

## **Division 2 Powers of inspector**

### **Inspector's powers**

Clause 17 prescribes that inspectors will have all the powers that inspectors have under the *Industrial Relations Act 1999* as well as additional powers as set out in this division.

### **Power to seize evidence**

Clause 18 provides for the circumstances under which an inspector may seize a thing at a workplace. These circumstances are where the inspector reasonably believes that:

- the thing is evidence of an offence against this Act
- the thing is evidence of an offence against this Act and its seizure is necessary to prevent it being hidden, lost or destroyed or used to continue or repeat an offence.
- the thing has just been used in committing an offence against this Act.

### **Securing seized things**

Clause 19 provides for the power of an inspector to move a seized thing from a place or reasonably restrict access to it at the place of seizure. The Bill gives examples of how access may be restricted.

### **Tampering with seized things**

Clause 20 provides an offence penalty for tampering or attempting to tamper with a thing to which access has been restricted without an inspector's approval.

### **Receipt for seized thing**

Clause 21 requires an inspector to give a receipt for a seized thing to the person from whom it was seized or for a receipt for a seized thing to be left in a conspicuous position. The receipt must generally describe the thing and its condition. The requirement to give a receipt is waived where it is impracticable or unreasonable to do so because of a thing's nature, condition and value.

### **Forfeiture of seized thing**

Clause 22 provides that a seized thing is forfeited to the State if its owner can't reasonably be found or the thing can't reasonably be returned or if there is a reasonable belief that it is necessary to keep the thing to prevent it being used to commit further offences.

The owner of the thing must by written notice be told of any decision to keep the thing if there is a reasonable belief that it is necessary to keep the thing to prevent it being used to commit further offences.

### **Return of seized thing**

Clause 23 requires that a seized thing that has not been forfeited must be returned to its owner at the end of 6 months or if a proceeding for an offence involving it is commenced within 6 months, at the end of proceedings and appeal from the proceedings. The thing, unless it is forfeited, must be returned to its owner immediately its continued retention as evidence ceases to be necessary.

### **Access to seized thing**

Clause 24 provides that unless it is impracticable or unreasonable to do so and unless the thing is forfeited or returned, the owner of a seized thing must be allowed to inspect it and, if it is a document, copy it.

## **Division 3 Proceedings**

### **Proceedings for offences**

Clause 25 provides for prosecution of offences under this Act to be taken before an industrial magistrate in accordance with the *Industrial Relations Act 1999* with any necessary changes. Time limits for the commencement of a prosecution are prescribed. No limitation is placed on who may commence proceedings.

### **Evidentiary provisions**

Clause 26 provides that in proceedings under this Act certain appointments, copies of certificates or notices and authority to accept service of documents are accepted in evidence or presumed until the contrary is proven.

## **Part 4 Appeals**

### **Appeal from decision of the chief executive**

Clause 27 provides that an affected person (mentioned in clause 14) who is dissatisfied with a decision of the chief executive about a special circumstances certificate or work limitation notice may appeal the decision to the industrial commission (the Queensland Industrial Relations Commission – see s.36 of the *Acts Interpretation Act 1954* and s.255 of the *Industrial Relations Act 1999*). Appeals are subject to the *Industrial Relations Act 1999* with necessary changes and must be commenced within the time limits set in this Act unless the industrial commission allows for an extension of time.

### **Nature of appeal**

Clause 28 provides for an appeal to the industrial commission to be by way of rehearing on the record but also allows for the hearing of fresh or additional evidence at the discretion of the commission.

### **Decision on appeal**

Clause 29 provides that in an appeal the industrial commission may

- confirm the original decision;
- allow the appeal, set aside the original decision and substitute another;  
or
- allow the appeal, suspend the operation of the original decision and remit the matter to the chief executive to act according to law.

The industrial commission is given all the same powers as the chief executive in dealing with the appeal.

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

Clause 30 provides that a dissatisfied person may appeal to the Industrial Court against a decision of the Industrial Magistrates Court in relation to offences against the Act.

## **Part 5 General**

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

Clause 31 provides that the chief executive may issue guidelines about decisions on special circumstances certificates or work limitation notices. In deciding these guidelines the chief executive may consult with any entity that may help in the achievement of the purposes of the Act.

### **Protection from liability**

Clause 32 provides an indemnity against civil liability for the chief executive and inspectors (see definition of 'official' in the Dictionary) for actions done or omissions made honestly and on reasonable grounds under the Act.

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

Clause 33 places an obligation on executive officers of corporations to ensure the corporation complies with the Act. If the corporation commits an offence, each executive officer also commits an offence. A defence for an executive officer is provided if it can be proved they took reasonable steps to ensure compliance by the corporation or if the person was not in a position to influence the conduct of the corporation in relation to the offence.

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

Clause 34 provides that in an offence proceeding, an act done or omitted to be done by a person's representative is also taken to have been done or omitted to be done by the person. A defence is provided where the person proves that they could not have prevented the action or omission by the exercise of reasonable diligence.

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

Clause 35 prescribes an offence penalty for making false or misleading statements to an inspector or the chief executive.

## **False or misleading documents**

Clause 36 prescribes an offence penalty for giving false or misleading documents to an inspector or the chief executive. No offence applies where the person, when giving the document, tells the inspector or the chief executive that the document is false or misleading or gives the correct information.

## **Delegations**

Clause 37 permits the chief executive officer's powers to be delegated to another appropriately qualified officer of the Department of Industrial Relations.

## **Approved forms**

Clause 38 provides for the chief executive to approve forms for use under the Act. The parental consent form mentioned in clauses 10 and 11 would be such an approved form.

## **Regulation-making power**

Clause 39 provides for the making of regulations by the Governor in Council. Regulations may be made about:

- Work conditions for children generally.
- Work conditions for children in particular types of businesses. It is already intended that a code of practice be inserted in the regulation for children in the entertainment industry (including in adult entertainment) within the first 12 months after the Act commences. The provision will also allow for consideration of making regulations with provisions that are targeted on the particular circumstances of other specific industries.
- Matters for which fees are payable.
- Records that must be kept by employers about the children they employ. These records will closely reflect information already required to be kept for all employees under the *Industrial Relations Act 1999* with additional pieces of information such as the following:
  - The name, address and home and business phone number of a parent of the child.
  - The name, address and home and business phone number of another contact person nominated by the child's parent.

- For school-aged or young children - a parental consent form as prescribed by the Bill.
  - For a child who is not a school-aged or young child – a copy of a form of identification stating the child’s date of birth (e.g. a passport, birth certificate, or school I.D. card).
- Offence penalties for contravention of the regulation.

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

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

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

Clause 40 provides that this division amends the *Education (General Provisions) Act 1989*.

#### **Amendment of s119 – Employment of children of compulsory school age**

Clause 41 amends section 119(1) to provide that a parent shall not employ or cause or permit to be employed 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, unless there is in existence at the material time, in respect of that child, a dispensation granted in accordance with section 115(1).

Previously, section 119(1) provided that a parent shall not employ or cause or permit to be employed during the hours prescribed under a regulation for attendance at school the parent’s child who is of compulsory school age unless there is in existence at the material time, in respect of that child, a dispensation granted in accordance with section 115(1).

To avoid confusion between the legislative regime established under the *Child Employment Act 2005* and the *Education (General Provisions) Act 1989*, this amendment clarifies parent’s obligations with regard to the employment of children of compulsory school age.

**Insertion of new part 14**

Clause 42 inserts a new part 14 (Declaratory provision for *Child Employment Act 2005*) and new section 171 after part 13. The new section 171 (Further amendment, or repeal, of *Education (General Provisions) Regulation 2000*) clarifies that the amendment of the *Education (General Provisions) Regulation 2000* by this Act does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

**Division 2 Amendment of *Education (General Provisions) Regulation 2000*****Regulation amended in this division**

Clause 43 provides that this division amends the *Education (General Provisions) Regulation 2000*.

**Omission of s20 – Hours during which child of age of compulsory attendance not to be employed – Act, s119**

Clause 44 omits section 20 of the *Education (General Provisions) Regulation 2000*. This amendment arises as a result of the amendment to section 119 of the *Education (General Provisions) Act 1989*.

**Part 7 Amendment of *Industrial Relations Act 1999*****Act amended in this part**

Clause 45 provides that part 7 amends the *Industrial Relations Act 1999*.

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

Clause 46 provides for the amendment of the last dot point of the formulae for calculating an annual leave payment using the default average commission. Dot point three in Section 13 (5) provides that the figure obtained from making the calculations in accordance with dot points one and two is to be multiplied by a number of days. The number of days is obtained by adding up the number of days starting with the day the leave



commences and ending on the day before the employee is due to return to work.

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

Clause 47 inserts two new definitions into section 17. 'Parental leave entitlement' is defined as the entitlements mentioned in sections 18(2), (3) or (4) and a 'short term casual employee' is defined as a casual employee who is not a long term casual employee. A long term casual employee is defined in section 15A.

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

Clause 48 inserts a new section 18(5) which provides that parental leave (long parental leave, short parental leave or adoption leave) must not extend beyond one year after the child is born or if an application for an extension of parental leave has been made under section 29A and has been successful, the total period of parental leave must not extend beyond 2 years after the child was born or adopted.

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

Clause 49 omits section 29 and inserts new sections 29, 29A, 29B, 29C and 29D.

### **Extending period of parental leave entitlements by notice**

Section 29 provides for an employee to extend the period of parental leave available under section 18(2), (3) or (4) once only by written notice to the employer stating when the extended period is to end. The total period of parental leave under this clause must not extend beyond 1 year after the child is born or adopted. The agreement of the employer is not necessary for this extension although the notice must be given at least 14 days before the leave starts or if it has already started then at least 14 days before it ends.

### **Extending period of parental leave by agreement**

Section 29A provides a right to an employee to make an application to their employer to obtain the agreement of the employer to extend the period of parental leave. Subsection (1) provides for maternity leave available under section 18(2) to be extended from 52 weeks to a maximum of 104 weeks in total. Subsection (2) provides for short parental leave to be extended to a

maximum of 8 weeks in total and for long parental leave to be extended to a maximum of 96 weeks in total.

Subsection (3) provides for short adoption leave to be extended to a maximum of 8 weeks in total and for long adoption leave to be extended to a maximum of 96 weeks in total.

Subsection (4) provides that an application to extend the period of parental leave may only be made once within any period of 12 months unless the employer agrees otherwise.

### **Employee on parental leave may apply to work part-time**

Section 29B provides a right for an employee on parental leave to apply to their employer to return to work on a part-time basis. The maximum period an employee can work part-time under this provision is until the child reaches school age (section 29C(2)). An application to return to work on a part time basis may only be made once within any period of 12 months unless the employer agrees otherwise.

### **Application for extension or part-time work**

Section 29C provides that an application made by the employee to their employer to extend their parental leave or to return to work on a part-time basis must be in writing. An employee on short parental leave or short adoption leave must make the application to the employer at least 2 business days before the leave ends while an employee accessing any other form of parental leave must make their application to the employer at least 4 weeks before the leave ends. An employee who intends to apply to return to work part-time must make the application to the employer 7 weeks before the leave ends.

Subsections (c), (d) and (e) set out the information that must be contained in the application and subsection (f) sets out the information that must be provided in a statutory declaration. In the case of an employee accessing long parental leave or long adoption leave the statutory declaration is about continuing to be the child's primary care giver and in relation to an employee applying to return to work on a part-time basis it is about the employee continuing to be the child's primary caregiver when not at work.

Employees applying to extend short parental leave or short adoption leave are not required to provide a statutory declaration. The period in relation to returning to work part-time is up until the child reaches the compulsory school age.

Subsection (3) provides that a person may make an application under sections 29A or 29B even if they commenced their parental leave before the commencement of the section.

### **Employer to give proper consideration to application for extension or part-time work**

Section 29D (1) (a), (b) and (c), set out the matters an employer must consider in relation to an application made by an employee for an extension of their parental leave or to return to work on a part-time basis. This does not prevent the employer from considering other relevant matters.

Subsection (2) provides that an employer must not unreasonably refuse an application made to extend parental leave or to return to work on a part-time basis.

Subsection (3) provides that the employer must inform the employee, in writing, of the decision and if the employer refuses the application the employer must also give written reasons for the refusal (subsection (4)). Where the employee is on short parental leave or short adoption leave, the employer must inform the employee of the decision as soon as possible after receiving the application and certainly before the leave ends. If the employee is on any other form of parental leave then the employer must inform the employee of the decision within 14 days after receiving the application.

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

Clause 50 provides for the amendment of the heading of the section to read '**Employer's obligations to advise about parental leave entitlements**' (subsection (1)). Subsection (2) amends section 33 (1)(a) and (1)(b) by deleting "this part" and substituting "this division" as the section only applies to parental leave in division 2 and not other divisions contained in Part 2 of the *Industrial Relations Act 1999*.

### **Insertion of new ss 38A-38C**

Clause 51 provides for the insertion of new sections 38A, 38B and 38C after section 38 in Chapter 2, part 2, division 2.

**Employer's obligation to advise about significant change in the workplace**

Section 38A (1) applies the section to an employer who has made a decision to implement significant change at a workplace (whether or not the decision was made before the commencement of this section provided it hasn't been implemented. Subsection (2) provides that the employer must take reasonable action to advise each employee who is absent from work on parental leave about the proposed change before it is implemented. The employer must also advise the employee of any effect the proposed change may have on the position the employee held before going on parental leave (subsection (3)). An example in relation to the status or level of responsibility of the position is given.

The employer must also give the employee a reasonable opportunity to discuss any significant effect the change will have on the employee's position. Reasonable means reasonable in the particular circumstances. The employer must advise the employee and provide a reasonable opportunity for discussion but that is all that is required.

**Employee's obligations to advise employer about particular changes**

Section 38B (1) provides that an employee, who is absent on parental leave, must advise the employer of any change in the employee's contact details including their address. This information may be required for various purposes but in particular it is required to enable the employer to be able to contact the employee should the need arise under section 38A to advise the employee about any significant change in the work place. The note to the subsection reflects this position.

Subsection (2) provides that an employee, who is absent on parental leave, must also take reasonable steps to advise the employer, as soon as possible, about any significant matter that may affect the length of the employee's leave, the date the employee's intends to return to work or an earlier decision to return to work on a full-time basis or to apply to return to work on a part-time basis.

**Review of Ss 29A - 29D**

Section 38C (1) provides for a review, of sections 29A, 29B, 29C and 29D about extending parental leave and returning to work on a part-time basis, by the Full Bench of the Queensland Industrial Relations Commission (QIRC) of it's own initiative or on the direction of the Minister. In the

absence of a direction by the Minister, the Full Bench is to start the review within 3 years after the commencement of the section (subsection (2)) and must consider if the sections are meeting the reasonable needs of employees and the impact, if any, they are having on the ability of employers to conduct their businesses efficiently (subsection (3)).

Subsection (4) provides that the Full Bench must report its findings and make recommendations to the Minister. It will then be a matter for the Minister to determine what action, if any, may be required in relation to the operation of the sections.

### **Replacement of s 39 (Entitlement)**

Clause 52 provides for the replacement of section 39 with new sections 39, 39A, 39B and 39C.

### **Employee's entitlement to carer's leave**

Section 39(1) provides that an employee is entitled to use up to 10 days (carer's leave), previously 5 days, of their sick leave entitlement in each year to care and support members of the employee's immediate family or household when they are ill or because of an unexpected emergency (such as an unexpected failure of child care arrangements).

For the *Industrial Relations Act 1999*, 'immediate family' is defined to include, and so is not limited to, the employee's spouse; a child, ex-nuptial child, stepchild, adopted child, ex-foster child, parent, grandparent, grandchild or sibling of the employee or employee's spouse. The word 'household' is not defined and would have its ordinary meaning.

Subsection (2) provides that if an employee has exhausted their entitlement to carer's leave under (1) they may take up to an additional 2 days per occasion of unpaid carer's leave to care and support members of their immediate family or household who are ill or because of an unexpected emergency.

Subsection (3) provides that in addition to the unpaid carer's leave in subsection (2) the employee may take additional unpaid carer's leave if the employer agrees.

Subsection (4) provides that 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 which require more than 1 person to care for the person.

Subsection (5) clarifies that carer's leave may be taken for part of a day.

Subsection (6) defines 'employee' for this section not to include a casual employee as there are specific sections applying to casual employees (short term and long term) and defines 'sick leave' to include sick leave accrued before the commencement of this section.

### **Long term casual employee's entitlement to carer's leave**

Section 39A (1) provides that a long term casual employee is entitled to take up to 10 days leave (also carer's leave), previously 5 days, in each year to care and support members of the employee's immediate family or household when they are ill or because of an unexpected emergency (such as an unexpected failure of child care arrangements). A casual employee is not entitled to sick leave and so would have no sick leave to access for this purpose. All carer's leave is unpaid.

Subsection (2) provides for a long term casual employee to take additional unpaid carer's leave if the employer agrees.

Subsection (3) provides that a long term casual employee can not take care's leave if another person has taken leave to care for the same person unless there are special circumstances which require more than 1 person to care for the person.

Subsection (4) clarifies that carer's leave may be taken for part of a day.

Subsection (5) provides that an employer must not penalise a long term casual employee by failing to re-engage the long term casual employee only because he/she accessed carer's leave under this section. A long term casual employee would be able to make an application for unfair dismissal under section 73, as a long term casual employee is not excluded from making such an application.

Subsection (6) provides that this section does not affect any other rights the employer may have not to re-engage the long term casual employee.

### **Short term casual employee's entitlement to carer's leave**

Section 39B (1) provides that a short term casual employee is entitled to leave work or be unavailable to attend work for up to 2 days (also carer's leave) on each occasion he/she is required to care and support members of the employee's immediate family or household when they are ill or because of an unexpected emergency (such as an unexpected failure of child care arrangements) or because of the birth of a child. A casual employee is not eligible for sick leave and so would have no sick leave to access for this purpose. All carer's leave is unpaid. A short term casual employee is not

eligible for parental leave and so would not have access to parental leave for the birth of a child. All carer's leave is unpaid.

Subsection (2) provides that if a short term casual employee has exhausted their entitlement to carer's leave under subsection (1) they may leave work or be unavailable to attend work for the reasons mentioned in (1) for additional periods if the employer agrees.

Subsection (3) provides that a short term casual employee can not take care's leave if another person has taken leave to care for the same person unless there are special circumstances which require more than 1 person to care for the person.

Subsection (4) clarifies that carer's leave may be taken for part of a day.

Subsection (5) provides that an employer must not penalise a short term casual employee by failing to re-engage the short term casual employee only because he/she accessed carer's leave under this section. A short term casual employee would be able to make an application for unfair dismissal under section 73, as a short term casual employee is not excluded from making such an application for unfair dismissal where the dismissal was for an invalid reason and the new section 73(2)(ka) makes dismissal for this reason an invalid reason.

Subsection (6) provides that this section does not affect any other rights the employer may have not to re-engage the short term casual employee.

Subsection (7) clarifies that all leave taken is unpaid.

### **Employees etc. to provide supporting information to employer**

Section 39C (1) provides that, if required by the employer, an employee wishing to access carer's leave must provide a doctor's certificate or a statutory declaration about the illness and the need for the ill member of the employee's immediate family or household to be cared for by another person.

Subsection (2) provides that, if practicable, the employee must give the employer notice of the intention to take carer's leave before taking it and give the name of the person requiring care and the person's relationship to the employee and the reason for taking the leave and the estimated period of absence and, if the reason is an unexpected emergency, the nature of the emergency.

Subsection (3) provides that if it is not practicable to notify the employer before taking the leave then the employee must notify the employer at the first reasonable opportunity.

**Amendment of s 40 (Entitlements)**

Clause 53 provides for the amendment of section 40. Section 40(1) provides that only piece workers are excluded from accessing bereavement leave as short term casuals will now be able to access the leave.

Subsection (2) amends section 40(2) by adding ‘or short term casual employee’ after ‘long term casual employee’.

Subsection (3) renumbers Ss 40(4) and (5) as (5) and (6).

Subsection (3) inserts a new (4) in Section 40 which provides for a short term casual employees to be unavailable to attend work for up to 2 days on unpaid bereavement leave because of the death of a member of the person’s immediate family or household together with any extra time reasonably required for the person to travel to and from the funeral or other ceremony for the death. All ‘leave’ is unpaid and applies to a death in or out of Australia.

Subsection (4) inserts new subsections (7) and (8).

Subsection (7) provides that an employer must not penalise a casual employee by failing to re-engage the employee only because he/she accessed bereavement leave under this section. A short term casual employee would be able to make an application for unfair dismissal under section 73, as a short term casual employee is not excluded from making such an application for unfair dismissal where the dismissal was for an invalid reason and the new section 73(2)(ka) makes dismissal for this reason an invalid reason.

Subsection (8) provides that this section does not affect any other rights the employer may have not to re-engage a casual employee.

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

Clause 54 provides for the amendment of 71A by inserting a new subsection (2) which ensures that an employee, apprentice or trainee mentioned in section 72(3) or (7) does not have to comply with the notice provisions of section 71A. Subsection (1) provides for renumbering of the section and subsection (3) substitutes ‘subsection (3)’ for ‘subsection (2)’ in the renumbered subsection (4).



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

Clause 55 provides for the insertion in section 73 of another ‘invalid reason’ for dismissal. This invalid reason is a reason mentioned in section 39B(5) or 40(7) which sections are about an employer not re-engaging (dismissing) a short term casual employee only because he/she has accessed carer’s leave or bereavement leave.

**Amendment of s350 (Appointment of inspectors)**

Clause 56 amends section 350(4) of the *Industrial Relations Act 1999* to provide that when an inspector holds an appointment under that Act they are also an inspector under the *Child Employment Act 2005*.

**Amendment of s352 (Powers)**

Clause 57 amends section 352 of the *Industrial Relations Act 1999* to add a new subclause 4. The new subclause provides that when an inspector exercises powers under that Act while acting as an inspector under the *Child Employment Act 2005* (see clause 17), the terms ‘employee’ and ‘employer’ are modified to accord with the purpose and other provisions of the *Child Employment Act 2005*.

**Insertion of new Chapter 20, Part 5**

Clause 58 inserts a new Part 5 in Chapter 20

**Part 5 Transitional provision for Child Employment Act 2005****Provision for agreed extensions of parental leave**

Section 739 provides that any agreement made between an employee and an employer under the section 29, that applied before these amendments commenced, to extend the period of parental leave under the section 18, that applied before these amendments commenced, is not affected by these amendments. It also defines ‘new section 29’ and ‘old section 18’.

**Amendment of sch 5 (Dictionary)**

Clause 59 inserts the definitions for ‘parental leave entitlement’ and ‘short term casual employee’ in schedule 5.

**Schedule Dictionary**

The dictionary provides the meaning of various terms used in this Act.