

CHILD WELFARE AMENDMENT ACT

No. 82 of 1990

AN ACT to amend the *Child Welfare Act 1947* and to repeal the *Child Welfare Amendment Act 1984*.

[Assented to 20 December 1990.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Child Welfare Amendment Act 1990*.

Commencement

2. (1) Except as provided in subsections (2) and (3), this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Section 5 is to be taken to have come into operation on 1 December 1989.

(3) Section 9 shall come into operation on such day as is fixed by proclamation.

Principal Act

3. In this Act, the *Child Welfare Act 1947** is referred to as the principal Act.

[*Act No. 66 of 1947 reprinted as at 23 May 1990.]

Section 9A amended

4. Section 9A of the principal Act is amended in subsection (1) (a) by inserting after “66B,” the following—

“ 108B, 108D, ”.

Section 23A amended

5. Section 23A of the principal Act is amended—

(a) by deleting paragraph (a) in the definition of “proceedings”;
and

(b) by deleting paragraph (a) in the definition of “respondent”.

Section 31A amended

6. Section 31A of the principal Act is amended in subsection (1) by deleting the penalty provision and substituting the following—

“ Penalty: \$10 000 or imprisonment for 12 months, or both. ”.

**Sections 106 and 107 repealed
and sections substituted**

7. Sections 106 and 107 of the principal Act are repealed and the following sections are substituted—

Definition

“ 106. In this Part “exempt child” means a child who holds a certificate granted under section 13 (4) of the *Education Act 1928* exempting him from attendance at school to enable him to engage in employment.

**Supply of false information
to employers an offence**

107. (1) It is an offence for a child or a person who has the custody or guardianship of the child to give false or misleading information as to—

- (a) the age of the child; or
- (b) the matter of whether or not the child is an exempt child,

to a person who employs or may employ the child for a purpose specified in section 107A (1), 108 (1) or 108A (3).

Penalty: \$200.

(2) A child under 10 years of age who gives false or misleading information as referred to in subsection (1) does not commit an offence.

Street trading

107A. (1) A child under 12 years of age shall not engage in street trading.

(2) A child who has attained the age of 12 years and is under 15 years of age shall not engage in street trading—

- (a) during the hours when the child is required to attend school; or
- (b) outside the time between 6 a.m. and 7 p.m.

(3) Subsection 2 (a) does not apply to an exempt child.

(4) Where the Director-General is of the opinion that the welfare of a child is likely to be jeopardized by the fact of or the manner or extent of the engagement by the child in street trading, he may, by written notice given to the child—

- (a) prohibit the child from engaging in street trading;
or
- (b) impose limitations on the engagement by the child in street trading,

and a child who receives such a notice shall comply with it.

(5) The Director-General shall serve a copy of a notice issued under subsection (4) on—

- (a) the employer of the child; and
- (b) each person who has custody or guardianship of the child.

(6) A person who knowingly causes, procures or employs a child to engage in street trading in contravention of subsection (1) or (2) or of a notice under subsection (4) or who knowingly allows a child in his custody or guardianship to so engage, commits an offence.

Penalty: \$2 000 for a first offence and \$5 000 for a later offence.

(7) It shall be a requirement for—

- (a) the custodian or guardian of a child seeking street trading employment to provide a declaration of age and details relating to any notice of prohibition from engaging in street trading; and
- (b) the employer to sight and hold a copy of any declaration provided under paragraph (a).

(8) Where a person is prosecuted for an alleged offence of causing, procuring or employing a child to engage in street trading in contravention of a notice under subsection (4), or of allowing a child in his custody or guardianship to so engage, it is a defence for the person to show—

- (a) that the Director-General had not served a copy of the notice on him or otherwise informed him of the contents of the notice; and
- (b) that he was otherwise unaware of the contents of the notice. ”.

Section 108 inserted

8. After section 107A of the principal Act, as inserted by section 7, the following section is inserted—

Restriction on employment of children for indecent purposes

“ 108. (1) A person shall not—

- (a) employ a child;
- (b) cause or procure a child to be employed; or
- (c) being a person who has the custody or guardianship of a child, allow the child to be employed,

for the purpose of the child performing in an indecent, obscene or pornographic manner in the course of taking part in an entertainment or exhibition or the making of an advertisement.

Penalty: \$20 000 or imprisonment for 3 years, or both.

(2) Without prejudice to the generality of the expression “purpose of the child performing in an indecent, obscene or pornographic manner” in subsection (1), a child is employed for the purpose of performing in an indecent, obscene or pornographic manner if, in the course of the employment, the child—

- (a) is engaged in an activity of a sexual nature;

- (b) is in the presence of another person who is engaged in an activity of a sexual nature; or
- (c) is required to pose or move in a manner calculated to give prominence to sexual organs, the anus or, in the case of a female, her breasts.

(3) Without prejudice to its generality, the expression “taking part in an entertainment or exhibition” in subsection (1) and sections 108A (3) and 108B (1) includes the circumstances where the performance of the child—

- (a) consists in whole or in part of modelling or posing of any kind;
- (b) is only for the person employing the child or for some other particular person or a class of persons; or
- (c) is recorded for later visual or audible presentation to an audience of one or more persons.

(4) For the purposes of subsection (1) and sections 108A (3) and 108B (1)—

- (a) a child who takes part in an entertainment or exhibition carried on for profit or in the making of an advertisement for commercial purposes is to be taken to be employed by the person carrying on the entertainment or exhibition or making the advertisement, notwithstanding that the child is not an employee of that person or receives no consideration from that person; and
- (b) “employ” includes the engaging of a child to perform professional work under a contract of service and the engaging of a child to perform any work under a contract for services. ”.

**Sections 108A, 108B, 108C, 108D
and 108E inserted**

9. After section 108 of the principal Act, as inserted by section 8, the following sections are inserted—

**Licence to employ children required
in relation to an entertainment,
exhibition or advertisement**

- “ 108A. (1) In this section and sections 108B, 108C and 108D, “child” means a child under the age of 15 years.

(2) The Minister may by order published in the *Government Gazette* fix a day as the appointed day for the purposes of subsection (3).

(3) On or after the appointed day a person shall not—

- (a) employ a child;
- (b) cause or procure a child to be employed; or
- (c) being a person who has the custody or guardianship of a child, allow the child to be employed,

for the purpose of the child taking part in an entertainment or exhibition or the making of an advertisement, unless the employment of the child is authorized by a licence granted under section 108B.

Penalty: \$1 000.

(4) Subsection (3) does not apply in respect of the employment of a child where—

- (a) the child is employed for the purpose of an occasional entertainment the net proceeds of which are wholly applied for the benefit of a school or charitable object;
- (b) the child is an exempt child; or
- (c) the Minister has granted an exemption under section 108D, if the conditions, if any, subject to which the exemption was granted are complied with.

Grant of licences

108B. (1) The Minister may, on receipt of an application containing the information required by the regulations to be supplied in respect of the class of licence sought, grant a licence of that class authorizing a child or children to be employed for the purpose of taking part in an entertainment or exhibition or the making of an advertisement, being an entertainment, exhibition or advertisement specified or of a kind specified in the licence.

(2) The Minister shall not grant a licence for a child to be employed for the purpose of performing in an indecent, obscene or pornographic manner in the course of employment referred to in subsection (1) and section 108 (2) applies for the purposes of this subsection.

(3) In exercising his powers under subsection (1), the Minister may grant—

- (a) an individual licence in respect of one child;
- (b) a group licence in respect of a prescribed number of children to be employed as a group in a common activity; or
- (c) a fixed term licence in respect of the employment of any number of children during a prescribed period.

(4) The Minister shall not grant an individual licence unless he is satisfied that proper provision has, in the manner specified in the application, been made to safeguard the health, welfare and education of the child.

(5) In the case of an application for the grant of a group licence or a fixed term licence, it is not necessary to identify individual children who will be employed under any licence granted.

(6) The Minister shall not grant a group licence or a fixed term licence unless he is satisfied that the person applying for the licence has made or will make proper provision to safeguard the health, welfare and education of children employed under the licence.

(7) Subject to subsection (8)—

- (a) an individual licence or a group licence is to be in force for such period as is prescribed or as the Minister may determine, either generally or in each case;

- (b) a fixed term licence is to be in force for the period prescribed under subsection (3) (c); and
- (c) a licence is to be subject to such conditions as are prescribed or as the Minister may determine, either generally or in each case,

and where the period or conditions of a licence are determined by the Minister they are to be endorsed on the licence.

(8) The Minister may on reasonable grounds vary or cancel a licence.

Regulations for section 108B

108C. Regulations may be made under section 149 prescribing—

- (a) the form of and information to be contained in an application for a licence;
- (b) the period for which a class of licence is to be in force;
- (c) the number of children that may be employed under a group licence;
- (d) the minimum age of a child for employment under a class of licence; and
- (e) conditions attaching to the grant of a class of licence, including conditions limiting the hours of work of a child in a day or during a period or the number of consecutive days of work.

Exemption from licensing requirement

108D. (1) The Minister may exempt a person from the requirement under section 108A to obtain a licence to employ a child where the Minister is satisfied that the nature and circumstances of the employment concerned are such as to make the obtaining of a licence unwarranted.

(2) The Minister may on reasonable grounds withdraw an exemption or vary a condition on which it was granted.

Right of appeal

108E. (1) A person who applies for or holds a licence under section 108B or who applies for or holds an exemption under section 108D may appeal to the court against a decision of the Minister—

- (a) to refuse to grant a licence;
- (b) to grant a licence subject to a condition that was imposed in the individual case;
- (c) to cancel a licence;
- (d) to refuse to grant an exemption; or
- (e) to withdraw an exemption.

(2) An appeal is to be instituted within 21 days of receipt by the person of notification of the decision of the Minister, but the court may, on application by the person, extend the time for instituting an appeal to a period that it considers reasonable in the circumstances of the case.

(3) The Minister is a party to an appeal and the appellant shall serve on the Minister a copy of the document instituting the appeal.

(4) Where an appeal against a decision of the Minister to cancel a licence or to withdraw an exemption is instituted, the decision of the Minister is stayed pending determination of the appeal, unless the court orders otherwise.

(5) The court has jurisdiction to hear and determine an appeal under subsection (1) and may confirm the decision of the Minister or direct the Minister to reverse his decision or vary it in the manner specified by the court.

(6) The Minister shall give effect to a direction under subsection (5).

(7) Each party is to bear his own costs of an appeal, unless the court considers that the circumstances justify the making of an award of costs, in which case the court may award costs. ”.

Section 109 amended

10. Section 109 of the principal Act is amended by deleting “\$20” and substituting the following—

“ \$2 000 ”.

Section 142 amended

11. Section 142 of the principal Act is amended in subsection (1) by inserting after “Act” the following—

“ , other than section 107A (1), (2) or (4), ”.

Repeal of Act No. 31 of 1984

12. The *Child Welfare Amendment Act 1984** is repealed.

[*Act No. 31 of 1984.]
