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## EMPLOYMENT OF YOUNG PERSONS AND CHILD LABOUR POLICY

### Purpose

aims to abide by the relevant 'child labour' laws, which usually place restrictions on certain types of work performed by young persons, times when a young person is prohibited from working and prohibition from employing young persons below a specified age in certain designated work. Such laws are usually based on principles similar to occupational health and safety laws. However, some state child labour laws go beyond this principle and enforce state-based employment conditions on the employment of young people.

The Fair Work Act is not intended to exclude the operation of certain state and territory laws, including 'child labour' laws (see [s27\(2\)\(e\)](#)), however, the [Fair Work Regulations 2009 \[Cth\]](#) exclude any state or territory law that provides terms and conditions of employment that are covered by the National Employment Standards, or may be included in a modern award or included in an enterprise agreement.

Subject to the relevant state or territory child labour law, the employment of a young person during school holidays or outside school hours would not usually breach the relevant state or territory education law. For work during school hours to be allowable, a person would need to be participating in a school-based apprenticeship or traineeship, or an accredited work experience program arranged through the appropriate educational institution.

### Scope

This policy applies to all employees and employers, and covers behaviour that occurs in work-related context, including, but not limited to, daily employment, conferences, work functions, office Christmas parties and business trips. This policy also applies to those sharing a common workplace but not a common employer.

### Policy

When employing children, i.e. a person under 18 years of age, is aware and committed to abiding to the relevant federal, state, or territory laws, as well as the provisions of the applicable industrial instrument. These laws may relate to the employment of school-aged persons, state child employment laws and the relevant school leaving age.

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## State/territory education laws

Each state and territory prescribes a minimum school age, ie the age at which a child is not compulsorily required to attend school, although this varies depending on the jurisdiction. The minimum school leaving age in Northern Territory and Australian Capital Territory is 15 years; while in New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania, the student must remain in some form of education, training or employment till 17 years of age (or completion of Year 10).

Any person below the minimum school leaving age is precluded from accepting employment which would prevent their attendance when school is open for the child's instruction or participation in school activities. However, an employer would be able to employ a person of any age, subject to the relevant child employment laws in that state, or before or after compulsory school times.

## State/territory laws

A number of state and territory jurisdictions have introduced child labour laws in recent years. Such legislation currently exists in New South Wales, Victoria, Queensland, Western Australia and Australian Capital Territory, with the South Australian government considering the introduction of similar legislation.

### New South Wales

The [Industrial Relations \(Child Employment\) Act 2006 \[NSW\]](#) requires an employer of a person under 18 years of age to provide employment terms and conditions at least equivalent to those applying under the comparable New South Wales state award and industrial legislation. For example, where a comparable New South Wales state award prescribes a relevant junior rate of pay that is greater than the minimum rate in a modern award, the state award junior rate will prevail. New South Wales employers should be aware of this as it may cause potential under payment of wages claims from junior employees. The Act also applies to employers in New South Wales who dismiss a person under 18 years of age, regardless of the federal unfair dismissal laws. The NSW Office of Industrial Relations has responsibility for enforcement and ensuring compliance with the Act.

Under the [Children and Young Persons \(Care and Protection\) Act 1998 \[NSW\]](#), an employer of a person under 15 years employed in entertainment, still photography and door-to-door selling or, under 16 years if employed as a model must be the holder of an employer's authority. However, this legislation does not apply if the child is occasionally taking part in these activities or where the proceeds are for a charitable object.

The [Children and Young Persons \(Care and Protection\) \(Child Employment\) Regulation 2010 \[NSW\]](#) commenced on 1 September 2010. For the purposes of [s224\(1\)\(c\)](#) of this Act, a person is exempt from being required to hold an employer's authority in respect of the employment of a child if:

- The child is more than 10 years old and the employment is outside school hours and for no more than 10 hours per week, or
  - The child is a national of a foreign country who is employed in connection with the conduct of entertainment, exhibition or performance under the auspices of the government of the foreign country
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## Victoria

The [Child Employment Act 2003 \[Vic\]](#) regulates the employment of children in Victoria under the age of 15 years. There is a minimum age of 13 years for employment generally, although there is no minimum age regarding employment in a family business or in the entertainment industry. However, there is a minimum age of 11 years for children delivering newspapers and advertising material or making deliveries for a registered pharmacist.

Hours of work are regulated under the Act. Children can be employed for a maximum of 3 hours per day and 12 hours per week during school term, and a maximum of 6 hours per day and 30 hours per week during school holidays. These hours are inclusive of rest breaks.

Children can only be employed between 6 am and 9 pm and must receive a 30-minute break every three hours. Children are only permitted to perform light work. 'Light work' is defined as work that is not likely to be harmful to a child's health, safety or moral and material welfare. Before employing a child under 15 years, an employer is required to ensure that a Child Employment Permit has been granted.

## Queensland

The [Child Employment Act 2006 \[Qld\]](#) states that an incorporated employer of a child under 18 years who is employed under a federal workplace agreement must ensure the agreement or arrangement under which the child is employed does not disadvantage the child in relation to the child's employment conditions, when compared with the comparable Queensland state award or the minimum conditions under other state legislation (eg [Industrial Relations Act 1999 \[Qld\]](#)).

This means that where a comparable state award prescribes a relevant junior wage rate greater than the relevant rate in an applicable modern award, the state award wage rate will prevail. The Act also allows persons under 18 years access to the state unfair dismissal laws through the Queensland Industrial Relations Commission.

Regulations to the Act stipulate restrictions and exemptions in regard to the minimum age of employment, maximum hours of work, shifts, work breaks, prohibited hours, and supervision of a 'school aged child' (ie a child under 16 years and required to be enrolled at school).

The maximum allowable hours of work for school-aged children are:

- 4 on a school day
- 8 on a non-school day
- 12 during a school week
- 38 during a non-school week

Also, children between 11 and 13 years are not allowed to work between 6 pm and 6 am, while other school-aged children are not allowed to work between 10 pm and 6 am. The restrictions relating to age do not apply where the child is employed in the family business (defined as wholly owned by a close adult relative of the child) or in the entertainment industry. A school-aged child is not able to work unless written consent is provided on a Parent's Consent Form.

## Western Australia

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The [Children and Community Services Act 2004 \[WA\]](#) provides that children need to be 15 years of age to be employed in part-time, casual, or holiday jobs, although there are some exceptions when younger children can be employed. Children aged between 13 and 15 years may be employed in a shop, retail outlet, restaurant, delivering newspapers or pamphlets, or collecting shopping trolleys between 6 am and 10 pm and if the work is outside school hours.

Children between 10 and 13 years may be employed to deliver newspapers, pamphlets, or advertising material provided the work is between the hours of 6 am and 7 pm and outside school hours. These restrictions do not apply where children are engaged in employment as part of an official educational program.

### **Full-time employment**

#### *Leaving school before the end of Year 10*

[Section 11](#) of the [School Education Act 1999](#) allows the Minister for Education through the Chief Executive Officer of the Department of Education Services to exempt a child of compulsory education age from enrolment at a non-government school.

A parent/legal guardian of a student who seeks an exemption must make application through the school to the Department of Education Services using the [Application for Exemption from School Enrolment \(Non-Government Schools\)](#) form. The main grounds for granting an exemption are for the student to commence full-time employment, a traineeship or an apprenticeship. The form requires the school principal to make a recommendation. The form is returned to the Department of Education Services.

The exemption will be granted only until the end of Year 10 (or until the end of the year in which the student reaches the age of 15).

The *School Education Act 1999* (as amended) requires all young people to participate in full-time in education, training or employment, or a combination of these, until the end of the year they turn 17. A parent/legal guardian must therefore complete an additional form when the student reaches the year in which he/she turns 16 (and ordinarily would be in Year 11 had they remained at school) but intends continuing in employment, a traineeship or an apprenticeship. The [Notice of Arrangements](#) form is obtainable from the Department of Education. The form provides for acknowledgement by the Minister for Education of the student's participation in one or more education, training or employment options.

This additional form is best completed at the same time as applying for the school exemption before the end of Year 10. The form is returned to the Department of Education Services which will hold the form and pass to the Department of Education at the beginning of the year in which the student turns 16.

The Notice of Arrangements form and information on the new school leaving age can be downloaded from the website of the [Department of Education](#).

#### *Leaving school during Years 11 and 12 (including leaving at the end of a fully completed Year 10)*

A parent/legal guardian is required to complete and submit the Notice of Arrangements form on behalf of their child direct to the Department of Education. Completion of the form fulfils the parent's legal obligation under the legislation.

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## Australian Capital Territory

The [Children and Young People Act 2008 \[ACT\]](#) regulates the employment of children and young persons under the age of 18 years, and encompasses all children and young people employed in the Australian Capital Territory under a contract of service or a contract for service. The Act also covers 'work experience' undertaken by a young person. The Chief Executive may prohibit employment if it is deemed to be contrary to the best interests of the child or young person.

A child or young person may be employed on 'light work', or be employed in a family business. The [Children and Young People Regulation 2009 \[ACT\]](#) provides examples of light work including: going on errands, casual work in and around a private home, work related to sporting activities, clerical work, work as a cashier, gardening, taking care of children in a private home, providing entertainment, eg singing, dancing, musical instrument playing, performing on radio, television or film, modelling, and a photographic subject.

A child or young person cannot be employed in 'high risk employment', which is an industry, occupation or activity declared by the Minister as high risk. The [Children and Young People \(High Risk Employment\) Declaration No. 1 2009](#) states that employment in an industry, occupation or activity that involves any of the following to be high risk employment:

- use of dangerous machinery
- use of dangerous substances (as defined in the [Dangerous Substances Act 2004](#))
- handling harsh or toxic chemicals
- high elevation work
- service of alcohol
- gaming or gambling services
- nudity and display of genitals
- working with extreme temperatures
- heavy construction and excavation work.

## Industrial Instruments and Age Restrictions

Most modern awards and enterprise agreements do not prescribe a minimum age regarding the employment of young persons, except in respect of certain classes of work regarded as dangerous or unduly arduous, or the performance of work after certain hours, eg late night work.

Many modern awards which cover occupations that are semi-skilled or unskilled may not prescribe junior wage rates. This means the employer is required to pay the minimum adult rate for the classification under which the work is performed by the junior employee, regardless of their age.

Modern awards that do not include junior wage rates include:

- *Security Services Industry Award 2010*
  - *Cleaning Services Award 2010*
  - *Building and Construction General On-Site Award 2010*
  - *Quarrying Award 2010*
  - *Nurses Award 2010*
  - *Electrical, Electronic and Communications Contracting Award 2010*
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Where a modern award prescribes a scale of wage rates commencing from (say) 16 years of age, an employee employed who is younger than 16 must be paid the 16 year minimum award rate of pay.

**Breach of Policy**

A breach of this policy may be found to be unlawful and potentially result in legal action under the relevant legislation above.

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