

Mandatory Code of Practice for the Employment of Children in Entertainment

Child Employment Act 2003

DEPARTMENT OF BUSINESS AND INNOVATION



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Introduction

This code of practice is made under section 29 of the *Child Employment Act 2003* ("the Act"). The code of practice contains provisions regulating the employment of children in entertainment.

A **child** is defined in the Act as a person under 15 years of age.

The parent of a child is required to obtain a permit under the Act before the child can engage in employment, unless the child is working in a family business or, in some limited cases, in accordance with a work experience arrangement under the *Education Act 1958*. It is an offence for a person to employ a child unless a permit has been issued for the employment, unless the child is working in a family business.

Under section 3 of the Act, **entertainment** means any form of entertainment and includes –

- (a) singing, dancing or acting;
- (b) playing a musical instrument;
- (c) appearing in a radio, television, film or similar program or production not in the nature of a news item;
- (d) modelling;
- (e) appearing in promotional events or advertising;
- (f) working as a photographic subject, whether still or moving;
- (g) working in or in relation to a circus;
- (h) taking part in a performance that is recorded for use in a subsequent entertainment or exhibition;
- (i) working in musical theatre, plays, operas or other live entertainment;
- (j) performing in a shopping centre.

Under section 4 of the Act, a child is engaged in **employment** if the child takes part or assists in any business, trade or occupation carried on for profit –

- (a) whether or not the child receives payment or other reward for his or her participation or assistance; and
- (b) whether the child is engaged under a contract of service, a contract for services or any other arrangement.

Under section 4 of the Act a person **employs** a child and is an **employer** of a child if they cause or permit a child to engage in employment.

The Act contains examples of activities that may not constitute **employment** in section 4(4). They are –

- (a) participating in a church service or religious program;
- (b) participating in an occasional project or entertainment the net proceeds of which are applied for the benefit of a church or school;
- (c) performing any activity for a non-profit organisation;
- (d) participating in a sporting activity (including coaching, refereeing or umpiring).

Under section 32 of the Act, a person who employs a child in entertainment must not contravene the code of practice. Maximum penalties are specified in section 32 as:

100 penalty units in the case of a body corporate;

60 penalty units in any other case.

The Act gives a number of powers to the Secretary of the Department of Innovation, Industry and Regional Development. In practice, a number of these powers are delegated to child employment officers employed under the Act.

Provisions of code

1 Application

This code of practice applies to all employers of children working in entertainment, whether or not the employer is named in a permit issued under Division 2 of Part 2 of the Act.

2 Interpretation

A word or phrase in this code of practice has the same meaning as it has under the Act, unless the context requires otherwise.

3 Records of employment and personal information

- (1) Prior to employing a child, an employer must obtain from the parent or guardian of the child the following –
 - (a) the name, home address and home telephone number of the child; and
 - (b) the names, addresses and home, business and mobile telephone numbers (if any) of the child's parents or guardians; and
 - (c) the name, address and telephone number of any person who has lawful authority to consent to the medical treatment of the child; and
 - (d) an authority signed by a person who has lawful authority to consent to the medical treatment of the child consenting to the employer seeking, or where appropriate, administering, such emergency medical treatment as is reasonably necessary; and
 - (e) the name, address and telephone number of any person who is to be notified of any accident, injury, trauma or illness involving the child; and
 - (f) details of allergies or other relevant medical conditions and needs of the child; and
 - (g) details of any dietary restrictions of the child; and
 - (h) names, addresses and telephone numbers of the persons who are authorised to collect the child from the employer

The Secretary has published a model Child Employment Information Form for the gathering of the information specified in subclause (1). The form can be obtained at www.irv.vic.gov.au.

(2) An employer must include the following additional details in the records required to be kept under the *Child Employment Regulations 2004*:

- (a) details of the location at which the child is employed on each occasion of employment; and
- (b) the times during which the child received education from a tutor engaged by the employer, and the general subject matter covered; and
- (c) the information obtained under subclause (1).

NB. Under the Child Employment Regulations 2004 (Vic) employers must keep records containing –

- (a) the times the child started work and finished work each day of work; and*
- (b) the hours the child worked each day and each week; and*
- (c) the date the child started employment and the date that he or she finished employment; and*
- (d) each date the child worked.*

(3) An employer must keep a copy of a child's employment permit at the place where the child is employed, or be able to produce a copy to a child employment officer on request.

4 Shifts and rest breaks

(1) Subject to subclauses (2) and (2A), an employer must not employ a child for more than one shift on any one day.

(2) An employer does not contravene subclause (1) if the working day was interrupted to enable the child to attend his or her regular school.

(2A) The Secretary may in exceptional circumstances and on application from an employer agree to vary the requirement in subclause (1), provided that:

- (a) the employment in which the child is engaged is live entertainment; and
- (b) the child is to be employed on a second shift on the one day to replace another child who is unavailable due to sickness, injury or other unforeseen circumstance, and this is necessary to allow a live performance to proceed; and
- (c) the child is employed to work a second shift on the one day during the pre-production or production stage to participate in a publicity call where it is not possible for another child (who has not worked that day) to attend the call; and
- (d) the employer's application is received in writing, contains reasons for the application and is provided to the Secretary sufficiently in advance of the

employment to enable an assessment to be made of the merits of the application; and

- (e) applications for variations will not in the ordinary course be considered outside business hours; and
- (f) the Secretary is satisfied that the health, education and moral and material welfare of the child will not suffer as a result of the variation.

(3) Subject to subclauses (4) and (5), an employer must ensure that no child is required to start work on a particular day less than 12 hours after the child has finished work on the previous day, whether for the same or for any other employer.

(4) An employer does not contravene subclause (3) in relation to employment with another employer if the employer held a reasonable belief after making all reasonable inquiries that the child had not worked for another employer within 12 hours of commencing work.

(5) The Secretary may in exceptional circumstances and on application from an employer agree to vary the requirement in subclause (3), provided that:

- (a) the child is 8 years old or above; and
- (b) the varied time between finishing and commencing work is no less than 10 hours; and
- (c) the employer's application is received in writing, contains reasons for the application and is provided to the Secretary sufficiently in advance of the day in question to enable an assessment to be made of the merits of the application; and
- (d) applications for variations will not in the ordinary course be considered outside business hours; and
- (e) the Secretary is satisfied that the health, education and moral and material welfare of the child will not suffer as a result of the variation.

(6) An employer must ensure that a child is given a 10-minute rest break every hour.

(6A) The Secretary may in exceptional circumstances and on application from an employer agree to vary the requirements in subclause (6), provided that:

- (a) the child is employed in live entertainment; and
- (b) the child is 10 years old or above; and
- (c) it is not possible to provide the child with a 10-minute rest break every hour due to the requirements of the child's role; and
- (d) the variation only applies during a performance or rehearsal performance; and

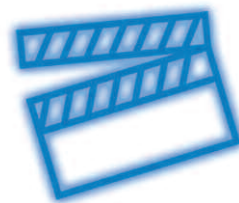
- (e) the child receives a minimum 20-minute break at interval; and
 - (f) the employer's application is received in writing, contains reason for the application and is provided to the Secretary sufficiently in advance of the employment to enable an assessment to be made of the merits of the application; and
 - (g) applications for variations will not in the ordinary course be considered outside business hours; and
 - (h) the Secretary is satisfied that the health, education and moral and material wellbeing of the child will not suffer as a result of the variation.
- (7) An employer must ensure that a child is given a 45-minute rest break every 5 hours, provided that the first 45-minute break must commence at or before 1pm if the child commenced work prior to 10am.
- (8) In this clause, a 'rest break' means a period during which the child is not required to carry out any employment duties, including but not limited to rehearsal and preparation.

5 Hours of work

- (1) Subject to subclauses (2), (3), (4) and (5), maximum daily working hours, hours within which children may be employed and maximum days of employment within a weekly period are set out in –
- (a) **Table A** for children working in radio, television, film or similar program or production, promotional events or advertising, as a photographic subject, whether still or moving, modelling, in a performance in a shopping centre, in a performance that is recorded for use in a subsequent entertainment or exhibition and any other employment not covered in Table B.
 - (b) **Table B** for children working in musical theatre, plays, operas or other live entertainment, or in or in relation to a circus.
- (2) An employer must not require a child to work later than 9pm on any day if the child is required to attend school on the morning of the following day.
- (3) An employer must not employ a child for more than 4 hours on any day on which the child attends school for at least 3 hours.
- (4) Subject to subclause (5) the Secretary may in exceptional circumstances and on application from an employer agree to vary the maximum number of days of employment, the maximum hours and the finishing

times of work contained in Tables A and B and subclauses (2) and (3), provided that:

- (a) the employer's application is received in writing, contains reasons for the application and is provided to the Secretary sufficiently in advance of the work in question to enable a proper assessment to be made of the merits of the application; and
 - (b) applications for variations will not in the ordinary course be considered outside business hours; and
 - (c) the variation will only be granted if the Secretary is satisfied that the health, education and moral and material welfare of the child will not suffer as a result of the variation.
- (5) A variation granted by the Secretary under subclause (4) must not:
- (a) extend maximum employment hours per day in Tables A and B and subclause (3) by more than 1 hour; or
 - (b) extend finishing times in Tables A and B and subclause (2) by more than 2 hours, with the exception of a child aged from 2 years to under 6 years covered by Table B whose finishing time may be extended by no more than 5 hours; or
 - (c) extend finishing times in Tables A and B beyond midnight; or
 - (d) allow a child covered by Table A to commence work before 6am; or
 - (e) allow a child aged from 3 years to under 8 years covered by Table A to work beyond 11pm; or
 - (f) allow a child covered by Table B to commence work before 9am; or
 - (g) increase the maximum number of days of employment in any period of 7 consecutive days for a child in Table A.
 - (h) extend maximum employment hours per day in Table B and subclause (3) by more than one hour except for children between 10 and 12 years of age, during school holidays, by more than three hours.
- (6) The Secretary may in exceptional circumstances and on application from an employer agree to extend the maximum employment hours per day in Table B by no more than 30-minutes in the event of an unforeseen disruption to a live performance (in addition to a variation granted under clause 5(5)(a)).



6 Calculation of employment time

- (1) 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 1 hour spent by the child in travelling from home to the place of work; and
 - (b) any time in excess of 1 hour spent by the child in travelling home from the final place of work; and
 - (c) the whole of the time that the child is required to be at work, excluding the 45-minute rest break required under clause 4(7) (provided that any time taken for the rest break in excess of 45 minutes must be counted as time worked, unless the longer rest break is taken in order to comply with an industrial Award or Agreement); and
 - (d) 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; and
 - (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.
- (2) The periods set out in subclause (1)(a) and (b) are not taken into account in determining daily start and finishing times of work.

7 Work and education

- (1) The total period of time for which a child is employed when added to the time required to fulfil educational requirements must not exceed 40 hours in any period of 7 consecutive days, except as provided for in subclause 1A.
- (1A) The total period of time for which a child is employed when added to the time required to fulfil educational requirements may total up to 44 hours and 30 minutes in any period of 7 consecutive days if a child has been granted a variation to undertake an additional shift in accordance with the provisions of clause 4(2A).
- (2) For the purpose of subclause (1), the time required to fulfil educational requirements shall be –
 - (a) for a child who has been exempted from attendance at school under s74G of the Community Services Act 1970 (Vic), the period

(if any) that is stipulated by the Minister in granting the exemption; or

- (b) for a child who has been exempted from attendance at school under s74G of the Community Services Act 1970 (Vic), if the Minister has not stipulated a period of education under subclause (2)(a), the period required under clause 8(2); or
 - (c) for a child who has not been exempted from attendance at school, 4 hours for each day during school term that the child has not been exempted from attending school.
- (3) An employer may not employ a child in contravention of subclause (1) except as provided for in subclause 1A.

8 Provision of tutor

- (1) If the Minister stipulates a period of education to be fulfilled by the child under clause 7(2)(a), the employer must engage a tutor to provide the stipulated amount and subject matter (if stipulated) of education during the working hours of the child.
- (2) If the Minister has not stipulated a period of education to be fulfilled under clause 7(2)(a), an employer must engage a tutor to provide 2 hours of education per day during school term once the child has been absent from school for the equivalent of 9 days in any one school term as a result of employment with the employer.
- (3) The employer may meet the obligation in subclause (2) by providing education over a period of up to 4 weeks, such that the child receives an average of 10 hours per week over that period.
- (4) The tutor engaged by the employer under subclause (1) or (2) must be a registered teacher, and appropriately qualified to teach the child.
- (5) The employer must ensure that a tutor engaged by the employer is given a proper opportunity to consult with the child's school and develop an education plan for the child in consultation with the school.
- (6) Despite subclauses (1) and (2), if the provision of education during working hours is impractical, the parent or guardian of the child and the employer may agree for the parent or guardian to obtain the services of a tutor to provide education outside working hours.
- (7) If a parent or guardian obtains the services of a tutor in accordance with subclause (6), the employer must reimburse the parent or guardian for the costs of the tutor, subject to the limits specified in subclause (8).

- (8) The employer is not obliged under subclause (7) to reimburse the parent or guardian for –
 - (a) tutoring hours in excess of those specified in subclause (1) or (2) whichever the case may be; or
 - (b) tutoring costs in excess of a maximum hourly rate as set from time to time by the Secretary.
- (9) For the avoidance of doubt, provision of education in accordance with subclause (6) does not increase the hours available for employment under clause 7.
- (10) If an employer is required to engage a tutor under subclause (1) or (2), the employer must provide an area of sufficient space and facilities of sufficient quality to enable the tutor to provide appropriate education to the child, and ensure that children being tutored and the tutor have exclusive access to the area and facilities while education is being provided.

9 Variations for technical week in live entertainment

- (1) Subject to subclause (2), the Secretary may on application from an employer agree to vary any of the requirements of clauses 5 and 7(1) in relation to the employment of a child in the week Monday to Saturday inclusive immediately prior to the first public performance of a live theatre production ('technical week').
- (2) A variation will only be considered under subclause (1) if –
 - (a) the employer's application is received in writing, contains reasons for the application and is provided to the Secretary sufficiently in advance of technical week to enable a proper assessment to be made of the merits of the application; and
 - (b) the Secretary is satisfied that the health, education and moral and material welfare of the child will not suffer as a result of the variation.

10 Travel home

- (1) An employer must ensure that each child aged less than 13 years is collected or taken home after the child finishes work by a parent or guardian of the child, or a person authorised by the parent or guardian to collect or take home the child.
- (2) An employer must ensure that each child aged 13 years or older is collected or taken home after the child finishes work by a parent or guardian of the child, or a person authorised by the parent or guardian to collect or take home the child, unless either of the following applies –

- (a) the distance between work and home is less than 10 kilometres and travel home will be completed in the ordinary course within daylight hours or before 6pm, whichever is earlier; or
 - (b) the employer has been provided with written consent from the child's parent or guardian permitting the child to travel home alone, and travel home will be completed in the ordinary course before 8.30pm.
- (3) 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 or guardian of the child.

11 Food and drink

- (1) An employer must ensure that each child has, at reasonable hours, access to appropriate and sufficient nutritious food, having regard to the age, taste, culture and dietary restrictions of the child.
- (2) An employer must ensure that each child has access at all times to fruit, fruit juice, milk and water, having regard to the age and dietary restrictions of the child.

12 Toilet, washing and dressing room facilities

- (1) An employer must ensure that clean and accessible toilet, hand-washing and hand-drying facilities are provided at each place of work of the child.
- (2) An employer must ensure that facilities exist so that any child is able to dress and undress in private.

13 Protection from the elements

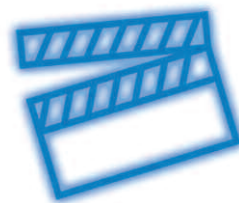
An employer must ensure that each child is adequately clothed and otherwise protected from extremes of climate.

14 Punishment prohibited

An employer must ensure that a child is not subjected, while at work, to any form of corporal punishment, social isolation, immobilisation or any other behaviour likely to humiliate or frighten the child.

15 Medical issues

- (1) An employer must not employ a child who is known by the employer to be ill, unfit for work, or carrying or to have been exposed to an infectious disease that poses a risk to the health of others in the workplace.
- (2) If a child becomes ill or is injured while at work, the employer must immediately notify one of the child's parents or guardians of that fact, or, if the parent or



guardian is not contactable, another person nominated by the parent or guardian.

16 Parental contact

- (1) An employer must at all times ensure that each child is able to make contact with his or her parents or guardians 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.
- (2) Subject to subclause (3), an employer must allow a parent or guardian of a child to be present at the workplace at all times when the child is present at the workplace.
- (3) An employer may exclude a parent or guardian from a particular area of the workplace or from direct contact with the child, provided that the exclusion is only for a period and only from an area necessary to ensure that the employer's undertaking or production is not unduly disrupted, or to protect the health and safety of any person present in the workplace including the parent or guardian.
- (4) If the child's employment requires the child to spend one or more nights away from home, the employer must provide appropriate accommodation for both the child and a parent or guardian of the child, if the parent or guardian is to accompany the child.

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 developmental needs of the child.

18 Inappropriate roles or situations

- (1) An employer must ensure that a child is not 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 or situations that are likely to cause distress or embarrassment to the child; or
 - (b) to become distressed in order to obtain a more realistic depiction of a particular emotional reaction.

19 Nudity

- (1) Subject to subclause (2), an employer must not employ a child in any situation in which the child is naked, and must ensure that the child is not present when any other person is naked.
- (2) Subclause (1) does not apply if –
 - (a) the child is under the age of 12 months; and
 - (b) the child's parent or guardian has provided written consent to the employer authorising the child to be naked or present when any other person is naked; and
 - (c) the child's parent or guardian is present for the whole period during which the child is naked or the other person is naked, as the case may be.

20 Supervision

- (1) An employer must ensure that each child is provided with adequate and direct supervision, having regard to the age, sex, and degree of maturity of the child, and having regard to the number of children employed at any one time.
- (2) In particular –
 - (a) the employer must ensure that a supervisor of a child is not given other responsibilities that prevent the supervisor from providing direct supervision to the child; and
 - (b) if the child is more than 12 weeks old and less than 6 years old, the child is to be supervised by:
 - (i) a parent or guardian of the child or a person nominated by the employer and authorised by the parent or guardian; or
 - (ii) a person with an early childhood qualification gazetted in accordance with regulation 25(a) of the Children's Services Regulations 1998 (Vic); or
 - (iii) a registered nurse, a registered midwife or a registered maternal and child health nurse; and
 - (c) if the child is more than 6 years old, the child is to be supervised by a parent or guardian of the child, or a person nominated by the employer and authorised by the parent or guardian, or by an adult with training or experience in the care of children of the age of the child to be supervised.

NB. Under s13 of the Act the employer and some persons who have direct supervision or control of the child are also required to consent to a police check, or provide a statutory declaration as part of the permit application process.

21 Babies

- (1) This clause applies to babies who are less than 12 weeks old.
- (2) An employer must not employ a baby for more than one hour on any one day unless –
 - (a) a registered nurse, registered midwife or registered maternal and child health nurse is present at all times; and
 - (b) a parent or guardian of the baby is present at all times; and
 - (c) the registered nurse or registered midwife advises the employer that the baby is fit for employment; and
 - (d) the registered nurse or registered midwife advises the employer that the environment in which the baby is to be employed is unlikely to cause the baby to become distressed; and
 - (e) the employer follows the advice of the registered nurse or registered midwife in all matters that relate to the welfare of the baby.
- (3) An employer may employ a baby for one hour or less on any one day provided that –
 - (a) a parent or guardian of the baby is present at all times; and
 - (b) the employer is satisfied on advice from the parent or guardian that –
 - (i) the baby was delivered full term and in good health; and
 - (ii) the baby's birthweight was at least 3 kilograms; and
 - (iii) the baby has not had any post-natal problems; and
 - (iv) the baby is feeding successfully; and
 - (v) the baby's weight gain from birth has been satisfactory.
- (4) An employer who employs a baby must not allow the baby to be exposed to harmful lighting.
- (5) An employer must not allow makeup to be applied to a baby unless the makeup is non-irritating and uncontaminated.
- (6) An employer must not allow any person who is known by the employer to have a respiratory or skin infection or to be carrying an infectious disease to come into contact with the baby.

22 Relationship with awards and agreements

The application of this code of practice is subject to the provisions of any award or agreement in force under the *Workplace Relations Act 1996* (Cth) that are directly applicable to the employment of children under 15 in entertainment.

23 Provision of code to parents and guardians

An employer must advise the parent or guardian of each child they employ of the existence of this Code and provide the parent or guardian with a copy of the Code on request from the parent or guardian

24 Commencement

This code of practice commences operation on 1 November 2005

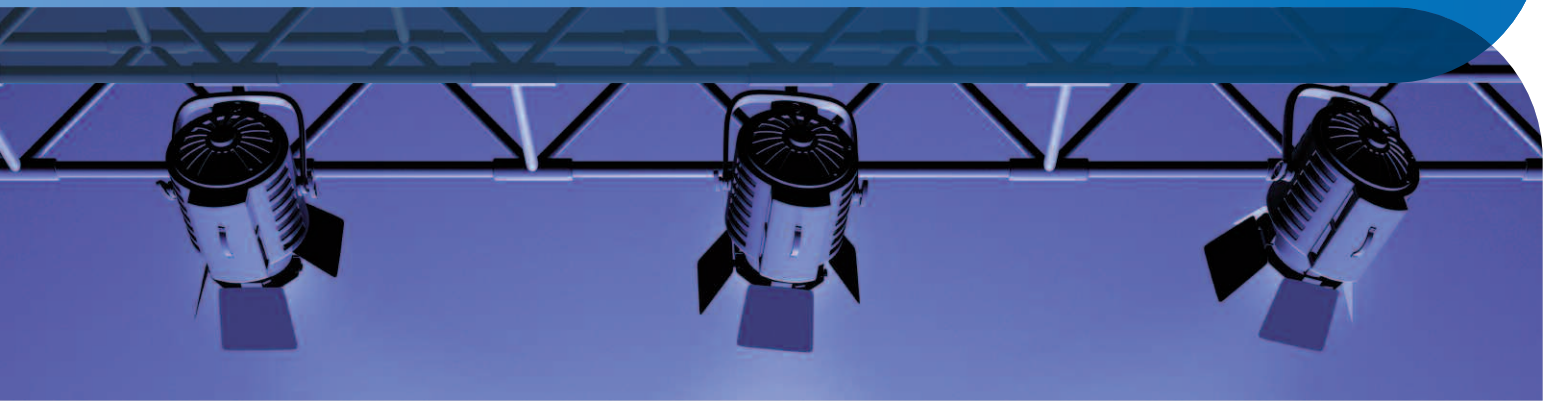


Table A

Film, Television, Radio, Advertising, Photography, Modelling etc. (see clause 5(1)(a))

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 3 years	3	6am – 6pm	4 hours
3 years and under 8 years	4	6am – 11pm	6 hours
8 years and under 15 years	5	6am – 11pm	8 hours

Table B

Live Entertainment, including Musical Theatre, Plays, Operas, Circus etc. (see clause 5(1)(b))

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 2 years	1	9am – 6pm	4 hours
2 years and under 6 years	3	9am – 6pm	4 hours
6 years and under 10 years	4	9am – 10pm	4 hours
10 years and under 12 years	4	9am – 11pm	6 hours
12 years and under 15 years	4	9am – 11pm	8 hours

www.workforce.vic.gov.au

For Further Information

For more information and advice about the *Child Employment Act 2003 (Vic)* or to obtain an Application for a Child Employment Permit, visit the website at:

www.workforce.vic.gov.au

Or contact a Child Employment Officer on telephone number 1800 287 287.

Child Employment Officers - DBI

GPO Box 4509 Melbourne Vic 3001

Tel 1800 287 287 **Fax** 9651 9703

Note: This brochure has been prepared for general information only. It is not a substitute for legal advice. Readers should seek further advice before acting on the information provided, to ensure compliance with the law.

Department of Business and Innovation

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