

**CHILDREN (CARE AND PROTECTION) (CHILD
EMPLOYMENT) AMENDMENT ACT 1992 No. 51**

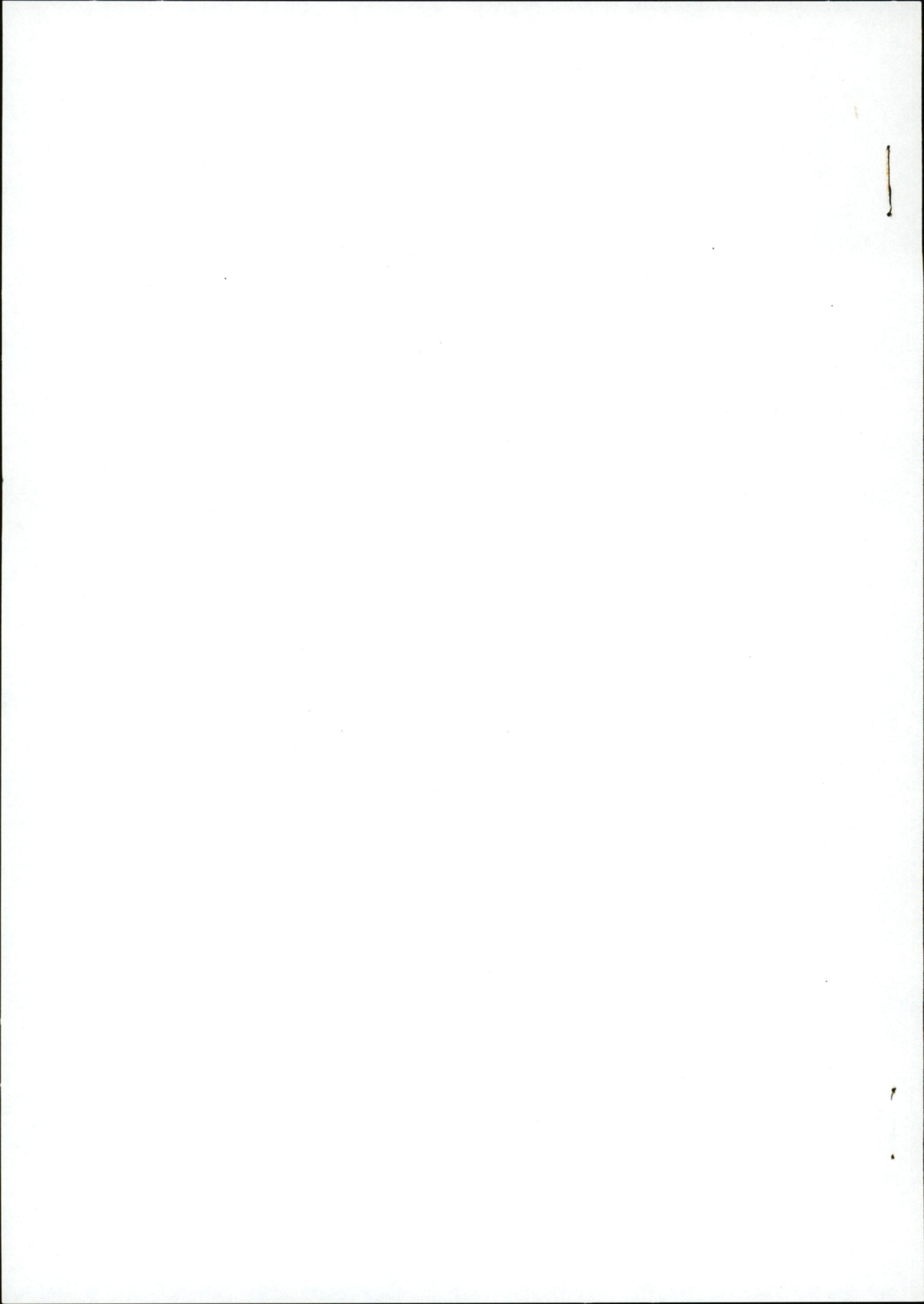
NEW SOUTH WALES



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**SCHEDULE 1—AMENDMENT OF CHILDREN (CARE AND PROTECTION)
ACT 1987**



**CHILDREN (CARE AND PROTECTION) (CHILD
EMPLOYMENT) AMENDMENT ACT 1992 No. 51**

NEW SOUTH WALES



Act No. 51, 1992

An Act to amend the Children (Care and Protection) Act 1987 with respect to the employment of children under the age of 15 years; to amend certain other Acts consequentially; and for other purposes.
[Assented to 15 September 1992]

Children (Care and Protection) (Child Employment) Amendment Act 1992 No. 51

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Children (Care and Protection) (Child Employment) Amendment Act 1992.

Commencement

2. (1) This Act commences on a day to be appointed by proclamation.

(2) The proclamation also has the effect of substituting Part 4 of the Children (Care and Protection) Act 1987 and of commencing that Part as so substituted.

Amendment of Children (Care and Protection) Act 1987 No. 54

3. The Children (Care and Protection) Act 1987 is amended as set out in Schedule 1.

Consequential amendment of other Acts

4. (1) The Child Welfare Act 1939 is amended by repealing Part 13 (sections 65–71).

(2) The Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987 is amended by repealing clause 14 of Schedule 5.

SCHEDULE 1—AMENDMENT OF CHILDREN (CARE AND PROTECTION) ACT 1987

(Sec. 3)

(1) Section 3 (**Definitions**):

In section 3 (1), in alphabetical order, insert:

“**employer’s authority**” means an employer’s authority that has been granted by the Minister under Schedule 1A and that is in force;

(2) Part 4 (sections 50–54):

Omit the Part, insert instead:

PART 4—EMPLOYMENT OF CHILDREN

Definitions

50. (1) In this Part:

“**child**” means a child under the age of 15 years;

SCHEDULE 1—AMENDMENT OF CHILDREN (CARE AND PROTECTION) ACT 1987—*continued*

“**employment**” means paid employment or employment under which some other material benefit is provided.

(2) Even though a relationship of employment may not otherwise exist, a person is taken, for the purposes of this Part, to employ a child if:

- (a) the regulations declare that persons of the class to which the person belongs are taken to employ children of the class to which the child belongs; or
- (b) the Minister has, by notice in writing served on the person, declared that the person is, for the purposes of this Part, taken to employ the child or children of the class to which the child belongs.

Endangering children in employment

51. A person who causes or allows a child to take part in any employment in the course of which the child’s physical or emotional well-being is put at risk is guilty of an offence.

Certain employers of children to be authorised

52. (1) A person (other than the holder of an employer’s authority) must not employ a child:

- (a) to take part in an entertainment or exhibition; or
- (b) to take part in a performance which is recorded for use in a subsequent entertainment or exhibition; or
- (c) to offer anything for sale from door-to-door; or
- (d) to do anything else that is prescribed for the purposes of this section by the regulations.

(2) The holder of an employer’s authority must not employ a child in contravention of the conditions of the authority.

(3) A person must not cause or procure a child to be employed knowing that the child will be employed in contravention of this section.

(4) A person having the care of a child must not consent to or otherwise allow the child to be employed knowing that the child will be employed in contravention of this section.

Maximum penalty: 10 penalty units.

Exemptions

53. (1) A person who employs a child is not required to hold an employer’s authority if:

SCHEDULE 1—AMENDMENT OF CHILDREN (CARE AND PROTECTION) ACT 1987—*continued*

- (a) the child is employed for the purpose of a fundraising appeal (within the meaning of the Charitable Fundraising Act 1991) by a person lawfully conducting the appeal; or
 - (b) the child is employed for the purpose of an occasional entertainment or exhibition the net proceeds of which are to be applied wholly for a charitable object; or
 - (c) the person is exempt by the regulations from being required to hold an employer's authority; or
 - (d) the person is exempt by the Minister from being required to hold an employer's authority.
- (2) A person is exempt by the Minister from being required to hold an employer's authority only if written notice of the exemption has been served on the person setting out the conditions (if any) on which the exemption was granted and only while the person has not contravened any such condition.
- (3) The Minister may revoke an exemption by a written notice of revocation served on the exempted person, but only after:
- (a) written notice of intention to revoke the exemption has been served on the person setting out the reason for which it is intended to revoke the exemption; and
 - (b) the Minister has taken into consideration any representation made to the Minister by the person within 28 days after service of the notice of intention.
- (4) Without limiting the reasons for which an exemption may be revoked, an exemption may be revoked if any condition to which it is subject is contravened.
- (5) The Minister may revoke an exemption:
- (a) which applies because the employer is lawfully conducting a fundraising appeal, but only with the concurrence of the Minister administering the Charitable Fundraising Act 1991; or
 - (b) granted by the regulations, but only if the regulations allow the Minister to revoke the exemption.

SCHEDULE 1—AMENDMENT OF CHILDREN (CARE AND PROTECTION) ACT 1987—*continued*

Employers' authorities

54. Schedule 1A applies to an employer's authority.

Removal of child from place of unlawful employment

54A. A child is taken to be a child in need of care if:

- (a) a person (other than a relative of the child) is employing the child in contravention of this Part at any place; and
- (b) an officer requests a person responsible for the child to remove the child from the place; and
- (c) the child is not immediately so removed.

Entry without warrant in certain circumstances

54B. (1) For the purpose of:

- (a) ensuring that the provisions of this Act and the regulations and of any conditions imposed on an employer's authority are being complied with at premises that are a place of employment of a person who is the holder an employer's authority; or
- (b) ensuring that the conditions of any exemption from holding an employer's authority are being complied with at premises that are a place of employment of an exempted employer,

an authorised officer may, at any time, without any authority other than this subsection, enter the premises and inspect them and observe and converse with any person apparently employed there.

(2) In exercising the powers conferred by this section, an authorised officer may be accompanied by:

- (a) a medical practitioner; or
- (b) a member of the police service,

or both, and any such medical practitioner may inspect the premises and observe, examine and converse with any person apparently employed there.

(3) Nothing in this section authorises:

- (a) the entry of a dwelling; or
- (b) the examination of a person in contravention of section 20 or 21 or against the person's will.

SCHEDULE 1—AMENDMENT OF CHILDREN (CARE AND PROTECTION) ACT 1987—continued

- (3) Section 112 (**Appeals to Community Welfare Appeals Tribunal**):
- (a) After section 112 (1) (a), insert:
 - (a1) a decision of the Minister to grant an employer's authority or to impose a condition on, to revoke or vary any condition of, to impose a further condition on or to suspend or revoke any such authority;
 - (b) From section 112 (1) (b), omit "50 (4)", insert instead "53".
 - (c) In section 112 (1) (d), after "paragraph (a)", insert ", (a1)".
 - (d) After section 112 (1) (d), insert:
 - (d1) a decision of the Minister to declare under section 50 (2) that a person is taken to be the employer of a child;
- (4) Section 124 (**Regulations**):
- In section 124 (1) (i), before "registers", insert "the keeping and inspection of records and".
- (5) After Schedule 1, insert:

SCHEDULE 1A—PROVISIONS RELATING TO EMPLOYERS' AUTHORITIES

(Sec. 54)

Applications for authorities or exemptions

1. (1) An application for an employer's authority or for an exemption from the requirement to hold such an authority is to be made in a form approved by the Minister and is to be accompanied by the prescribed fee.

(2) The regulations may provide for the reduction or rebating of fees for applications in prescribed circumstances.

Requirements for applicants for authorities

2. An applicant for an authority may be granted the authority only if:

- (a) the applicant has the capacity to comply with Part 4 and the conditions on which the authority is to be granted; and
- (b) the applicant establishes to the satisfaction of the Minister that the applicant will comply with that Part and those conditions while the authority is in force.

SCHEDULE 1—AMENDMENT OF CHILDREN (CARE AND PROTECTION) ACT 1987—*continued*

Grant or refusal of authority

3. (1) When a person applies to the Minister for an employer's authority, the Minister must cause an inquiry to be made concerning the application by officers and a report on the application to be made and furnished to the Minister by an officer.

(2) On receipt of the report, the Minister must:

(a) grant the authority to the applicant; or

(b) cause to be served on the applicant a notice stating that, when 28 days have expired after service of the notice, the Minister intends to refuse the authority on the grounds specified in the notice unless it has been established to the Minister's satisfaction that the authority should not be refused.

(3) When the 28 days have expired, the Minister must, after considering any submissions made during that period by the applicant:

(a) grant an employer's authority to the applicant; or

(b) refuse the authority and cause to be served on the applicant a notice stating the ground on which the authority has been refused.

(4) The period of 28 days referred to in this clause may be varied or waived by agreement between the Minister and the applicant.

Duration of authority

4. (1) Unless sooner revoked, an employer's authority remains in force for such period, not exceeding 12 months, as is specified in the authority, commencing on the date on which it is granted, or such later date as may be specified in the authority.

(2) If an application is made by the holder of such an authority for a further employer's authority while the other authority is still in force, the other authority remains in force until the application is finally dealt with (whether or not on appeal).

SCHEDULE 1—AMENDMENT OF CHILDREN (CARE AND PROTECTION) ACT 1987—*continued*.

Conditions of authority

5. An employer's authority is subject to:
- (a) any condition prescribed by the regulations for all employers' authorities or for a class of employers' authorities to which the authority belongs; and
 - (b) any other condition imposed by the Minister:
 - (i) specified in the authority when it was granted; or
 - (ii) subsequently imposed on the authority under clause 6.

Revocation, variation or addition of conditions on authorities

6. (1) The Minister may (whether or not at the request of the holder of the authority):

- (a) revoke or vary any condition of an employer's authority; or
- (b) impose a further condition on an employer's authority, by causing to be served on the holder of the authority a notice stating that the condition specified in the notice is revoked or varied as specified or that the further condition specified in the notice is imposed on the authority.

(2) This clause does not apply to a condition of an authority that is prescribed by the regulations unless the regulations provide otherwise.

Suspension and revocation of authority

7. (1) The Minister may suspend or revoke an employer's authority on the ground that the holder of the authority has contravened a provision of this Act or the regulations or a condition of the authority.

(2) The Minister may suspend or revoke an employer's authority at the request of the holder of the authority.

(3) If the Minister intends to suspend or revoke an employer's authority, the Minister must cause to be served on the holder of the authority a notice stating that, when 28 days have expired after service of the notice, the Minister intends to suspend the authority for a period (not exceeding 6

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months) specified in the notice or to revoke the authority, as the case may be, on the ground specified in the notice, unless it has been established to the Minister's satisfaction that the Minister should not suspend or revoke the authority.

(4) When 28 days have expired after a notice has been served under subclause (3), the Minister may, after considering any submissions made during that period by the holder of the authority:

(a) suspend the authority to which the notice relates for the period (not exceeding 6 months) specified in the notice; or

(b) revoke the authority to which the notice relates, by a further notice served on the holder, which further notice must specify the ground on which the authority is suspended or revoked, as the case may be.

(5) Despite subclauses (3) and (4), if the holder of an employer's authority has requested that the authority be suspended or revoked, the Minister may, by notice served on the holder of the authority:

(a) suspend the authority for the period (not exceeding 6 months) specified in the notice; or

(b) revoke the authority,
as the case may require.

(6) An employer's authority is taken not to be in force during any period for which it is suspended.

(7) If an employer's authority has been suspended under this clause for a period, the Minister may, at any time during that period, restore the authority by serving on the holder of the authority immediately before it was suspended a notice stating that the authority is restored.

(6) Schedule 3 (Savings and Transitional Provisions):

(a) At the end of clause 1 (1), insert:

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SCHEDULE 1—AMENDMENT OF CHILDREN (CARE AND PROTECTION) ACT 1987—*continued*

(b) After Part 2, insert:

PART 3—SAVING CONSEQUENT ON THE ENACTMENT OF THE CHILDREN (CARE AND PROTECTION) (CHILD EMPLOYMENT) AMENDMENT ACT 1992

Saving of certain child employment licences

6. (1) If, immediately before the repeal of Part 13 of the Child Welfare Act 1939 by the Children (Care and Protection) (Child Employment) Amendment Act 1992, the employment of a person was authorised by a licence in force under that Part:

(a) the Child Welfare Act 1939, as in force immediately before the repeal of that Part, continues to apply to the employment of the person; and

(b) Part 4 of this Act does not apply to that employment, until the licence expires or otherwise ceases to have effect under the Child Welfare Act 1939 or until the transitional period expires, whichever occurs first.

(2) In this clause, “**the transitional period**” means the period of 3 months after the commencement of Part 4, as substituted by the Children (Care and Protection) (Child Employment) Amendment Act 1992.

[Minister's second reading speech made in—
Legislative Council on 25 March 1992
Legislative Assembly on 29 April 1992]