

Children and Young Persons (Care and Protection—Child Employment) Regulation 2005

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New South Wales

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Children and Young Persons (Care and Protection—Child Employment) Regulation 2005



New South Wales

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Children and Young Persons (Care and Protection) Act 1998*.

REBA MEAGHER, M.P., Minister for Community Services

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Children and Young Persons (Care and Protection—Child Employment) Regulation 2005*.

2 Commencement

This Regulation commences on 1 April 2005.

3 Definitions

(1) In this Regulation:

child has the same meaning as in section 221 (1) of the Act.

Code of Practice means the code of practice set out in Schedule 1.

employment has the same meaning as in section 221 (1) of the Act.

registered nurse and **registered midwife** have the same meanings as in the *Nurses and Midwives Act 1991*.

the Act means the *Children and Young Persons (Care and Protection) Act 1998*.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Definition of “employment” (section 221)

For the purposes of section 221 (2) of the Act, persons are taken to employ children if the persons make payments to (or confer other material benefits on) persons other than the

children themselves, but in respect of services rendered by those children.

Part 2 Employers' authorities

5 Employers' authorities (section 223)

For the purposes of section 223 (1) (d) of the Act, participation by a child in still photographic sessions is prescribed as a matter with respect to which an employer's authority is required.

6 Exemptions from requirement to hold employer's authority—foreign government

- (1) For the purposes of section 224 (1) (c) of the Act, any person who employs a child in connection with the conduct of an entertainment, exhibition or performance under the auspices of the government of a foreign country, in relation only to children who are so employed and who are nationals of the same foreign country, is exempt from being required to hold an employer's authority.
- (2) For the purposes of section 224 (5) (b) of the Act, the Minister may revoke any exemption granted by this clause.

7 Exemptions from requirement to hold employer's authority—short term employment of children over 10

For the purposes of section 224 (1) (c) of the Act, any person who employs a child who is more than 10 years old is exempt from being required to hold an employer's authority if:

- (a) the employment is outside school hours and for no more than 10 hours per week, and
- (b) the person complies with the requirements of the Code of Practice in respect of the child's employment, and
- (c) the person uses his or her best endeavours to ensure that all persons under his or her control comply with the requirements of the Code of Practice in respect of the child's employment, and
- (d) the person ensures that a copy of the Code of Practice is given to a parent of the child.

8 Applications for authorities and exemptions (clause 1 of Schedule 2)

- (1) For the purposes of clause 1 (1) of Schedule 2 to the Act, the following fees are the prescribed fees for an application for an employer's authority or for an exemption from the requirement to hold such an authority:
 - (a) \$1,100, in the case of an application that relates to work that involves participation in any entertainment, exhibition or performance, as referred to in section 223 (1) (a) or (b) of the Act,

- (b) \$550, in the case of an application that relates to work that involves offering anything for sale door-to-door, as referred to in section 223 (1) (c) of the Act,
 - (c) \$484, in the case of an application that relates to work that involves participation in still photographic sessions.
- (2) The Minister may reduce the amount of any such fee by up to 50 per cent if satisfied that the number of children that the applicant seeks to employ under the authority at any one time is not more than 5 and the period for which the authority is sought is not more than 1 month.
 - (3) The Minister may reduce the amount of any fee payable under this clause by up to 10 per cent if satisfied that the applicant displays a proven commitment to the principles of the Code of Practice.
 - (4) In the case of a fee that has been reduced in accordance with subclause (2), the reduction permitted by subclause (3) applies to the fee as so reduced.

9 Conditions of authorities (clause 5 of Schedule 2)

- (1) For the purposes of clause 5 (a) of Schedule 2 to the Act, an employer's authority is subject to the following conditions:
 - (a) that the employer will comply with the requirements of the Code of Practice,
 - (b) that the employer will use his or her best endeavours to ensure that all persons under his or her control comply with the requirements of the Code of Practice,
 - (c) that the employer will ensure that a copy of the Code of Practice is given to a parent of each child that he or she employs under the authority,
 - (d) that the employer will furnish the Children's Guardian with such information concerning the employment of children by the employer as the Children's Guardian may reasonably require.
- (2) The condition prescribed by subclause (1) (a) is subject to any revocation or variation effected by the Minister in accordance with clause 6 (1) of Schedule 2 to the Act.

Part 3 Miscellaneous

10 Repeal and saving

- (1) The *Children (Care and Protection—Child Employment) Regulation 2001* is repealed.
- (2) Any act, matter or thing that had effect under the *Children (Care and Protection—Child Employment) Regulation 2001* immediately before the repeal of that Regulation is taken to have effect under this Regulation.

Schedule 1 Code of Practice

(Clause 3)

Note—

Compliance with the requirements of the Code of Practice is a condition of an employer's authority. This is subject to any revocation or variation of any condition of an employer's authority effected by the Minister in accordance with clause 6 (1) of Schedule 2 to the Act.

Part 1 General

1 Record of employment

- (1) An employer must ensure that a record is kept for each child employed.
- (2) The record must include the following particulars:
 - (a) the name, address and home telephone number (if any) of the child,
 - (b) the name, address and both home and business telephone numbers (if any) of the child's parents,
 - (c) the name, address and both home and business telephone numbers (if any) of some other person nominated by the child's parents as being a person responsible for the child in the event of the parents being unavailable,
 - (d) the child's date of birth,
 - (e) the nature of the work that the child is employed to carry out,
 - (f) in the case of a child for whose employment a consent is required by or under any Act or law, particulars of any consent so given,
 - (g) the dates and times of each occasion on which the child is employed,
 - (h) particulars of the place of work or location at which the child is employed on each such occasion,
 - (i) the name, address and both home and business telephone numbers (if any) of the child's supervisor on each such occasion.
- (3) The record must be kept available for inspection by an inspector of the Office of the Children's Guardian at the business premises of the employer specified in that regard by the relevant employer's authority.

2 Notice of work locations

- (1) An employer must not at any time employ a child at any place of work or location unless the Children's Guardian has been given at least 7 days' notice (or such lesser notice as the Children's Guardian may, in a particular case or class of cases, allow) of

the employer's intention to employ the child at that place of work or location and specifying the address of the place of work or details of the location, and the period during which the child will be employed there.

- (2) The notice must also give details of any unusual risks existing in connection with the proposed location.

3 Insurance

- (1) An employer must ensure that each child is covered by a policy of personal accident insurance with benefits for injuries no less than those payable for the same injuries under the *Workers Compensation Act 1987* or the *Workplace Injury Management and Workers Compensation Act 1998*.
- (2) This clause does not apply with respect to any child in respect of whom compensation for injury is the subject of injury insurance effected in accordance with the *Workers Compensation Act 1987* or the *Workplace Injury Management and Workers Compensation Act 1998*.

4 Hours of work

- (1) An employer must not employ a child for more than one shift on any one day.
- (2) An employer must not employ a child for more than 4 hours on any day on which the child is required to attend school.
- (3) An employer must ensure that each child is given a 10 minute rest break every hour and a 1 hour rest break every 4 hours.

5 Schooling requirements

- (1) An employer must not employ a child during hours of normal school attendance unless:
 - (a) the employment is for a period during which the child is not required to attend school pursuant to the approval of the principal of the school that the child attends or the Director-General of the Department of Education and Training, or
 - (b) the child is enrolled at a school to undertake courses of study by means of distance education, or
 - (c) the child is registered for home schooling under Division 6 of Part 7 of the *Education Act 1990* and the employment is permitted by the conditions to which that registration is subject.
- (2) The total period of time for which a child is employed during any period of 7 consecutive days, when added to the time required to be spent by the child during that 7-day period fulfilling educational requirements specified in an approval referred

to in subclause (1) (a) or fulfilling home schooling or distance education requirements, must not exceed 40 hours.

(3) An employer must not employ a child in contravention of subclause (2).

6 Calculation of employment

A child's total period of employment during any period of 24 hours is to be calculated as if the following periods formed part of the time for which the child is employed:

- (a) any time in excess of 45 minutes spent by the child in travelling from home to the place of work,
- (b) if the employer is responsible for bringing the child to work, any time between the child's arrival at the place of work and the child's actual commencement of work,
- (c) the whole of the time (including any rest breaks or other breaks in work and any travelling time) that the child is required to be at work,
- (d) any time in excess of 45 minutes spent by the child in travelling home from the final place of work,
- (e) if the employer is responsible for taking the child home from work, any time between the child's finishing work and the start of the child's journey home from work.

7 Travel

- (1) An employer must ensure that each child is taken home after the child finishes work unless:
 - (a) the child is more than 12 years old, and
 - (b) the distance between work and home is less than 10 kilometres, and
 - (c) travel home will be by public transport and will be completed within daylight hours.
- (2) An employer must ensure that each child's journey home commences within 30 minutes after the child finishes work unless the child is accompanied by a parent of the child.

8 Minimum breaks between successive shifts etc

- (1) An employer must ensure that no child is required to start work less than 12 hours after the child has previously finished work, whether for the same or for any other employer.
- (2) An employer must not require a child to work later than 9.00 pm on any day if the child is required to attend school on the following day.

9 Food and drink

- (1) An employer must ensure that each child is provided with appropriate and sufficient nutritious food, having regard to the age, taste and culture of the child.
- (2) The food should be varied and should be served to children at reasonable hours.
- (3) An employer must ensure that water, fruit juice or other such drinks are readily available at all times to each child.

10 Toilet facilities

An employer must ensure that clean and easily accessible toilet, hand-washing and hand-drying facilities are provided at each place of work.

11 Protection from the elements

An employer must ensure that each child is adequately clothed and otherwise protected from extremes of climate.

12 Punishment prohibited

An employer must ensure that no child is subjected to any form of corporal punishment, social isolation, immobilisation or any other behaviour likely to humiliate or frighten the child.

13 Notification of accidents etc

In the event of a child becoming ill or being injured, the child's employer must ensure that at least one of the child's parents is immediately notified of that fact.

14 Parental contact

An employer must at all times ensure that each child is able to make contact with his or her parents or with some other person responsible for the child and must facilitate the making of any such contact whenever the child so requests or whenever it is otherwise appropriate to do so in the interests of the child.

15 Awards and agreements under the [Industrial Relations Act 1996](#)

The application of this Code of Practice to any child is subject to the provisions of any award or agreement in force under the [Industrial Relations Act 1996](#) in relation to the child.

Part 2 Entertainment, exhibitions and photography

Division 1 General

16 Application of Part

This Part applies to employment of a child to take part in:

- (a) an entertainment or exhibition, or
- (b) a performance that is recorded for use in a subsequent entertainment or exhibition, or
- (c) a photographic session.

17 Recreation facilities

An employer must ensure that appropriate recreational materials and rest facilities are available for each child during breaks in work, having regard to the age and circumstances of the child.

18 Dressing room facilities

An employer must ensure that facilities exist so that any child is able to dress and undress in private.

19 Work directions

- (1) An employer must ensure that no child is cast in a role or situation that is inappropriate to the child, having regard to the child's age, maturity, emotional or psychological development and sensitivity.
- (2) An employer must not allow a child:
 - (a) to be exposed to scenes which are likely to cause distress to the child, or
 - (b) to become distressed in order to obtain a more realistic depiction of a particular emotion or reaction.
- (3) An employer must not employ a child in any situation in which the child or any other person is naked.

20 Times of work

- (1) An employer must not employ a child otherwise than in accordance with:
 - (a) the times set out in Table A to this Schedule with respect to film and television, shopping centre performances, still photography and modelling or other exhibitions, and
 - (b) the times set out in Table B to this Schedule with respect to theatrical

performances.

- (2) In addition, an employer must not employ a child for more than 3 consecutive evening performances if the day following each performance is a day on which the child is required to attend school.
- (3) The times allowed by Tables A and B to this Schedule are subject to the other provisions of this Schedule with respect to hours of work.

21 Supervision

- (1) An employer must ensure that each child is provided with appropriate supervision, having regard to the age, sex and degree of maturity of the child.
- (2) In particular:
 - (a) the child is to be accompanied by a person responsible for the child, or by an adult authorised by name in writing by a person responsible for the child, whenever the child is travelling between home and the place of work or between places of work, and
 - (b) if the child's employment requires the child to spend one or more nights away from home, appropriate accommodation must be provided for both the child and a person responsible for the child, and
 - (c) if the child is less than 6 years old, the child is to be supervised:
 - (i) by a person responsible for the child or a person authorised by a person responsible for the child, or
 - (ii) by the holder of a child care certificate or a certificate of child care studies issued by a college of technical and further education, or
 - (iii) by a registered nurse or registered midwife, and
 - (d) if the child is more than 6 years old, the child is to be supervised by a person responsible for the child or by an adult with training or experience in the care of children of the age of the child to be supervised.
- (3) Subclause (2) (a) does not require a child to be accompanied when the child is travelling between home and a place of work or between places of work if:
 - (a) the child is more than 12 years old, and
 - (b) the distance to be travelled is less than 10 kilometres, and
 - (c) the travel will be by public transport and will be completed within daylight hours.
- (4) An employer must ensure that no supervisor supervises at any one time more than:

- (a) 2 children, if any of the children are under 3 years old, and
 - (b) 5 children, if any of the children are between 3 and 5 years old, and
 - (c) 10 children, if the children are more than 5 years old.
- (5) An employer must ensure that a supervisor does not have any other responsibilities while supervising children.

22 Children less than 3 years old

An employer must not employ a child who is less than 3 years old unless:

- (a) a registered nurse or registered midwife is present at all times, and
- (b) the registered nurse or registered midwife advises the employer that the child is suitable for employment, and
- (c) the registered nurse or registered midwife advises the employer that the environment in which the child is to be employed (including, in particular, the lighting and the temperature) will not cause the child to become distressed, and
- (d) the employer follows the advice of the registered nurse or registered midwife in all matters (such as the provision of nursing and mothercare and the use of makeup) that relate to the welfare of the child.

Division 2 Babies under 12 weeks of age

23 Application

This Division applies to babies who are less than 12 weeks old.

24 Employment requires express authority

An employer must not employ a baby unless the conditions of the employer's authority expressly authorise the employer to do so.

25 Registered nurse or registered midwife to be present

- (1) An employer must not employ a baby unless:
- (a) a registered nurse or registered midwife is present at all times, and
 - (b) the registered nurse or registered midwife advises the employer that the baby is suitable for employment, and
 - (c) the registered nurse or registered midwife advises the employer that the environment in which the baby is to be employed (including, in particular, the lighting and the temperature) will not cause the baby to become distressed, and

(d) the employer follows the advice of the registered nurse or registered midwife in all matters (such as the provision of nursing and mothercare and the use of makeup) that relate to the welfare of the baby.

(2) The registered nurse or registered midwife must not advise that a baby is suitable for employment unless he or she is satisfied:

(a) that the baby was delivered full term and in good health, and

(b) that the baby's birth weight was at least 3.0 kilograms, and

(c) that the baby has not had any post-natal problems, and

(d) that the baby is feeding successfully, and

(e) that the baby's weight gain from birth has been satisfactory.

26 Direct lighting not to be used

An employer who employs a baby must not allow the baby to be exposed to direct lighting.

27 Use of makeup

An employer must not allow makeup to be applied to a baby unless the makeup is non-irritating and uncontaminated.

28 Handling

An employer who employs a baby must not allow more than 4 people (including the baby's mother and the registered nurse or registered midwife) to handle the baby during any single period of employment.

29 Segregation from persons suffering respiratory or skin infections

An employer who employs a baby must not allow any person who has a respiratory or skin infection to come into contact with the baby.

Part 3 Door-to-door sales

30 Minimum age for children employed in door-to-door sales

An employer must ensure that each child employed in door-to-door sales is at least 14 years and 9 months old.

31 Times of work

(1) On days other than school days, an employer must not employ a child in door-to-door sales for more than 6 hours.

- (2) An employer must not employ a child in door-to-door sales for more than 5 days per week.
- (3) An employer must ensure that, if a child is employed outdoors in door-to-door sales, the employment:
 - (a) does not start before sunrise or 6.30 am, whichever is the later, and
 - (b) does not finish later than sunset or 6.00 pm, whichever is the earlier.

32 Entry to motor vehicles and private homes prohibited

An employer must ensure that no child is permitted to sell any item to a person in a motor vehicle or to enter a private dwelling during the door-to-door sale of items.

33 Supervision

- (1) An employer must ensure that each child employed in door-to-door sales works in the company of at least one other person and clearly indicates, by means of identification badges or distinctive clothing, the business name of the employer.
- (2) An employer must ensure:
 - (a) that a supervisor remains at all times in the general vicinity of each child employed in door-to-door sales and makes contact with each child at intervals of not more than 30 minutes and knows the whereabouts of each child at all times when the child is employed in door-to-door sales, and
 - (b) that the child is accompanied by a person responsible for the child, or by an adult authorised by name in writing by a person responsible for the child, whenever the child is travelling between home and the place of work or between places of work, and
 - (c) if the child's employment requires the child to spend one or more nights away from home, that appropriate accommodation is provided for both the child and a person responsible for the child.
- (3) An employer must ensure that a supervisor does not supervise more than 6 children employed in door-to-door sales at any one time.

Table A
Film and television, shopping centre performances, still photography and modelling or other exhibitions

Age	Maximum number of days of employment in any period of 7 consecutive days	Hours during which child may be employed	Maximum employment hours per day
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Under 6 months	1	6.00am-6.00pm	4 hours
6 months and under 3 years	1	6.00am-6.00pm	4 hours
3 years and under 8 years	4	6.00am-11.00pm	6 hours
8 years and under 15 years	5	6.00am-11.00pm	8 hours

Table B
Theatrical performances

Age	Maximum number of days of employment in any period of 7 consecutive days	Hours during which child may be employed	Maximum employment hours per day
Under 6 months	1	9.00am-6.00pm	4 hours
6 months and under 2 years	1	9.00am-6.00pm	4 hours
2 years and under 6 years	3	9.00am-6.00pm	4 hours
6 years and under 10 years	4	9.00am-10.00pm	4 hours
10 years and under 12 years	4	9.00am-11.00pm	6 hours
12 years and under 15 years	4	9.00am-11.00pm	8 hours