

**CHILDREN (CARE AND PROTECTION) (CHILD
EMPLOYMENT) AMENDMENT BILL 1992**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Children (Care and Protection) Act 1987 so as to require persons who employ children under the age of 15 for certain purposes (such as in stage productions, radio or television entertainment or door-to-door selling) to hold an employer's authority granted by the Minister for Health and Community Services, unless exempted from that requirement. The amendments also restate, with modifications, other provisions currently in force relating more generally to the employment of children.

At present, any such child who is employed is required to be licensed under provisions of the Child Welfare Act 1939. Those provisions will cease to have effect within a transitional period of 3 months after the commencement of the new scheme providing for employer's authorities.

The Bill substitutes Part 4 of the Principal Act which has not been commenced and which contains a proposed scheme for the licensing of children who are employed that is similar to the scheme under the Child Welfare Act.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation.

Clause 3 gives effect to the Schedule of amendments to the principal Act.

Clause 4 repeals Part 13 of the Child Welfare Act which contains the licensing provisions referred to above (and consequently removes any need to repeal that Part by a proclamation under section 2 (2) of the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987).

The clause also repeals transitional provisions in Schedule 5 to the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987 that will be made redundant by the substitution of Part 4 of the principal Act.

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

Schedule 1 (1) inserts a definition of “employer’s authority” into the Principal Act.

Schedule 1 (2) repeals Part 4 of the Principal Act and substitutes it with a new Part 4 (Employment of Children) containing the following proposed sections:

Section 50 (Definitions) which defines “child” for the purposes of proposed Part 4 as meaning a child under the age of 15 years and allows the regulations (and the Minister) to extend the class of persons who will be employers for the purposes of that Part.

Section 51 (Endangering children in employment) creates an offence if a person causes or allows a child to be employed in circumstances in which the physical or emotional well-being of the child is put at risk.

Section 52 (Certain employers of children to be authorised) sets out some cases in which an employer of a child will be required to hold an employer’s authority. Other cases may be added by the regulations. The specified cases are where the child is employed:

- to take part in an entertainment or exhibition
- to take part in a recorded performance intended for use in a subsequent entertainment or exhibition
- to offer anything for sale from door-to-door

Section 53 (Exemptions) provides for exemptions of the following kinds from the requirement to hold an employer’s authority:

- specific exemptions where the child is employed for the purpose of a lawful fundraising appeal or in an occasional exhibition or entertainment for the benefit of a school or for a charitable object
- exemptions provided by the regulations
- exemptions granted by the Minister

Subject to certain qualifications, the Minister may revoke an exemption of any kind.

Section 54 (Employers’ authorities) gives effect to proposed Schedule 1A intended to be inserted into the Principal Act which contains provisions relating to employers’ authorities described below.

Section 54A (Removal of child from place of unlawful employment) provides that a child is taken to be in need of care (and consequently able to be physically removed from a place) if the child is employed at the place in contravention of the proposed Part and has not been removed from the place by a person responsible for the child on request made by an officer of the Department of Community Services.

Section 54B (Entry without warrant in certain circumstances) allows a specially authorised officer to enter premises without a warrant if:

- ensuring that an employer who holds such an authority is complying with the proposed Part, the regulations and the conditions of the authority at a place of employment
- ensuring that conditions of an exemption are being complied with at a place of employment

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Any such officer may be accompanied by a medical practitioner or a member of the police service, but is not authorised to enter a dwelling without a search warrant.

Schedule 1 (3) amends section 112 (Appeals to Community Welfare Appeals Tribunal) to ensure that appeals may be made from decisions concerning employers' authorities and the exercise of other discretions conferred by the proposed Part.

Schedule 1 (4) amends section 124 (Regulations) to declare that regulations may be made about the keeping and inspection of records under the Principal Act.

Schedule 1 (5) inserts a new Schedule 1A (Provisions Relating to Employers' Authorities) into the Principal Act. Clauses in the proposed Schedule:

- set formal requirements for applications for authorities or for exemptions
- establish requirements for applicants for employers' authorities
- require the Minister to give 28 days' notice of intention to refuse to grant an authority and to give notice of the ground on which any authority is refused
- fix the maximum term of an authority at 12 months
- provide that conditions of authorities may be imposed by the regulations or by the Minister (or both)
- allow the Minister to change the conditions of an authority while it is in force
- provide for the suspension or revocation of an authority

Schedule 1 (6) amends Schedule 3 (Savings and Transitional Provisions) to allow licences in force under the Child Welfare Act to continue for not more than 3 months after the new requirement to hold an employer's authority commences and to allow transitional regulations to be made under the Principal Act.
