Queensland

Child Employment Amendment Regulation (No. 1) 2006

Explanatory Notes for SL 2006 No. 313

made under the

Child Employment Act 2006

Short title

Child Employment Amendment Regulation

Authorising Legislation

Section 39(2)(b) of the Child Employment Act 2006 (the Act) provides that the Governor in Council may make a regulation to "regulate work conditions for children in particular types of businesses, including in the entertainment industry".

Objective of the Regulation

The main purpose of this amendment to the Child Employment Regulation 2006 (the Regulation) is to regulate the employment conditions for children working in the entertainment industry. In addition the amendment has been developed to prohibit employers in any industry from requiring or permitting children to work while they are nude or partially nude.

Reasons for the Regulation

During 2002-2004, the Commission for Children and Young People and Child Guardian undertook a review of child labour in Queensland. Arising

from the review Government decided to introduce the Act and the Regulation and to develop a code of practice for the employment of children in the entertainment industry.

While the original intention was that the method of regulation be through a code of practice, it now takes the form of an amendment to the Regulation. The rationale for this is that codes of practice generally require only voluntary compliance while the nature of this amendment which imposes obligations upon employers and restricts hours and types of work requires mandatory compliance, making a Regulation the appropriate instrument.

It was also decided that the employment of children in 'adult entertainment' type activities across all industries would be prohibited. This differs from the concept of 'adult entertainment' used by the Liquor Licensing Division (LLD) of the Department of Tourism, Fair Trading and Wine Industry Development when restricting access to premises with an Adult Entertainment Permit. The intention is to complement existing prohibitions by providing protection against the types of activities not already prohibited. Generally this involves regulation of the less explicit, but still inappropriate, activities, such as any work performed by a child while nude or partially nude (e.g. topless waitressing).

Fundamental legislative principles

No conflicts with fundamental legislative principles have been identified.

Consultation

On 15 May 2006, a draft of the regulation was sent to approximately 65 stakeholders representing the community and government. In general, the feedback was positive and no substantial changes to the provisions of the Amendment were sought. Meetings were held with several stakeholders at their request where general agreement on the Amendment was reached.

A subsequent round of consultation resulted in concerns being raised by various Government agencies, including the Department of the Premier and Cabinet, the Department of Child Safety, the Department of Communities and the Department of Justice and the Attorney-General over exemptions to prohibitions upon nudity and semi-nudity. As a result, an exemption to the prohibition of children working nude or partially nude on the grounds of compliance with cultural tradition has been removed.

Financial Considerations

Additional costs to Government

The Act, Regulation and Amendment have introduced a new legislative and policy function for DEIR that will require the conduct of workplace audits and provision of advice and information and the monitoring and enforcement of compliance.

As a result an Urgent and Unavoidable Funding Issues Submission was made as part of the 2005-06 Budget Mid-Year Review. The Submission secured one-off funding of $400,000 with all other costs of implementation (including those for the Amendment) to be met from internal funds of the Department of Employment and Industrial Relations.

Economic impact

The Regulation will not impose an appreciable cost on employers or other sections of the community. Most employers in the entertainment industry already operate within the requirements of the Regulation so they are already bearing the costs of meeting the obligations that will be imposed on them by the regulation. Further, the cost of meeting the obligations is not high in itself.

The provisions in the amendment specifically regulating the entertainment industry are based on codes of conduct which exist currently in New South Wales (NSW) and Victoria. The NSW code has existed since 1992 and the Victorian code has operated since November 2005. Compliance with both of these interstate codes is compulsory. The United States, UK and Canada also have similar codes. Therefore, any productions that come to Queensland which originate from these areas generally already comply with their own codes of conduct for the employment of children while in Queensland. As most production companies which shoot film and television in Queensland are based in Victoria, NSW or one of the countries mentioned above, this represents the majority of this part of the industry.

In addition, most large live production companies in Queensland are either bound by the New South Wales (NSW) mandatory code of conduct by virtue of its being a schedule to the certified agreement (CA) for live theatre or by a memorandum of understanding with the MEAA. These include Opera Queensland, Queensland Performing Arts Trust (QPAT), Queensland Ballet, Gordon Frost Productions, and the Queensland Theatre

Company. These organisations are all currently working within the terms of the NSW code.

The number of children working in the entertainment industry in Queensland is low. The only data available is from the 2001 Census but it is suggested that the industry has not appreciably changed in size in the last five years. At that time 1893 persons were engaged in work as entertainers. That is 0.12% of persons employed in Queensland in total. Of these, it is estimated that less than five percent would be children.

The aspects of the codes which impose a duty on the employer will not be costly to implement, when considered in the context of the entire budget for a production. These go to such things as:

(a) the engagement of teachers in certain circumstances;

(b) employment of qualified supervisors for the children;

(c) food and drink;

(d) recreation facilities; and

(e) specific provisions for the health and safety of babies under the age of 12 weeks.

Notes on Provisions

Part 1 Preliminary

This part contains provisions relating to the title of the Regulation, its commencement date and definitions.

Part 2 General provisions for all work

Prohibition on nudity and sexually provocative clothing (s 3A)

Clause 3A prohibits employers from requiring or permitting children from working nude or partially nude. In particular this section prohibits children from working nude or being clothed when sexual organs, the anus or, in the case of female children who are at least 5 years of age, breasts are visible. This prohibition does not apply to children under the age of 12 months working in the entertainment industry, if the parent has given written permission and is present when the child is working in this manner.

Except for the exclusions relating to children under 12 months and female children under 5 years, this clause applies to all children under 18 years of age working in all industries.

Amendment of s 5 (Prohibited working hours for school-aged or young children)

This clause amends s 5 of the Regulation to clarify that the total number of hours a child may work during a period applies to work performed for all employers during that period.

Amendment of s 9 (Records for children who are working)

This section of the Regulation has been amended to clarify that records must be kept for at least 2 years after the child stops working for the employer.

Insertion of new section 10 and pt 3 Special circumstances certificates (s 10)

This clause prescribes that applications for special circumstances certificates must be lodged sufficiently in advance to allow the chief executive adequate time to consider the application.

Part 3 Specific provisions for work in the entertainment industry

Division 1 Application of part 3

Division 1 concerns restrictions that apply to work in the entertainment industry performed by school aged or young children. A school-aged child is a child who is under 16 years of age and is required to be enrolled at a State school or non-State school (e.g. they have not completed year 10). A young child is a child who is not yet of compulsory school age (i.e. they are less than 6 years of age). Work in the entertainment industry includes only performance work not work done by production staff. These terms are defined in the Act and Regulation.

Section 11 clarifies that employers must comply with the provisions of Part 3 as well as with any provisions in Part 2 of the Regulation that are applicable to work in the entertainment industry.

Division 2 Restrictions on work performed by school-aged or young children

Prohibition on inappropriate roles and situations (s 12)

Section 12 restricts the way in which a school aged or young child may work. This section restricts the employment of children in inappropriate roles or situations with respect to the child's age, emotional and psychological development, maturity and sensitivity.

Specific restrictions include that the children may not:

- be exposed to scenes or situations likely to distress or embarrass them; or
- be made distressed to obtain a more realistic depiction of a particular emotional reaction; or
- be present while another person is nude or clothed or partially nude. In certain circumstances (i.e. with the written consent and presence in the workplace of a parent of the child) children under the age of 12

months are be excluded from the prohibition on work while nude or partially nude.

Restrictions on work performed by children under 12 weeks (s 13)

Section 13 sets out the additional restrictions imposed when an employer employs a baby, that is, a child under 12 weeks. These generally go to ensuring the health and safety of the child while at work.

Prohibited working hours for school-aged or young children (s 14)

There are two sets of restricted hours prescribed for school-aged or young children working in the entertainment industry. These hours are categorised into permitted hours in recorded entertainment (contained in Schedule 1) and permitted hours in live entertainment (contained in Schedule 2).

Permitted hours for work in live entertainment are more restricted than those in recorded entertainment as it is generally accepted that live work is more stressful. The categories of recorded entertainment (e.g. film, television, advertising, photographic modelling etc.) and live entertainment (e.g. theatre, opera, fashion parades, etc.) are defined in the Dictionary to the Regulation.

Within the categories of recorded and live entertainment the spread of hours within which work may be performed, the maximum working hours per day and the maximum number of days in a week on which work can be performed are prescribed for a number of age groupings.

For example, the hours range from a maximum of four hours on one day per week between the hours of 9am to 6pm for children aged less than two years working in live entertainment to eight hours per day on five days per week between the hours of 6am to 11pm for children aged 8 years and up to 16 years, working in recorded entertainment.

Section 14 prescribes the total of hours spent at work and in completing compulsory educational requirements must not exceed 40 in any week. This includes whether at a school or in another arrangement (e.g. tutoring at the workplace) approved under the *Education (General Provisions) Act 2006* (the EGPA).

The length and frequency of meal and rest breaks and additional limits on working hours based on late ceasing times on the previous day or the number of hours spent at school on a day are also prescribed.

Where a school-aged or young child works in a business, or a corporation, that is totally owned by a close adult relative of the child, the requirements of section 14 do not apply. Close adult relative is defined as an adult who is a parent, grandparent, aunt, uncle, sibling or step sibling of the child.

Calculating hours already worked (s 15)

This section provides direction in determining what is to be included and excluded for the purposes of calculating the total number of hours worked. For instance, section 15 provides that some specified times spent in travelling to or from work, before work commences or after work ceases are counted as work hours, while the one hour break the child is required to take is excluded.

Prescribed supervision of school-aged or young children (s 16)

The section prescribes the way in which the child is to be supervised, including parental responsibility, the qualifications of those employed to supervise the children and the ratios of supervisors to children.

Division 3 Employers' duties for school-aged or young children

Employer to whom this division applies (s 17)

Section 17 clarifies that this division applies to an employer who employs a school aged or young child (a prescribed child) in the entertainment industry.

Information for parents about child employment guide (s 18)

Under this section an employer must inform the parent of a prescribed child about the existence of the Child Employment Guide and supply the parent a copy of it if so requested.

Employer's duty about collection of prescribed child and travel home (s 19)

Employers are obliged to take reasonable steps to ensure that children under 13 years are collected from work by a parent of the child or another person authorised in writing by the parent.

This provision also applies where the child is aged 13 years and over unless the child lives close to the place of employment and can be home by 6pm, in which case they may travel alone. Similarly, if the child's parent has given written consent and the child can be home before 8.30pm, the provisions in the above paragraph do not apply. If the child is to travel home alone, the employer is obliged to take steps to ensure that he/she starts their trip within 30 minutes of finishing work for the day.

Employer's duty to provide food and drink (s 20)

The employer is required to provide suitable meals at all reasonable times and make water and other suitable drinks available to children at all times.

Employer's duty to protect from climactic conditions (s 21)

The employer is obliged to ensure that children are suitably clothed and otherwise protected from illness or injury caused by climactic conditions.

Employer's duty about facilities for dressing and undressing (s 22)

The employer must provide facilities that allow a prescribed child to dress and undress in private while at work. Where the work in the entertainment industry is performed inside a building the standard of a dressing room is prescribed under the *Workplace Health and Safety Regulation 1997*.

Employer's duty to provide recreation materials and rest facilities (s 23)

The employer must provide suitable rest facilities and recreation materials for children while at work.

Employer's duty about unfitness for work and contagious medical conditions (s 24)

An employer must not permit a child to work if they are unfit for work due to illness or injury or if they are carrying or have been exposed to a contagious medical condition that may risk the health of another person. For a child who is not yet of school age, the employer must notify a parent or another person nominated by the parent if the child becomes ill or is injured at work or has been exposed to a contagious medical condition.

Employer's duty about presence of parent (s 25)

The employer must permit a parent to be at the workplace at all times while the child is at the workplace. The exception to this is if the exclusion of the parent is for a limited time and only for health and safety reasons or if the parent's presence would cause disruption to the production.

If the child is required to spend time away from home because of work commitments, the employer must provide the child and, if the parent so desires, a parent, with accommodation while they are away.

Employer's duty to engage teacher (s 26)

If a child is granted a flexible schooling arrangement under the provisions of the *Education (General Provisions) Act 2006* EGPA that allows the child to work during normal school hours and which requires that the child is tutored by a teacher, the employer must provide the teacher. They must also provide a suitable place and facilities for teaching.

Records for prescribed children (s 27)

In addition to the record keeping requirements in part 2 of the Regulation, the employer is required to keep details of any medical conditions or medicinal needs, dietary restrictions, the names of persons authorised by the parent to collect the child and the address or location where the child is working on each occasion.

Amendment of schedule (Dictionary)

This section provides that the schedule (Dictionary) be renumbered as schedule 3 and inserts in the schedule definitions of new terms used in the amendment to the Regulation. These include the following:

- Home;
- Live entertainment;
- Midwife;
- Prescribed child;
- Recorded entertainment;
- Registered nurse; and
- Registered teacher.

Insertion of new schedules 1 and 2

This section provides for the insertion of two new schedules detailing the permitted working hours for school-aged or young children. Schedule 1 applies to work performed in recorded entertainment and Schedule 2 applies to work in live entertainment.

ENDNOTES

1 Laid before the Legislative Assembly on . . .

2 The administering agency is the Department of Employment and Industrial Relations.