



# **Child Employment Act 2006**

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## Queensland

# Child Employment Act 2006

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# Child Employment Act 2006

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

### 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, 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*, schedule 1 defines *child*, in this context, to mean an individual who is under 18.

## 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), a reference in this Act to a parent of a child is a reference only to—
  - (a) if a person is granted guardianship of a child under the *Child Protection Act 1999*—the person granted guardianship; or
  - (b) if paragraph (a) does not apply but a person otherwise exercises parental responsibility for a child under a decision or order of a Federal Court or a court of a State—the person who exercises parental responsibility for the child under the decision or order.

## 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 at a State school or a non-State school under the *Education (General Provisions) Act 2006*.

*Note—*

A child may not be required to be enrolled at a State school or a non-State school if the *Education (General Provisions) Act 2006*, chapter 9, part 3, 4 or 5 applies to the child.

## **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; 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—
    - (i) work experience; or
    - (ii) an apprenticeship; or
    - (iii) a traineeship.
- (3) However, for sections 8A to 8C, **work**, in relation to a child, includes work that is part of work experience, an apprenticeship or a traineeship.
- (4) Also, for parts 2A and 2B, **work**, in relation to a child, includes employment that is part of an apprenticeship or a traineeship.

## Part 2                      Restrictions to safeguard working children

### 8A      Prohibition on nudity and sexually provocative clothing

- (1) An employer must not require or permit a child to work—
  - (a) while the child is nude; or
  - (b) while the child is clothed or covered in another way so—
    - (i) the child’s sexual organs or anus are visible; or
    - (ii) if the child is a female who is at least 5 years—her breasts are visible.

Maximum penalty—100 penalty units.

*Note—*

This provision is an executive liability provision—see section 33.

- 
- (2) Subsection (1) does not apply to work in the entertainment industry if—
- (a) the child is under 12 months; and
  - (b) a parent of the child, who is not the employer of the child, has given the employer written consent to whichever of the following is relevant—
    - (i) the child working while the child is nude;
    - (ii) the child working while the child is clothed or covered in another way so the child’s sexual organs or anus are visible; and
  - (c) a parent of the child is present while the child is working in either of the ways mentioned in subsection (1).
- (3) However, a consent for subsection (2)(b)(ii) need not cover all matters mentioned in the provision so long as all matters in the provision relevant to the work the child is to do are covered.

## **8B Prohibition on work as social escort**

- (1) An employer must not require or permit a child to work as a social escort.

Maximum penalty—100 penalty units.

*Note—*

This provision is an executive liability provision—see section 33.

- (2) In this section—

***health service*** see the *Hospital and Health Boards Act 2011*, schedule 2.

***social escort***—

- (a) means a person who, under an arrangement of a commercial character, is held out to the public for hire to—
  - (i) accompany another person to social affairs or to places of entertainment or amusement; or

- (ii) consort with another person in any place, whether public or private; but
- (b) does not include a person who provides the services mentioned in paragraph (a) as part of health services for the other person.

## **8C Prohibition on inappropriate roles and situations**

- (1) An employer must not require or permit a child to work in a role or situation that is inappropriate for the child, having regard to the child's age, emotional and psychological development, maturity and sensitivity.

Maximum penalty—100 penalty units.

*Note—*

This provision is an executive liability provision—see section 33.

- (2) Without limiting subsection (1), the child may not—
- (a) be exposed to scenes or situations that are likely to distress or embarrass the child; or
  - (b) be made distressed to obtain a more realistic depiction of a particular emotional reaction; or
  - (c) perform an act of an explicit sexual nature or be present in an area while another person performs an act of an explicit sexual nature; or
  - (d) be present while another person is—
    - (i) nude; or
    - (ii) clothed or covered in another way so—
      - (A) the person's sexual organs or anus are visible; or
      - (B) if the person is a female who is at least 5 years—her breasts are visible.
- (3) Subsection (2)(d) does not apply if—
- (a) the child is under 12 months; and

- 
- (b) a parent of the child, who is not the employer of the child, has given the employer written consent to whichever of the following is relevant—
    - (i) the child being present while the other person is nude;
    - (ii) the child being present while the other person is clothed or covered in another way so the person's sexual organs or anus are visible;
    - (iii) the child being present while the other person is clothed or covered in another way so the person's breasts are visible; and
  - (c) a parent of the child is present while the child is present and the other person is as mentioned in subsection (2)(d)(i) or (ii).
- (4) However, a consent under subsection (3)(b)(ii) or (iii) need not cover all matters mentioned in the subsection so long as all matters in the subsection relevant to the work the child is to do are covered.

## **9 Other restrictions on work performed by children**

- (1) An employer must not require or permit a child to do work prescribed under a regulation, unless—
  - (a) the child is at least the age prescribed under the regulation to do the work; or
  - (b) it is work the child is permitted to do under the regulation.

Maximum penalty—100 penalty units.

*Note—*

This provision is an executive liability provision—see section 33.

- (2) An employer must not require or permit a child to work in a way a regulation states the child may not work.

Maximum penalty—100 penalty units.

*Note—*

This provision is an executive liability provision—see section 33.

- (3) An employer must not require or permit a child to work when a regulation states the child may not work.

Maximum penalty—100 penalty units.

*Note—*

This provision is an executive liability provision—see section 33.

- (4) An employer must not require or permit a child to work unless appropriately supervised by an adult.

Maximum penalty—100 penalty units.

*Note—*

This provision is an executive liability provision—see section 33.

- (5) An employer does not commit an offence against subsection (1), (2), (3) or (4) if the child is permitted or authorised under an Act or a special circumstances certificate to do the work, or to work in the way, or when, a regulation states the child may not work.

- (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 2006*, section 230, 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 2016*.

*Note—*

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

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**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.

*Note—*

This provision is an executive liability provision—see section 33.

- (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.
- (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.

*Note—*

This provision is an executive liability provision—see section 33.

- (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 2006*, section 230, 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.

- (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.



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**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.

*Note—*

This provision is an executive liability provision—see section 33.

### **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—

[s 14]

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- (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.

*Note—*

This provision is an executive liability provision—see section 33.

## **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 2A**                      **Minimum employment conditions for children**

### **Division 1**                      **Employment conditions**

#### **15A**    **Application of pt 2A**

- (1) This part applies to the employment of a child by a constitutional corporation if the child is employed under—
  - (a) an agreement under the *Workplace Relations Act 1996* (Cwlth) entered into after 26 March 2006; or
  - (b) an arrangement entered into after 26 March 2006 that is not an agreement mentioned in paragraph (a); or
  - (c) a preserved collective State agreement under the *Workplace Relations Act 1996* (Cwlth) that has been terminated and not replaced by an agreement under the *Workplace Relations Act 1996* (Cwlth) or an arrangement mentioned in paragraph (b).
- (2) However, this part applies to the employment of a child by a constitutional corporation only if—
  - (a) a State award or order is in force that covers employees who perform similar work to that performed by the child but are not employed by a constitutional corporation; or
  - (b) entitlements or protections under the *Industrial Relations Act 2016*, chapter 2, part 3 and the provisions continued under section 1019 of that Act cover employees who perform similar work to that performed by the child but are not employed by a constitutional corporation.
- (3) Also, for this part, a child to whom subsection (1)(b) applies is taken to be employed under an arrangement.

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**15B Employer to ensure child is not disadvantaged in relation to employment conditions**

- (1) An employer of a child to whose employment this part applies (an *affected employer*) must ensure that the agreement or arrangement under which the child is employed does not disadvantage the child in relation to the child's employment conditions.
- (2) An agreement or arrangement disadvantages a child in relation to the child's employment conditions only if the agreement or arrangement reduces the child's employment entitlements or protections.
- (3) In this section—  
*employment entitlements or protections*, in relation to a child's employment conditions, means the entitlements or protections that cover an employee performing similar work to that performed by the child under—
  - (a) a State award or order; or
  - (b) the *Industrial Relations Act 2016*, chapter 2, part 3 and the provisions continued under section 1019 of that Act.

**15C Industrial commission may decide whether agreement or arrangement reduces child's employment entitlements or protections for s 15B**

- (1) On the application of an inspector, or in a proceeding before the industrial commission under this part, including an appeal, the industrial commission may decide whether an agreement or arrangement reduces a child's employment entitlements or protections.
- (2) For subsection (1), the way the industrial commission decides whether an agreement or arrangement reduces a child's employment entitlements or protections must be as nearly as possible the way it would decide the same question under the *Industrial Relations Act 2016*, chapter 4, part 5, division 3 in a proceeding before the industrial commission under that Act.

*Note—*

The *Industrial Relations Act 2016*, chapter 4, part 5, division 3 is about the no-disadvantage test under that Act.

### **15D Affected employer to display State award or order at workplace**

An affected employer of a child must ensure a copy of a State award or order that is in force and covers employees performing similar work to that performed for the employer by the child is conspicuously displayed at the place where the child is employed.

Maximum penalty—20 penalty units.

### **15E Record keeping**

- (1) An affected employer of a child must keep the same time and wages record for the child as the employer would be required under the *Industrial Relations Act 2016*, section 339 to keep if that section applied to the employer in relation to the child's employment.

Maximum penalty—40 penalty units.

- (2) The affected employer must keep the record in the same way and for the same time as the employer would be required under the *Industrial Relations Act 2016*, section 339 to keep the record.

Maximum penalty—40 penalty units.

- (3) Also, an affected employer must, if the child asks, give the child a certificate of the same kind as an employer would be required to give an employee under the *Industrial Relations Act 2016*, section 339(5) if that section applied to the employer in relation to the child's employment.

Maximum penalty—40 penalty units.

- (4) This section does not limit section 39(2)(d).



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## Division 2                      Compliance notices

### 15F    Issue of compliance notice

- (1) This section applies if an inspector considers an affected employer—
  - (a) is contravening section 15B; or
  - (b) has contravened section 15B in circumstances that make it likely that the affected employer will continue to contravene that section or repeat the contravention.
- (2) The inspector may issue to the affected employer a notice (*compliance notice*) requiring the employer to remedy the contravention or the matters giving rise to the contravention within a stated period, of not less than 14 days, after the issue of the notice or the shorter period stated under subsection (4).
- (3) The affected employer must comply with the compliance notice, unless the employer has a reasonable excuse.  
Maximum penalty—100 penalty units.
- (4) For subsection (2), an inspector may state a period of less than 14 days after the issue of the compliance notice if the inspector is satisfied it is reasonably practicable for the employer to comply with the notice within the stated shorter period.
- (5) The compliance notice must—
  - (a) state the inspector’s reasons for issuing the notice; and
  - (b) include information about the affected employer’s right to appeal against the issue of the notice or the terms of the notice to the industrial commission.

### 15G    Compliance notice may include directions

- (1) An inspector may include in a compliance notice directions in relation to the steps an affected employer must take to remedy a contravention or a matter to which the notice relates or to otherwise comply with the notice.

- (2) Without limiting subsection (1), a direction may require an affected employer to pay to a child an amount worked out by the inspector that would have been payable to the child under the *Industrial Relations Act 2016* or a State award or order applying to the child's employment if the employment was not covered by an agreement or arrangement to which this part applies.
- (3) Also, a direction may offer an affected employer a choice of ways in which the affected employer may remedy the contravention or matter or comply with the notice.

#### **15H Withdrawal of compliance notice**

- (1) If, at any time, the inspector who issued a compliance notice to an affected employer or another inspector authorised by the chief executive for the purpose (both the *appropriate inspector*) is satisfied the compliance notice was issued in error or was incorrect, the appropriate inspector may withdraw the compliance notice by signed notice given to the affected employer.
- (2) The withdrawal has effect when notice of the withdrawal is given to the affected employer.

#### **15I Industrial magistrate's powers in proceeding for compliance notice offence**

- (1) This section applies in relation to a proceeding against an affected employer for a charge of a compliance notice offence.
- (2) If an industrial magistrate finds the affected employer guilty of the compliance notice offence, the industrial magistrate may, in addition to any penalty that may be imposed for the offence, order the affected employer to pay to each affected child the compliance notice amount for the child or the amount the industrial magistrate considers appropriate for the child.
- (3) Subsection (2) applies whether there is a finding of guilt or the acceptance of a plea of guilty in relation to the compliance

notice offence and whether or not a conviction is recorded for the offence.

- (4) However, if the industrial magistrate does not find the affected employer guilty of the compliance notice offence but, on the balance of probabilities, is satisfied the affected employer should be required to pay an amount to each affected child, the industrial magistrate may order the affected employer to pay to each affected child the compliance notice amount for the child or the amount the industrial magistrate considers appropriate for the child.
- (5) The industrial magistrate may make the order despite any express or implied provision of an agreement and on the terms the industrial magistrate considers appropriate.
- (6) Without limiting the powers of an industrial magistrate in a proceeding for a compliance notice offence, the industrial magistrate may, before making an order against an affected employer under this section, order that an inspector make an application under section 15N and adjourn the proceeding until a date fixed by the court or a date to be fixed without making a finding of guilt against the employer.
- (7) If the industrial commission makes an order of the kind mentioned in section 15O(2) or (3) on an application under section 15N, the industrial magistrate must not make an order under subsection (4).
- (8) In this section—

***affected child***, in relation to a compliance notice, means a child who is covered by an agreement or arrangement that is the subject of the compliance notice.

***compliance notice amount*** means the amount stated in a direction in a compliance notice as the amount an affected employer must pay to a child.

***compliance notice offence*** means an offence against section 15F(3).

## **15J Appeals**

- (1) An affected employer to whom a compliance notice is issued may appeal against the issue of the notice or the terms of the notice to the industrial commission.
- (2) The procedures for the appeal must be as nearly as possible the same procedures as the procedures for an appeal under the *Industrial Relations Act 2016*, chapter 11, part 6.
- (3) In particular, the appeal—
  - (a) must be started within 21 days after the person is given the compliance notice; and
  - (b) does not stay the operation of the notice appealed against unless the industrial commission otherwise orders.
- (4) However, the industrial commission may extend the time for starting an appeal.
- (5) A defect in the compliance notice does not affect an affected employer's right to appeal against the issue of the compliance notice or the terms of the notice.

## **15K Decision on appeal**

- (1) The industrial commission may—
  - (a) confirm the compliance notice appealed against; or
  - (b) allow the appeal and vary the compliance notice in the way the commission considers appropriate; or
  - (c) allow the appeal and revoke the compliance notice.
- (2) For deciding the appeal, the powers of the industrial commission under this part are—
  - (a) the same powers as the industrial commission has in relation to any proceeding for an appeal started under the *Industrial Relations Act 2016*; and
  - (b) the powers an inspector has under this part.

- (3) Also, if, the industrial commission confirms a compliance notice, it may, in the same proceeding, decide any application under section 15N for orders in relation to the contravention to which the compliance notice relates.

**15L Revocation or withdrawal of compliance notice does not prevent issue of another notice**

The revocation or withdrawal of a compliance notice issued to an affected employer does not prevent an inspector from issuing another compliance notice to the affected employer.

**15M Proceedings for offence not affected by compliance notice**

The issue, variation, revocation or withdrawal of a compliance notice does not affect any proceeding for an offence against this Act or for the recovery of an amount in connection with a matter for which the notice was issued.

**15N Inspector may apply to industrial commission in relation to contravention**

- (1) An inspector may apply to the industrial commission for a decision whether an affected employer—
  - (a) is contravening section 15B; or
  - (b) has contravened section 15B in circumstances that make it likely that the affected employer will continue to contravene that section or repeat the contravention.
- (2) The application may be made whether or not a compliance notice has been issued to the affected employer.
- (3) If the application is made because of non-compliance with a compliance notice and relates to a direction in the notice to pay a child an amount, the application must be made within 6 years after the amount became payable.
- (4) However, the application can not relate to an amount payable before 27 March 2006.

## **150 Consideration of s 15N application**

- (1) This section applies if, after considering an application under section 15N, the industrial commission decides the affected employer is contravening or has contravened section 15B.
- (2) The industrial commission may order the affected employer to remedy the contravention or the matter of the contravention as required under the compliance notice or in another way.
- (3) Also, if the matter of the non-compliance relates to a direction in a compliance notice to pay a child a stated amount, the industrial commission must make an order of the kind mentioned in the *Industrial Relations Act 2016*, section 477(1)(a).
- (4) The industrial commission may make an order under subsection (3) despite any express or implied provision of an agreement to the contrary and may order the payment to be made on the terms the industrial commission considers appropriate.
- (5) To the extent an order made under subsection (3) relates to contributions to a superannuation fund, the industrial commission may, in the order, require the contributions to be paid in the same way as it could if the order was made under the *Industrial Relations Act 2016*, section 477(2) on an application of a kind mentioned in section 476 of that Act.
- (6) If the order includes a requirement about superannuation contributions and either of the following applies, the contributions must be paid to the unclaimed moneys fund—
  - (a) the child can not be located after reasonable inquiry;
  - (b) after being required to do so, the child does not nominate a superannuation fund for the purposes of the order.

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## Part 2B Dismissal of children by constitutional corporation

### 15P Dismissal by constitutional corporation

- (1) This section applies in relation to a dismissal of a child from employment by a constitutional corporation on or after the introduction day (a *relevant dismissal*).
- (2) However, this section applies to a relevant dismissal only if it is a dismissal of a kind that could be the subject of an application under the *Industrial Relations Act 2016*, chapter 8, part 2 (the *dismissal provisions*) if the employer of the child were not a constitutional corporation.
- (3) A person who alleges that a child has been dismissed and that the dismissal is a relevant dismissal may apply to the industrial commission or an industrial magistrate under this Act for an order of a kind that may be made under the dismissal provisions.
- (4) The industrial commission or industrial magistrate—
  - (a) must consider the application in the same way as it would consider an application made to it under the dismissal provisions; and
  - (b) may make the same kinds of orders in relation to the application as it could make if the application were an application under the dismissal provisions.
- (5) For this section, a reference in the dismissal provisions to—
  - (a) employment is taken to be a reference to employment of a child by a constitutional corporation; or
  - (b) an employer is taken to be a reference to an employer who is a constitutional corporation; or
  - (c) an employee is taken to be a reference to a child who is employed by a constitutional corporation; or

- (d) a proceeding under chapter 8, part 2 is taken to be a reference to a proceeding under chapter 8, part 2 as applied by this section.
- (6) In this section—

*introduction day* means the day the Bill for the *Industrial Relations Act and Other Legislation Amendment Act 2007* was introduced into the Legislative Assembly.

## **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 2016*.
- (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 2016* 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 2016* 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 2016* 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 1 of the following is evidence of what it states—
  - (i) a compliance notice issued by an inspector;
  - (ii) a special circumstances certificate granted by the chief executive;
  - (iii) a work limitation notice issued by the chief executive; and

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- (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 against decisions of chief executive**

### **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 procedures for the appeal must be, as nearly as possible, the same procedures as the procedures for an appeal under the *Industrial Relations Act 2016*.
- (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) For deciding the appeal, the powers of the industrial commission under this part are—
- (a) the same powers as the industrial commission has in relation to a proceeding started under the *Industrial Relations Act 2016*; and
  - (b) the powers of 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.

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## 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 officer may be taken to have committed offence**

- (1) If a corporation commits an offence against a deemed executive liability provision, each executive officer of the corporation is taken to have also committed the offence if—
  - (a) the officer authorised or permitted the corporation's conduct constituting the offence; or
  - (b) the officer was, directly or indirectly, knowingly concerned in the corporation's conduct.
- (2) The executive officer may be proceeded against for, and convicted of, the offence against the deemed executive liability provision whether or not the corporation has been proceeded against for, or convicted of, the offence.
- (3) This section does not affect either of the following—

- (a) the liability of the corporation for the offence against the deemed executive liability provision;
  - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the deemed executive liability provision.
- (4) In this section—
- deemed executive liability provision* means any of the following provisions—
- section 8A(1)
  - section 8B(1)
  - section 8C(1)
  - section 9(1)
  - section 9(2)
  - section 9(3)
  - section 9(4)
  - section 10(1)
  - section 11(1)
  - section 12(7)
  - section 13(10).

### **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.

**40 Effect of regulation amendment by Justice and Other Legislation Amendment Act 2013**

The amendment of the *Child Employment Regulation 2006* by the *Justice and Other Legislation Amendment Act 2013* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

## Schedule Dictionary

### section 3

***affected employer***, for part 2A, see section 15B(1).

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

***apprenticeship*** see the *Further Education and Training Act 2014*, schedule 1.

***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*.

***compliance notice***, for part 2A, see section 15F(2).

***constitutional corporation*** means a corporation to which section 51(xx) of the Commonwealth Constitution applies.

*Note—*

Section 51(xx) of the Commonwealth Constitution confers powers on the Commonwealth Parliament to make laws with respect to foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth.

***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.

***employment entitlements or protections*** see section 15B(3).

***executive officer***, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

***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 2016*.

***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.

***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.

***State award or order***, for part 2A, means either of the following—

- (a) an award under the *Industrial Relations Act 1999*;  
(b) an order under the *Industrial Relations Act 2016*, chapter 2, part 5.

***traineeship*** see the *Further Education and Training Act 2014*, schedule 1.

***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 yet of compulsory school age under the *Education (General Provisions) Act 2006*.