

# Children and Young Persons (Care and Protection) (Child Employment) Regulation 2010

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New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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New South Wales

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# Children and Young Persons (Care and Protection) (Child Employment) Regulation 2010



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*.

LINDA BURNEY, MP Minister for Community Services

## 1 Name of Regulation

This Regulation is the *Children and Young Persons (Care and Protection) (Child Employment) Regulation 2010*.

## 2 Commencement

This Regulation commences on 1 September 2010 and is required to be published on the NSW legislation website.

### Note—

This Regulation replaces the *Children and Young Persons (Care and Protection—Child Employment) Regulation 2005* which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

## 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.

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

**week** means a period of 7 days commencing on a Monday and ending on a Sunday.

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

#### **4 Persons who are taken to employ children**

For the purposes of section 221 (2) (a) of the Act, a person is taken to employ a child if the person makes a payment to (or confers any other material benefit on) the child or another person in respect of services rendered by the child or in respect of preparatory actions of the child related to those services.

**Note—**

Preparatory actions in respect of a child employed in the entertainment industry may include things such as rehearsals, wardrobe fittings, the making of sound recordings and publicity activities.

#### **5 Code of Practice**

- (1) A person who employs a child to do any of the things set out in section 223 (1) (a)-(d) of the Act must:
  - (a) comply with the requirements of the Code of Practice in respect of the child's employment, and
  - (b) 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 in respect of the child's employment, and
  - (c) ensure that a copy of the Code of Practice, or a document explaining that Code of Practice in a form approved by the Children's Guardian from time to time, is given to a parent of the child before the child commences employment.
- (2) It is a condition of an employer's authority that the employer must comply with this clause.
- (3) It is a condition of any exemption from the requirement to hold an employer's authority that the employer to whom the exemption relates must comply with this clause.
- (4) The Minister may approve a modification to the Code of Practice in respect of its application to an employer or class of employers and if such a modification is approved, a reference in this Regulation to the Code of Practice in relation to the employer or class of employers is taken to be a reference to the Code of Practice as modified.

#### **6 Employers' authorities**

- (1) 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.
- (2) For the purposes of clause 5 (a) of Schedule 2 to the Act, an employer's authority is subject to a condition 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.

## **7 Exemptions from requirement to hold employer's authority**

- (1) For the purposes of section 224 (1) (c) of the Act, a person is exempt from being required to hold an employer's authority in respect of the employment of a child in any of the following circumstances:
  - (a) the child is more than 10 years old and the employment is outside school hours and for no more than 10 hours per week,
  - (b) the child is a national of a foreign country who is employed in connection with the conduct of an entertainment, exhibition or performance under the auspices of the government of the foreign country.
- (2) For the purposes of section 224 (5) (b) of the Act, the Minister may revoke any exemption granted by this clause.

## **8 Fees payable in respect of authorities**

- (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:
  - (a) \$2,200, 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) \$1,100, 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) \$968, 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 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 25 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 Savings**

Any act, matter or thing that, immediately before the repeal of the *Children and Young Persons (Care and Protection—Child Employment) Regulation 2005*, had effect under that Regulation continues to have effect under this Regulation.

## Schedule 1 Code of Practice

(Clause 3 (1))

### Note—

Compliance with the requirements of the Code of Practice is required by all persons who hold an employer's authority or who are exempt from the requirement to hold such an authority. In those cases where payment in respect of services rendered by a child is contingent on some future event, such as the success of a production, a person will be required to comply with the requirements of the Code of Practice unless no payment is ever made in respect of those services.

## 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 personal telephone number (if any) of the child,
  - (b) the name, address and both personal and business telephone numbers (if any) of the child's parents,
  - (c) the name, address and both personal 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 personal 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 appointed by 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:

- (a) any risks existing in connection with the employment of the child, including risks associated with employing the child at the proposed place of work or location and risks associated with the child's proposed role or employment schedule, and
- (b) the strategies that the employer proposes to ensure compliance with this Code, and
- (c) any modifications to this Code that the employer may seek.

### **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 Schooling requirements**

An employer must not employ a child of compulsory school-age (within the meaning of the [Education Act 1990](#)) 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.

### **5 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.

## **6 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.

## **7 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.

## **8 Protection from the elements**

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

## **9 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.

## **10 Notification of illness or injury**

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

## **11 Parental contact**

An employer must at all times ensure that a child is able to make contact with a parent, or the parent's nominee under clause 1 (2) (c), 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.

## **12 Industrial instruments or agreements**

If there is any inconsistency between a provision of this Code of Practice and a provision of any industrial instrument or agreement that applies to a child, then the provision of the instrument or agreement prevails if it is more beneficial to the child than the provision of this Code.

### **Note—**

Section 9B (2) of the *Industrial Relations Act 1996* provides that a reference in any Act or instrument to an industrial instrument or agreement (however described) includes a reference to a relevant federal industrial instrument or agreement.

## **Part 2 Hours of work**

### **13 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 90 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 that the child is required to be at work excluding any rest break required by clause 14 (4) (b) or a rest break:
  - (i) that is required by a provision of an industrial instrument or agreement, being a provision that prevails over this Code because of clause 12, and
  - (ii) that the industrial instrument or agreement provides is not to be counted as part of the total number of hours worked.
- (d) any time in excess of 90 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.

### **14 General limitations on 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 5 consecutive days.
- (3) Despite clause 15–17, an employer must not employ a child for more than 4 hours on any day on which the child receives schooling.

### **Note—**

Clauses 15–17 set out the maximum hours that may be worked on days other than days on which a child receives schooling.

- (4) An employer must ensure that each child is given:
  - (a) a 10 minute rest break every hour, and
  - (b) a 1 hour rest break every 4 hours.
- (5) An employer must ensure that no child starts work less than 12 hours after the child has previously finished work, whether for the same or for any other employer.
- (6) An employer must ensure that a child works no later than 9.00pm on any day if the child is to receive schooling on the following day.
- (7) In addition, an employer must not employ a child later than 8.00pm on 3 consecutive days if the day following each day on which the child is employed is a day on which the child is to receive schooling.
- (8) The total period of time for which a child is employed during any week, when added to the time that the child receives schooling during that week, must not exceed 50 hours.

#### **15 Limitations on hours of work—entertainment or exhibitions**

- (1) This clause applies to the employment of a child with respect to film, television, radio or shopping centre performances, still photography, the production of images for broadcasting, modelling or other exhibitions.
- (2) An employer must not employ a child in employment to which this clause applies otherwise than in accordance with the following table:

| <b>Age of child</b>                                 | <b>Maximum days per week</b> | <b>Hours during which child may be employed</b> | <b>Maximum hours per day</b> |
|---|------------------------------|---|------------------------------|
| Under 6 months                                      | 1 day                        | 6.00am–6.00pm                                   | 4 hours                      |
| 6 months and under 3 years                          | 2 days                       | 6.00am–6.00pm                                   | 4 hours                      |
| 3 years and under 8 years                           | 4 days                       | 6.00am–11.00pm                                  | 6 hours                      |
| 8 years and under 15 years (or 16 years for models) | 5 days                       | 6.00am–11.00pm                                  | 8 hours                      |

#### **16 Limitations on hours of work—live performances**

- (1) This clause applies to the employment of a child with respect to live performances

(including theatrical, musical and circus performances) other than a performance referred to in clause 15.

- (2) An employer must not employ a child in employment to which this clause applies otherwise than in accordance with the following table:

| <b>Age of child</b>         | <b>Maximum days per week</b> | <b>Hours during which child may be employed</b> | <b>Maximum hours per day</b> |
|-----------------------------|------------------------------|---|------------------------------|
| Under 6 months              | 1 day                        | 9.00am-6.00pm                                   | 4 hours                      |
| 6 months and under 2 years  | 2 days                       | 9.00am-6.00pm                                   | 4 hours                      |
| 2 years and under 6 years   | 3 days                       | 9.00am-6.00pm                                   | 4 hours                      |
| 6 years and under 10 years  | 4 days                       | 9.00am-10.00pm                                  | 4 hours                      |
| 10 years and under 12 years | 4 days                       | 9.00am-11.00pm                                  | 6 hours                      |
| 12 years and under 15 years | 4 days                       | 9.00am-11.00pm                                  | 8 hours                      |

### **17 Limitations on hours of work—door-to-door sales**

- (1) An employer must not employ a child in door-to-door sales for more than 6 hours on any day.
- (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 6.30am, whichever is the later, and
  - (b) does not finish later than sunset or 6.00pm, whichever is the earlier.

## **Part 3 Entertainment, exhibitions and photography**

### **Division 1 General**

#### **18 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.

### **19 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.

### **20 Dressing room facilities**

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

### **21 Work directions**

- (1) Before a child is cast in a role or situation the employer must fully inform the child and a parent of the child of the nature of the role or situation and must take into account any comments of the child or the parent.
- (2) 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.
- (3) 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.
- (4) An employer must not employ a child in any situation in which the child or any other person has an exposed genital area, buttocks or, in the case of female children or other persons, breasts.

### **22 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 parent or parent's nominee 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

parent or parent's nominee, and

(c) if the child is less than 6 years old, the child is to be supervised:

(i) by a parent or parent's nominee, 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 parent or parent's nominee 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.

(6) In this clause:

***parent's nominee*** means an adult authorised by name in writing by the parent.

### **23 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 care of the child and the use of make-up) that relate to the welfare of the child.

## **Division 2 Babies under 12 weeks of age**

### **24 Application**

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

### **25 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.

### **26 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 care of the baby and the use of make-up) 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.

### **27 Direct lighting not to be used**

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

## **28 Use of make-up**

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

## **29 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.

## **30 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 4 Door-to-door sales**

### **31 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.

### **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.