

EDUCATION AND TRAINING REFORM ACT 2006

MINISTERIAL ORDER 55 - STRUCTURED WORKPLACE LEARNING ARRANGEMENTS

The Minister for Education makes the following Order:

Part 1 – Preliminary

1. Title

This Ministerial Order may be cited as Ministerial Order 55 - Structured Workplace Learning Arrangements.

2. Authorising provisions and commencement

This Order is made under Sections 5.4.6 and 5.10.4 of the *Education and Training Reform Act 2006*, and comes into operation on the day it is signed.

3. Purpose

3.1 The purpose of this Ministerial Order is to:

- (a) revoke and replace Ministerial Order 23; and
- (b) provide an operational framework for the provision of structured workplace learning for:
 - (i) Victorian School Students undertaking Arrangements in Victoria;
 - (ii) Victorian School Students undertaking Arrangements in a Reciprocating State or in another State or Territory;
 - (iii) Overseas Students undertaking Arrangements in Victoria, a Reciprocating State or another State or Territory; and
- (c) make other provisions to ensure appropriate arrangements are in place for a Student under an Arrangement.

4. Revocation of Ministerial Order 23 – Structured Workplace Learning Arrangements

Ministerial Order 23 – Structured Workplace Learning Arrangements is hereby revoked on and from the date upon which this Ministerial Order 55 comes into operation, and from that date Structured Workplace Learning arrangements will be governed by the provisions of this Ministerial Order 55.

5. Definitions and interpretation

In this Order, unless inconsistent with the context or subject matter, the following definitions apply:

Accredited Course of Study means a course of study accredited by the Victorian Registration and Qualifications Authority or by the Australian Skills Quality Authority.

Act	means the <i>Education and Training Reform Act 2006</i> (Vic).
Arrangement	means a structured workplace learning arrangement made under section 5.4.5 of the Act.
Arrangement Form	means the form prepared in accordance with clause 19 of this Order to be completed by the Principal, Employer, Student and Parent (where the Student is under 18 years of age).
Compliance Codes	means any of the compliance codes developed by WorkSafe Victoria.
Department	means the Department of Education and Early Childhood Development.
Direct Supervision	means where a Supervisor is within sight and sound of the Student at all times while the Student is undertaking work related activities as determined under the Arrangement.
Educational Authority	means: <ul style="list-style-type: none">(a) the State of Victoria, in respect of a Government School; or(b) the proprietor of a School, in respect of a Non-Government School.
Employer	means the person who signs the Employer Acknowledgement in the Arrangement Form or a person authorised to sign on the Employer's behalf. This person will have Direct Supervision of the Student in the workplace or direct supervision or control of a Supervisor.
Employer Acknowledgement	means the Employer Acknowledgement section in the Arrangement Form which must be signed by the Employer in order for the Arrangement to take place.
Employee of the Department	means a person employed in the teaching service pursuant to section 2.4.3(1) of the Act.
FW Act	means the <i>Fair Work Act 2009</i> (Cth).
Government School	has the meaning under section 1.1.3 of the Act.
Hazardous substance	has the meaning under regulation 1.1.5 of the OHS Regulations.
HR Act	means the <i>Health Records Act 2001</i> (Vic).
Non-Government School	has the meaning under section 1.1.3 of the Act.

OHS	means occupational health and safety.
OHS Act	means the <i>Occupational Health and Safety Act 2004</i> (Vic).
OHS Program	means an Occupational Health and Safety Program developed from time to time by the Department with respect to Students undertaking Arrangements.
OHS Regulations	means the <i>Occupational Health and Safety Regulations 2007</i> (Vic).
OHS Training	means training in occupational health and safety which is part of an Accredited Course of Study undertaken by the Student.
Overseas Student	means a person as defined under section 1.1.3 of the Act and enrolled in a Victorian School.
Parent	has the meaning under section 1.1.3 of the Act and any other person who was agreed to when the Student was enrolled at the relevant School.
Principal	means: <ul style="list-style-type: none">(a) in relation to a Victorian Government School, a person appointed to a designated position as principal; or(b) in relation to a Victorian Non-Government School, the principal or person in charge of that School.
PR Act	means the <i>Public Records Act 1975</i> (Vic).
Reciprocating State	means New South Wales and South Australia.
Refugee	means any person who is covered by the definition of refugee in Article 1 A of the <i>1951 Convention Relating to the Status of Refugees</i> as amended by the <i>1967 Protocol Relating to the Status of Refugees</i> .
Scheduled carcinogenic substance	has the meaning under regulation 1.1.5 of the OHS Regulations.
School	has the meaning under section 1.1.3 of the Act.
School Year	in respect of any School means that portion of the year beginning with the first school day of that year and ending with the last school day of that year as determined by that School.
Student	means a person, other than an Overseas Student, enrolled in a Victorian School.
Supervisor	means the person/s nominated by the Employer to undertake Direct Supervision of a Student under an Arrangement.

Structured Workplace Learning Coordinator

means:

- (a) in relation to a Victorian Government School, an Employee of the Department; or
- (b) in relation to a Victorian Non-Government School, an employee of the School

as nominated by the Principal,

VET Program

means a vocational education and training program.

Part 2 - Prerequisites for Arrangements

6. Course of study

6.1 An Arrangement may only be entered into where:

- (a) a Student is:
 - (i) of or over the age of 15 years; and
 - (ii) undertaking an Accredited Course of Study; and
 - (iii) the Arrangement is for the purposes of training as part of that Accredited Course of Study.

7. Requirements of Principal in relation to Employers

7.1 Prior to entering into an Arrangement, the Principal must ensure that the Employer acknowledges, by completing the Employer Acknowledgement, to the Principal and the Student and the Parent (where the Student is under 18 years of age), that:

- (a) if the Arrangement is in Victoria, the Employer:
 - (i) understands and complies with all OHS legislation (including the OHS Act and OHS Regulations) and relevant standards, requirements and Compliance Codes; and
 - (ii) will meet the requirements as outlined in clause 7.1(a)(i) of this Order in respect of the placement of the Student under the Arrangement, as if the Student were an employee of the Employer;
- (b) if the Arrangement is outside Victoria, the Employer:
 - (i) understands and complies with all OHS legislation applicable to the Employer and any standards established by the occupational health and safety authority relevant to that Employer; and
 - (ii) will meet the requirements as outlined in clause 7.1(b)(i) of this Order in respect of the placement of the Student under the Arrangement, as if the Student were an employee of the Employer;

- (c) prior to commencing the placement under the Arrangement, the Student will be provided with:
 - (i) appropriate OHS training and instruction by the Employer; and
 - (ii) any equipment or clothing which is required or appropriate to comply with the Employer's OHS obligations (under any relevant OHS legislation and regulations) as if the Student were an employee of the Employer, having taken into account the Arrangement, the degree of experience and skill of the Student and the conditions in the workplace;
- (d) the Employer will provide the Principal or the Structured Workplace Learning Coordinator with access to the workplace at any reasonable time;
- (e) the Employer will not use the Arrangement as a substitute for the employment of employees or the engagement of contractors and the payment of appropriate wages or fees for services to employees or contractors, respectively;
- (f) the Student will not be continuously engaged by the Employer in a production or service capacity;
- (g) the Employer has nominated a Supervisor (who may be the Employer or a person employed by the Employer) who will provide Direct Supervision and who is responsible for carrying out the Employer's obligations under the Arrangement, including but not limited to:
 - (i) the health, education and moral and material welfare of the Student; and
 - (ii) ensuring that the Student is not subject to any form of unlawful discrimination, harassment and/or exploitation;
- (h) if the Employer nominates more than one Supervisor in accordance with clause 6.1(g) of this Order, those persons are jointly responsible for carrying out the Employer's obligations under this Arrangement;
- (i) the Employer will provide training and instruction to the Student as required by the Arrangement;
- (j) by engaging the Student, the Employer will not exceed the permitted number of Students in accordance with clause 13 of this Order;
- (k) the Student does not have any particular skill or ability to carry out the functions required of the Student by the Employer during the course of the placement under the Arrangement and nothing said by any person is a warranty or representation that the Student does have any particular skill or ability; and
- (l) the Employer has the duty as to the care and control of the Student whilst the Student is engaged at the workplace of the Employer and/or under the supervision of the Employer (or the Supervisor) under the Arrangement.

8. Requirements of Principal in relation to an Arrangement

- 8.1 The Principal will only enter into an Arrangement in accordance with the provisions of the Act and this Order.
- 8.2 Prior to the commencement of the placement under the Arrangement the Principal must ensure that:
- (a) the Employer, Student and Parent (where the Student is under 18 years of age) under an Arrangement completes the Employer Acknowledgement, Student Agreement and Parent Agreement and Consent sections of the Arrangement Form respectively, prior to the Principal completing the Principal Consent section of the Arrangement Form; and
 - (b) a copy of the Arrangement Form signed by each of the Employer, Student, Parent (where the Student is under 18 years of age) and Principal is provided to each of the relevant parties.
- 8.3 Prior to entering into an Arrangement, the Principal must be satisfied that:
- (a) the health, education and moral and material welfare of the Student will not suffer under the proposed Arrangement;
 - (b) the Student will not be subjected to any form of exploitation, harassment or unlawful discrimination during the course of the proposed Arrangement;
 - (c) the proposed Arrangement will provide structured workplace learning suitable to the needs of the Accredited Course of Study for which the Arrangement is proposed, within the time frame specified in that Arrangement and according to the capabilities of the Student;
 - (d) the distribution of structured workplace learning days during the School Year under the proposed Arrangement, and any other Arrangements which have occurred or are likely to occur, does not disadvantage the Student with regard to the balance of that Student's educational program at his or her School;
 - (e) the Student has the capacity to undertake a structured workplace learning placement without exposing themselves or others in the workplace to any unreasonable level of risk;
 - (f) appropriate procedures for making and recording any of the assessments of the performance of the Student under the Arrangement which are required for the Accredited Course of Study are established and are applied for the term of the Arrangement;
 - (g) both the Employer and the Supervisor are aware of each of their obligations to the Student under the Arrangement as outlined in the Employer Acknowledgment and under this Order;
 - (h) where the Student is required to undertake travel for the purposes of the Arrangement, that the travel arrangements are in accordance with clause 17 of this Order;

- (i) where the Student has to stay in accommodation other than his or her normal place of residence for the purposes of the Arrangement, that accommodation arrangements are in accordance with clause 18 of this Order;
- (j) the School has nominated a Structured Workplace Learning Coordinator for the Student during the course of the placement under the Arrangement;
- (k) the Structured Workplace Learning Coordinator has arranged with the Student an appropriate time to contact the Student (by any appropriate means) at least once during the course of the placement under the Arrangement;
- (l) the Student has the contact details of the Structured Workplace Learning Coordinator to report any incidences of harassment, bullying or violence during the course of the placement under the Arrangement,
- (m) with respect to OHS:
 - (i) where the Student is undertaking structured workplace learning as part of a VET Program within an Accredited Course of Study:
 - (A) the Student is undertaking OHS Training relevant to the workplace where the Student will be engaged under an Arrangement; or
 - (B) with respect to a Student with a disability or impairment, that where required, appropriate modifications to the delivery of OHS Training have been made while ensuring requirements of the VET Program are met; or
 - (ii) where a Student is undertaking structured workplace learning as part of a non-VET Program within an Accredited Course of Study:
 - (A) the Student will undertake and satisfactorily complete an OHS Program prior to commencing the placement under the Arrangement; or
 - (B) with respect to a Student with a disability or impairment, that where required, appropriate modifications to the delivery of an OHS Program will be made while ensuring requirements of the non-VET program are met;
- (n) the Principal has disclosed to the Employer any necessary health information in relation to the Student of which the Principal is aware and may disclose (pursuant to the HR Act) , including information with respect to any medical condition for which the Student may require treatment during the course of the placement under the Arrangement. In providing that information, the Principal is satisfied that:
 - (i) the Student, or the Parent (where the Student is under 18 years of age) has consented to the release of that health information; and

- (ii) the Employer has provided written assurance to the Principal that the Employer will maintain the confidentiality of that health information and will only disclose that health information to another party if treatment is required for a known medical condition or in the case of a medical emergency;

9. Arrangements for Students who are Overseas Students

- 9.1 When an Arrangement is made for structured workplace learning for an Overseas Student:
 - (a) all of the requirements of this Order in relation to a Student must be complied with; and
 - (b) all of the terms and conditions of the visa held by the Overseas Student must be complied with.

10. WorkSafe Insurance and Public Liability Insurance

- 10.1 All Students under an Arrangement that is undertaken in Victoria or in a Reciprocating State are covered under the WorkSafe Insurance Policy held by the Department.
- 10.2 Public liability insurance of at least \$10,000,000 cover, per event, in respect of any loss or damage which may be caused by any act or omission of the Student whilst engaged under an Arrangement, must be held or taken out, prior to the Student commencing a placement under the Arrangement:
 - (a) when an Arrangement is entered into by a Principal of a Government School in respect of a Government School Student - by the Department, with the insured being the Employer and the Student;
 - (b) when an Arrangement is entered into by a Principal of a Non-Government School in respect of a Non-Government School Student - either:
 - (i) by that School, with the insured being the School and the Student; or
 - (ii) by the Employer, with the insured being the Employer and the Student, if the Principal of that School has advised the Employer at least four (4) weeks prior to the Student commencing the placement under the Arrangement that the School does not have public liability insurance as set out in clause 10.2 of this Order.

Part 3 - Limitations on Arrangements

11. Maximum number of days of arrangement

- 11.1 The number of structured workplace learning days or hours for a Student in a School Year is counted by adding all placement days or hours specified in each Arrangement for a Student in that School Year.

- 11.2 If no days or hours of structured workplace learning are specified in the Accredited Course of Study, then the Principal will determine an appropriate number of days or hours for the Accredited Course of Study being undertaken by the Student and that number of days or hours will be included in the calculation of the maximum number of days or hours.
- 11.3 The number of days or hours for an Arrangement must not exceed the number of days or hours which:
- (a) are set out in the relevant Accredited Course of Study; or
 - (b) are set out by the Principal in approving an Arrangement where no days or hours are established by the relevant Accredited Course of Study; and
 - (c) can be reasonably undertaken by the Student within a School Year.
- 11.4 The days or hours undertaken by a Student must occur during the School Year, unless the Principal is satisfied that for the purposes of the relevant Accredited Course of Study a placement outside the School Year is necessary.

12. Hours of Structured Workplace Learning

- 12.1 Subject to clause 12.2, under an Arrangement a Student must not work:
- (a) beyond the number of hours in a day which are normal working hours for a standard shift without overtime for the industry in which the Employer is engaged;
 - (b) more than the maximum weekly hours of work described in Division 3 of Chapter 2 of the FW Act;
 - (c) between the hours of 11.00 pm and 6.00 am; and
 - (d) beyond a time which is ten hours before the start time of a placement day or a school day which the Student is expected to attend.
- 12.2 A Student may work beyond those hours specified in clause 12.1 where the Principal determines in writing that working beyond those hours:
- (a) is necessary for the purposes of the relevant Accredited Course of Study; and
 - (b) is not detrimental to the health, education and moral and material welfare of the Student.

13. Determining the number of Students who may be engaged by an Employer

- 13.1 Subject to clause 13.3 of this Order, an Employer is not permitted to engage at any time more than one Student under an Arrangement for every three employees in the workplace.
- 13.2 For the purposes of this clause 13 the term 'employees' includes:
- (a) all full-time employees at the workplace;
 - (b) for any part-time employees, the equivalent number of full-time employees (by dividing the total weekly part-time hours by the number of hours in a full-time working week); and

- (c) any sole proprietors, partners, casual employees or other persons engaged in work at the workplace.

13.3 An Employer may engage more than the permitted number of Students allowed under clause 13.1 of this Order where:

- (a) the circumstances of a particular Accredited Course of Study require the placement of a Student in a particular work location when that placement would not be permitted under clause 13.1;
- (b) the Employer certifies, in writing, that Direct Supervision will be provided for all Students with that Employer;
- (c) the Principal is satisfied that exceeding the maximum number permitted under clause 13.1 of this Order will not:
 - (i) be detrimental to the health, education and moral and material welfare of any Student in that workplace; and
 - (ii) lessen the acquisition of skills or knowledge by any Student for the Accredited Course of Study;
- (d) the Principal, or the Structured Workplace Learning Coordinator, will undertake to attend the workplace as frequently as is reasonably practicable; and
- (e) the number of Students will not exceed one Student for each employee of the Employer.

Part 4 - General provisions concerning Arrangements

14. Making and Varying an Arrangement

14.1 A Student may be placed with an Employer for structured workplace learning as part of the Student's education if the Principal, the Employer, the Student and the Parent (where the Student is under 18 years of age) have made an Arrangement.

14.2 An Arrangement may only be varied or amended, in writing signed by each of the Principal, the Employer, the Student and the Parent (where the Student is under 18 years of age).

15. Cancelling an Arrangement

15.1 An Arrangement may be cancelled at any time by written notice from:

- (a) the Principal to the Employer; or
- (b) the Employer to the Principal,

sent to each of the other parties.

15.2 A cancellation of an Arrangement under clause 15.1 of this Order is effective immediately upon receipt of the written notice from the relevant party

15.3 No reason or period of notice for the cancellation of an Arrangement is required to be given by either the Principal or the Employer to each other party.

- 15.4 An Employer must not cancel an Arrangement prior to consulting the Principal unless it is in circumstances where it is not reasonable to require the Employer to do so.

16. The minimum rate of payment for a Student engaged under an Arrangement

- 16.1 The minimum payment to a Student engaged under an Arrangement in Victoria is \$5.00 per day. For the avoidance of doubt, an Employer may elect, but is not required to make a payment to a Student that is more than that minimum payment.
- 16.2 The minimum payment referred to in clause 16.1 of this Order is not remuneration for work performed by the Student but is to contribute to reimbursing the Student for expenses incurred by the Student, during the Arrangement, such as daily travel and incidental costs incurred.
- 16.3 No payment is to be made to a Student engaged under an Arrangement if the structured workplace learning placement is with a Commonwealth Department or a body established under a Commonwealth Act.
- 16.4 If a Student is engaged under an Arrangement with an organisation that is engaged wholly or mainly in an educational, charitable or community welfare service not conducted for profit, the Student may determine that the whole of his or her payment will be donated back to that organisation. If the Student determines that the whole of his or her payment will be donated back to that organisation, the Parent (where the Student is under 18 years of age) must provide written consent to the proposed donation.

17. Travel arrangements

- 17.1 The Student or the Parent (where the Student is under 18 years of age) will be responsible for the Student's transport to and from the workplace.
- 17.2 Where it is proposed that as part of the Arrangement, the Student may be required to undertake vehicle travel with the Employer and/or a Supervisor, such travel will be subject to:
- (a) the Student or the Parent (where the Student is under 18 years of age) consenting to the Student undertaking such vehicle travel by completing the Structured Workplace Learning Travel and Accommodation Form attached to this Order; and
 - (b) the Employer and/or the nominated Supervisor completing the Structured Workplace Learning Travel and Accommodation Form attached to this Order.

18. Accommodation arrangements

- 18.1 If the Student is required to stay at accommodation other than his/her normal place of residence for the purpose of the Arrangement, the Student or the Parent (where the Student is under 18 years of age):
- (a) is responsible for making suitable accommodation arrangements; and
 - (b) must complete the Structured Workplace Learning Travel and Accommodation Form attached to this Order.

- 18.2 Where the Student is required to stay at accommodation other than his/her normal place of residence for the purposes of the Arrangement, the Student or the Parent (where the Student is under 18 years of age) is responsible for the control and care of the Student at all times where the Student is not under the control and care of the Employer, or any other person.

19. Arrangement Form

- 19.1 The Arrangement Form attached to this Order must be used in respect of all Arrangements in Victoria or a Reciprocating State.
- 19.2 An Arrangement must not commence unless the Arrangement Form has been completed in accordance with clause 8.2(a) and (b) of this Order.
- 19.3 The Principal must retain a copy of the completed Arrangement Form for all Students undertaking structured workplace learning for a period of 5 years or as otherwise specified by the PR Act or in any other relevant legislation from time to time.
- 19.4 If the industry to which the Arrangement relates, includes potential exposure of the Student to scheduled carcinogenic substances and/or other hazardous substances the Principal must retain a copy of the completed Arrangement Form for 30 years from the date the Student last worked at the Employer's workplace in accordance with the OHS Regulations or for a time described in any applicable OHS legislation in the State or Territory in which the Employer conducts its business.

Part 5 – Interstate Arrangements

20. Application of Part 5

This Part only applies to structured workplace learning undertaken by Students and Overseas Students in a Reciprocating State or in another State or Territory where the Principal is satisfied that it is appropriate to make an Arrangement. The obligations imposed by this part are in addition to the obligations imposed by other parts of this Order.

21. Arrangements with Employers in other States or Territories

- 21.1 A Principal may make an Arrangement with an Employer in another State or Territory if:
- (a) that State or Territory is a Reciprocating State; or
 - (b) the Principal is satisfied that it is appropriate that the Arrangement should be made.
- 21.2 In order to be satisfied that it is appropriate to enter into an Arrangement with an Employer in a State or Territory that is not a Reciprocating State, the Principal must be satisfied of the following matters:
- (a) those listed at clause 8.3 of this Order;
 - (b) that the Employer understands the OHS legislation, regulations and standards in the State or Territory in which the Employer operates and undertakes to comply with such in relation to the Student as if the Student were the Employer's employee;
 - (c) the Student and/or a Parent of the Student have made suitable insurance arrangements as follows:

- (i) cover for the Student for any injuries in the course of the Arrangement at least comparable to that applicable in Victoria to a Student under the *Accident Compensation Act 1985*; and
- (ii) public liability insurance of at least \$10,000,000 cover per event in respect of any loss or damage which may be caused by any act or omission of the Student whilst engaged under an Arrangement.

22. Requirements of Principal in relation to Overseas Students

- 22.1 Before permitting an Overseas Student to undertake an Arrangement in a Reciprocating State or another State or Territory, a Principal must be reasonably satisfied that the Employer is aware that it is an offence against the *Migration Act 1958* (Cth) to permit a person to work in breach of a visa condition.
- 22.2 A Principal must not enter into an Arrangement which relates to an Overseas Student where the Principal is aware that the terms of the proposed Arrangement are inconsistent with the conditions of the visa held by the Overseas Student.

23. Application of Order

This Order applies to all Students and Overseas Students undertaking structured workplace learning.

Part 6 - Transitional

24. Transitional Provision - Order 23

The revocation of Ministerial Order 23 shall not, subject to this clause, affect the status, continuity, operation or effect of any Arrangement made or existing or continuing by or under the revoked Ministerial Order prior to that revocation. However, such Arrangements shall continue to exist as if made under this Ministerial Order only until 30 June 2008.

25. Transitional Provision - Order 699

For the period from 1 January 2014 until 30 June 2014, the amendments made to this Order by Ministerial Order 699 do not apply to any placement undertaken under an Arrangement made on or before 31 December 2013.

Dated the day of 2008

Bronwyn Pike MP
Minister for Education