

## Child Employment Act 2003

### Act No. 81/2003

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Victoria

No. 81 of 2003

## Child Employment Act 2003<sup>†</sup>

[Assented to 11 November 2003]

**The Parliament of Victoria enacts as follows:**

### PART 1—PRELIMINARY

#### **1. Purpose and outline of Act**

- (1) The purpose of this Act is to reform the law relating to the employment of children under the age of 15.

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(2) In outline this Act—

- provides a system of permits to allow the employment of children under the age of 15;
- allows children under the age of 15 to work in family businesses without a permit;
- sets out general conditions of employment for children under the age of 15;
- provides for the making of a mandatory code of practice for the employment of children in the entertainment industry;
- prohibits the employment of children under the age of 15 in certain kinds of work;
- empowers the Governor in Council to declare kinds of employment prohibited for children under the age of 15;
- sets out offences;
- provides for the appointment of child employment officers and powers of inspection of workplaces where children are employed to ensure compliance with the Act;
- repeals Division 9 of Part III of the **Community Services Act 1970** (Employment of Children) and makes consequential amendments to that Act and the **Education Act 1958**.

(3) Sub-section (2) is intended only as a guide to readers as to the general scheme of this Act.

## 2. Commencement

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

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### 3. Definitions

In this Act—

**"child"** means a person under 15 years of age;

**"child employment officer"** means a person appointed under section 38;

**"declaration of suitability"** means a declaration given under section 19(4);

**"Department"** means Department of Innovation, Industry and Regional Development;

**"door-to-door selling"**, in relation to a child, means selling by the child of any goods or services at any premises other than premises occupied by the child's employer, and includes the child making a contact sales agreement within the meaning of the **Fair Trading Act 1999** with a purchaser;

**"employ"** has the meaning given by section 4;

**"employer"** has the meaning given by section 4;

**"employment"** has the meaning given by section 4;

**"entertainment"** means any form of entertainment and includes—

- (a) singing, dancing or acting;
- (b) playing a musical instrument;
- (c) appearing in a radio, television, film or similar program or production not in the nature of a news item;
- (d) modelling;
- (e) appearing in promotional events or advertising;
- (f) working as a photographic subject, whether still or moving;

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- (g) working in or in relation to a circus;
- (h) taking part in a performance that is recorded for use in a subsequent entertainment or exhibition;
- (i) working in musical theatre, plays, operas or other live entertainment;
- (j) performing in a shopping centre;

**"extended family member"** of a child, means an adult who is a grandparent, aunt, uncle, brother or sister of the child;

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

**"inland waters"** means—

- (a) any swamp or lake;
- (b) any waterway, channel or anabranch from its mouth to its source and any inlet, backwater or lagoon connected with it;
- (c) any other lagoon, backwater, anabranch or billabong;
- (d) any reservoir, dam, tank, channel or works for water storage or distribution;
- (e) any other waters declared by regulations under the **Fisheries Act 1995** to be inland waters for the purposes of that Act;

**"light work"** has the meaning given by section 5;

**"lock-up stage"** means the stage when a building's external wall cladding and roof covering is fixed, the flooring is laid and external doors and external windows are

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fixed (even if those doors or windows are only temporary);

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

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

**"parent"** has the same meaning as in the **Children and Young Persons Act 1989**;

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

**"person"** includes an unincorporated association;

**"police check"**, in relation to a person, means a check by the Chief Commissioner of Police on the person's criminal record (if any);

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

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

**Examples**

Examples of public places include—

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



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**"registered pharmacist"** means a person registered as a pharmacist under the **Pharmacists Act 1974**;

**"school day"** has the same meaning as in the **Education Act 1958**;

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

**"school term"** means—

- (a) in relation to a State school within the meaning of the **Education Act 1958**—the term as set by the Minister administering Part II of that Act;
- (b) in relation to any other school—the term as set by the school;

**"Secretary"** means Secretary to the Department;

**"sell"** includes offer for sale and expose for sale;

**"street trading"** means selling anything in a public place.

**4. What is employment?**

- (1) For the purposes of this Act, a child is engaged in employment if the child takes part or assists in any business, trade or occupation carried on for profit—
  - (a) whether or not the child receives payment or other reward for his or her participation or assistance; and
  - (b) whether the child is engaged under a contract of service, a contract for services or any other arrangement.

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- (2) For the purposes of this Act, a person who causes or permits a child to engage in employment—
- (a) employs the child; and
  - (b) is an employer of the child.
- (3) Despite sub-section (2)—
- (a) a parent or guardian of a child is not to be taken to employ the child, or to be an employer of the child, only because he or she permits the child to engage in employment, except in relation to a family business;
  - (b) the Secretary is not to be taken to employ a child, or to be an employer of a child, only because he or she issues a permit for the child to engage in employment;
  - (c) a principal or head teacher of a school is not to be taken to employ a child who is a pupil at the school, or to be an employer of the child, only because he or she makes a work experience arrangement under the **Education Act 1958** in respect of the child.
- (4) Examples of activities that do not constitute employment include—
- (a) participating in a church service or religious program;
  - (b) participating in an occasional project or entertainment the net proceeds of which are applied for the benefit of a church or school;
  - (c) performing any activity for a non-profit organisation;
  - (d) participating in a sporting activity (including coaching, refereeing or umpiring).
- (5) Nothing in sub-section (4) limits the kinds of activities that constitute or do not constitute employment.
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**5. What is light work?**

- (1) For the purposes of this Act, "**light work**" means work or any other activity that—
  - (a) is not likely to be harmful to a child's health or safety, moral or material welfare or development; and
  - (b) is not such as to prejudice the child's attendance at school or their capacity to benefit from instruction.
- (2) Examples of light work include—
  - (a) going on errands;
  - (b) casual work in or around a private home;
  - (c) golf-caddying;
  - (d) clerical work;
  - (e) gardening;
  - (f) street trading;
  - (g) delivering newspapers, pamphlets or other advertising material and making deliveries for a registered pharmacist;
  - (h) entertainment;
  - (i) farming related chores;
  - (j) working as a sales assistant in a shop.
- (3) An activity given as an example in sub-section (2) is not light work to the extent that it—
  - (a) is likely to be harmful to a child's health or safety, moral or material welfare or development; or
  - (b) is such as to prejudice the child's attendance at school or their capacity to benefit from instruction.

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- (4) Nothing in sub-section (2) limits the kinds of activities that may constitute light work.
  - (5) In determining whether or not any work or other activity is light work, consideration must be given to the nature and environment of the workplace or other place where the work or activity is, or is to be, performed.

**6. Supervisors include tutors and chaperones in entertainment**

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

**7. Act binds the Crown**

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

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**PART 2—EMPLOYMENT OF CHILDREN**

**Division 1—When may Children be Employed?**

**8. When may a child be employed?**

A child may be employed—

- (a) in accordance with a permit; or
- (b) in a family business, in accordance with Division 4.

Note: A child may also be employed in accordance with a work experience arrangement under Part IVA of the **Education Act 1958**—see section 64M of that Act.

**9. Employment without a permit**

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

Penalty: 50 penalty units in the case of a body corporate;

10 penalty units in any other case.

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

Penalty: 10 penalty units.

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

Note: This section also does not apply to the employment of a child in accordance with a work experience arrangement under the **Education Act 1958**, except as provided by section 64M(4) of that Act.

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**10. Minimum age for employment**

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

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

**11. Employment of children during school hours**

- (1) A person must not employ a child during school hours on any school day unless the Minister has granted the child an exemption from attendance at school under section 74G of the **Community Services Act 1970**.

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

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

Penalty: 60 penalty units.

**12. Prohibited employment**

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

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

60 penalty units in any other case.

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

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**Division 2—Permits for Children to Engage in Employment**

**13. Application for a permit**

- (1) A parent or guardian of a child may apply to the Secretary for a permit for the child to engage in employment.
- (2) An application for a permit must—
  - (a) be in the form approved by the Secretary; and
  - (b) state the name of the child and the child's school; and
  - (c) state the name of—
    - (i) the child's prospective employer; and
    - (ii) each person who will have direct supervision or control of the child in the proposed employment, where the supervision or control will not be directly supervised by another person; and
  - (d) contain, in respect of each person referred to in paragraph (c) who is not a parent, guardian or extended family member of the child—
    - (i) the signed consent of the person to a police check, in the form and containing the particulars specified for the purpose by the Chief Commissioner of Police; or
    - (ii) a statutory declaration that the person consented to a police check in connection with an application for a permit or declaration of suitability made within the previous 12 months and that since that time the person has not been charged with any offence; and



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- (e) contain a statement by the child's prospective employer giving details of—
  - (i) the intended workplace of the child and the business, trade or occupation carried on there; and
  - (ii) the duties it is intended that the child will perform; and
  - (iii) the intended hours of work of the child; and
- (f) be signed—
  - (i) by the applicant; and
  - (ii) by or on behalf of the prospective employer; and
  - (iii) by or on behalf of the child's school if the proposed employment will occur during school term.
- (3) If the child is not required to attend any school, the application must contain a statement to that effect and give the reason why the child is not required to attend.
- (4) The Secretary may refuse to consider an application if it does not comply with this section.

**14. Investigation of an application for a permit**

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

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

**15. Police checks**

- (1) The Secretary must refer to the Chief Commissioner of Police each consent to a police check contained in an application for a permit or declaration of suitability.
- (2) Subject to sub-section (3), within 14 days after receipt of a consent under sub-section (1), the Chief Commissioner of Police must—
- (a) cause a police check to be performed on the person who signed the consent; and
  - (b) give a report on the person's criminal record (if any) to the Secretary.
- (3) The Chief Commissioner of Police is not required to comply with sub-section (2) until the reasonable costs of the police check and report are paid by the prospective employer or employer (as the case requires).

**16. Determining an application for a permit**

- (1) Subject to sub-section (3), the Secretary may grant an application for a permit if he or she is satisfied that—
- (a) the health, education and moral and material welfare of the child will not suffer from the proposed employment; and
  - (b) the child is fit to be engaged in the proposed employment; and

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- (c) the child will not be subjected to any form of exploitation in the course of the proposed employment; and
  - (d) the proposed employment is not prohibited employment; and
  - (e) the child is of or over the minimum age permitted by section 10 for the proposed employment.
- (2) If the Secretary is not satisfied of the matters referred to in sub-section (1), he or she must refuse the application.
  - (3) The Secretary cannot grant an application until he or she has received, in respect of each person named in the application under section 13(2)(c) who is not a parent, guardian or extended family member of the child—
    - (a) a report under section 15(2)(b) on a police check; or
    - (b) a statutory declaration under section 13(2)(d)(ii).
  - (4) If the Secretary grants an application for a permit, he or she must—
    - (a) issue a permit to the applicant; and
    - (b) send a copy of the permit to the prospective employer and the child's school.
  - (5) The Secretary need not send a copy of the permit to the child's school if the school was not required to sign the application for the permit.

Note: Section 13(2)(f) only requires a school to sign an application if the proposed employment will occur during school term.

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- (6) A permit issued under this section—
- (a) must state the employment authorised by the permit; and
  - (b) subject to section 18, is valid for the period (not exceeding 12 months) specified in it.

**17. Permit conditions**

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

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

60 penalty units in any other case.

**18. Variation or cancellation of a permit**

- (1) The Secretary may vary or cancel a permit at any time by giving written notice to a parent or guardian of the child to whom it applies.
- (2) If the Secretary varies or cancels a permit, he or she must give written notice of the variation or cancellation to the child's employer and the child's school.

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- (3) The Secretary need not give notice under subsection (2) to a child's school if the school was not required to sign the application for the permit.

Note: Section 13(2)(f) only requires a school to sign an application if the proposed employment will occur during school term.

**19. Supervision of children employed under a permit**

- (1) An employer of a child under a permit must not, in the course of the child's employment, allow a person to have direct supervision or control of the child unless—
- (a) the person was named in the permit application as a person who will have direct supervision or control of the child; or
  - (b) the Secretary has given the employer a declaration of suitability in respect of the person; or
  - (c) the person is a parent, guardian or extended family member of the child; or
  - (d) the person's supervision or control of the child is directly supervised by—
    - (i) the employer; or
    - (ii) a parent, guardian or extended family member of the child; or
    - (iii) another person who was named in the permit application as a person who will have direct supervision or control of the child; or
    - (iv) another person in respect of whom the Secretary has given the employer a declaration of suitability.

Penalty: 50 penalty units in the case of a body corporate;

10 penalty units in any other case.

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- (2) The employer of a child under a permit may apply to the Secretary for a declaration of suitability in respect of a person who is intended to have direct supervision or control of the child.
- (3) The application must contain—
- (a) the name of the person in respect of whom the declaration is sought; and
  - (b) either—
    - (i) the signed consent of the person to a police check, in the form and containing the particulars specified for the purpose by the Chief Commissioner of Police; or
    - (ii) a statutory declaration by the person that he or she consented to a police check in connection with an application for a permit or declaration of suitability made within the previous 12 months and that since that time he or she has not been charged with any offence.
- (4) On an application under sub-section (2), the Secretary may give the employer a declaration of suitability in respect of a person if the Secretary considers that it is suitable for the person to have direct supervision or control of the child in the course of the child's employment.
- (5) The Secretary cannot give an employer a declaration of suitability in respect of a person until the Secretary has received—
- (a) a report under section 15(2)(b) on a police check; or
  - (b) a statutory declaration under sub-section (3)(b)(ii).
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**Division 3—General Conditions of Employment**

**20. Condition 1—light work**

A child may only be employed to perform light work.

**21. Condition 2—hours of work**

(1) A child may be employed—

- (a) for a maximum of 3 hours per day and 12 hours per week at any time during school term; and
- (b) for a maximum of 6 hours per day and 30 hours per week at any time outside school term.

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

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

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

**22. Condition 3—rest breaks**

- (1) A child who is employed must be given a rest break of at least 30 minutes after every 3 hours of work.
- (2) The rest break may be paid or unpaid.

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- (3) A child who is employed must be given a break of at least 12 hours between finishing one shift of work and commencing the next.

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

**23. Contravention of conditions**

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

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

60 penalty units in any other case.

**Division 4—Employment in Family Businesses**

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

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

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

**25. Provisions that do not apply to employment in family businesses**

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

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

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



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**26. Supervision in family businesses**

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

Penalty: 60 penalty units.

**Division 5—Employment in Entertainment**

**27. When may a child be employed in entertainment?**

A child may be employed in entertainment in accordance with a permit.

**28. Provisions that do not apply to employment in entertainment**

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

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

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

**29. Mandatory code of practice**

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

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

**30. What will the mandatory code contain?**

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

**31. How is the mandatory code made?**

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

**32. Effect of the mandatory code**

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

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

60 penalty units in any other case.

**33. Variation and revocation of the mandatory code**

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

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**34. Availability of the mandatory code**

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

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

**35. Restriction on certain activities**

- (1) A person must not cause or permit a child to engage in any of the following activities except to the extent that the activity is light work—
  - (a) participating in a church service or religious program;
  - (b) participating in an occasional project or entertainment the net proceeds of which are applied for the benefit of a church or school;
  - (c) engaging in any activity for a non-profit organisation;
  - (d) participating in a sporting activity (including coaching, refereeing or umpiring).

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

60 penalty units in any other case.

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

**36. Non-profit organisations—restricted hours for outdoor activities**

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

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

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**PART 4—COMPLIANCE**

**Division 1—Child Employment Officers**

**37. What are the functions of child employment officers?**

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

**38. Appointment of child employment officers**

The Secretary may, by instrument, appoint as a child employment officer for the purposes of this Act a person employed under Part 3 of the **Public Sector Management and Employment Act 1998** who, in the Secretary's opinion—

- (a) is competent to perform the functions and exercise the powers of a child employment officer; and
- (b) is of good repute, having regard to character, honesty and integrity; and
- (c) agrees in writing to perform the functions of a child employment officer in accordance with the criteria established from time to time by the Secretary.

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**39. Identity cards**

- (1) Each child employment officer must be issued with an identity card in the form approved by the Secretary.
- (2) The identity card must bear a photograph and the signature of the child employment officer.
- (3) A child employment officer must produce his or her identity card for inspection—
  - (a) before exercising a power under this Part other than a requirement made by post, fax, e-mail or other electronic communication; and
  - (b) at any time during the exercise of a power under this Part, if asked to do so.

Penalty: 10 penalty units.

**40. Police to assist child employment officers**

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

**41. When may powers be exercised?**

- (1) A child employment officer may exercise powers under this Part only to the extent that it is reasonably necessary to do so for the purpose of—
  - (a) investigating an application for a permit; or
  - (b) determining compliance with this Act or the regulations.

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- (2) In exercising powers under this Part, a child employment officer must—
- (a) cause as little inconvenience as possible; and
  - (b) not remain on premises any longer than is reasonably necessary.

**42. Power of entry**

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



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- (3) If a child employment officer exercises a power of entry under this section without the owner or occupier being present, the officer must—
- (a) on leaving the premises, leave a notice setting out—
    - (i) the time of entry; and
    - (ii) the purpose of entry; and
    - (iii) a description of all things done while on the premises; and
    - (iv) the time of departure; and
    - (v) the procedure for contacting the officer for further details of the entry; and
  - (b) post a copy of that notice—
    - (i) to the owner of the premises, if the identity and address of the owner are known to the officer; and
    - (ii) to the occupier of the premises, if the identity and address of the occupier are known to the officer.
- (4) A child employment officer does not have authority to enter any part of premises used for residential purposes, unless—
- (a) the officer has, before the entry and in addition to complying with sub-section (2), informed the occupier that he or she may refuse to consent to the entry; and
  - (b) the occupier has consented to the entry.
- (5) If an occupier consents to an entry under sub-section (4), the child employment officer who requested consent must before entering the premises ask the occupier to sign an acknowledgment in the prescribed form stating—
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- (a) that the occupier has been informed of the purpose of the entry; and
  - (b) that the occupier has been informed that he or she may refuse to consent to the entry; and
  - (c) that the occupier has consented to the entry; and
  - (d) the date and time that the occupier consented.
- (6) An occupier who signs an acknowledgment must be given a copy of the signed acknowledgment before the child employment officer leaves the premises.
- (7) If, in any proceeding, an acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry.
- (8) Sub-section (4) does not apply to any part of premises used both for residential purposes and for work. However, a child employment officer may only enter such premises under this section if an owner or occupier is present.

**43. Powers on entry**

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

- (a) inspect any work, material, machinery, appliance, article, facility or other thing;
  - (b) take samples of any goods or substances in accordance with the regulations;
  - (c) interview any employee;
  - (d) require a person having the custody of, or access to, a document relevant to the purpose of investigating an application for a permit or determining compliance with this Act or the regulations to produce the document to the
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officer within a reasonable period specified by the officer;

- (e) inspect, and make copies of or take extracts from, a document produced to him or her.

**44. Power to require production of documents**

- (1) A child employment officer, by written notice, may require a person to produce to him or her, within a reasonable period specified in the notice, a document relevant to the purpose of investigating an application for a permit or determining compliance with this Act or the regulations.
- (2) A child employment officer may inspect, and make copies of or take extracts from, a document produced to him or her under sub-section (1).

**45. Retention of documents**

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

**46. Confidentiality**

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

Penalty: 60 penalty units.

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

**Division 2—Offences**

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

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

Penalty: 60 penalty units.

- (2) A person must not—
- (a) give information to a child employment officer that the person knows to be false or misleading in a material particular; or

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- (b) produce a document to a child employment officer that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 60 penalty units.

**48. Protection against self-incrimination**

- (1) It is a reasonable excuse for a natural person to refuse or fail to give information, produce a document or do any other thing that the person is required to do by or under this Act, if the giving of the information, production of the document or doing of the thing would tend to incriminate the person.
- (2) Despite sub-section (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a record or other document that the person is required to keep by this Act or the regulations, if the production of the record or other document would tend to incriminate the person.

**49. Impersonating child employment officers**

A person must not impersonate a child employment officer.

Penalty: 60 penalty units.

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

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

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**51. Offences by unincorporated associations**

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

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**PART 5—GENERAL**

**52. Delegation**

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

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

**53. Regulations**

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

- (a) requiring employers to keep records in relation to the employment of children;
- (b) prescribing any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

(2) The regulations—

- (a) may be of general or limited application;
- (b) may differ according to differences in time, place or circumstances;
- (c) may impose a penalty, not exceeding 20 penalty units, for a contravention of the regulations.

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Part 6—Repeals, Amendments and Transitional Provisions

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**PART 6—REPEALS, AMENDMENTS AND TRANSITIONAL PROVISIONS**

**54. Repeal of existing child employment laws**

Division 9 of Part III of the **Community Services Act 1970** is repealed.

**55. New section 74G substituted in Community Services Act 1970**

For section 74G of the **Community Services Act 1970** substitute—

**"74G. Exemption from attendance at school**

The Minister may exempt a child from attendance at school on the ground—

- (a) of illness of, or severe hardship to, the child's parents; or
- (b) that the child (being at least 12 years of age) has been recommended by a medical practitioner for treatment that would prevent the child attending school; or
- (c) that it is in the interest of the child to be exempted from attendance at school."

**56. Amendment of Education Act 1958**

(1) In section 64LB of the **Education Act 1958**, after sub-section (1) **insert**—

"(1A) A work experience arrangement may be made under sub-section (1) in respect of a child only if the principal or head teacher is satisfied that—

- (a) the health, education and moral and material welfare of the child will not suffer from the proposed arrangement; and



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- (b) the child is fit to be engaged in the proposed work experience; and
- (c) the child will not be subjected to any form of exploitation in the course of the proposed work experience; and
- (d) the proposed work experience is not prohibited employment within the meaning of the **Child Employment Act 2003**.

Note: Section 64M(4) contains further restrictions on the making of work experience arrangements for certain types of employment."

- (2) In section 64M of the **Education Act 1958**, for sub-sections (3) and (5) **substitute—**
- "(3) For the avoidance of doubt, a permit under Division 2 of Part 2 of the **Child Employment Act 2003** is not required for the employment of a child in accordance with a work experience arrangement, except as provided by sub-section (4).
- (4) A work experience arrangement authorising the employment of a child in a factory or in a class of employment declared to be dangerous employment under sub-section (5) cannot be made unless—
- (a) the child is of or over 14 years of age; and
  - (b) a permit has been issued under Division 2 of Part 2 of the **Child Employment Act 2003** in respect of the proposed employment.
- (5) The Minister, by order published in the Government Gazette, may declare any class of employment to be dangerous employment if, in the Minister's opinion, there is a higher than usual risk of a child being exposed to

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the risk of physical injury in employment of that class.

(5A) The Minister, by order published in the Government Gazette, may from time to time amend or revoke an order made under sub-section (5)."

(3) in section 64MA of the **Education Act 1958**, for sub-section (3) **substitute**—

"(3) Section 64LB(1A) does not apply to a work experience arrangement under sub-section (1)."

**57. New section 64T inserted in Education Act 1958**

After section 64S of the **Education Act 1958** insert—

**"64T. Transitional**

This Part, as amended by section 56 of the **Child Employment Act 2003**, applies to work experience arrangements entered into or proposed to be entered into after the commencement of that section 56 and this Part, as in force immediately before that commencement, continues to apply to work experience arrangements entered into before that commencement."

**58. Transitional arrangement—permits**

A permit or licence issued under section 77 of the **Community Services Act 1970** that was in force immediately before the commencement of section 54 continues in force in accordance with its terms, as if it were a permit issued under Division 2 of Part 2 of this Act.

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Endnotes

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**ENDNOTES**

† *Minister's second reading speech—*

*Legislative Assembly: 9 April 2003*

*Legislative Council: 16 September 2003*

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

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