

EDUCATION AND TRAINING REFORM ACT 2006

MINISTERIAL ORDER 724 - WORK EXPERIENCE ARRANGEMENTS (NON-SCHOOL PROVIDERS)

The Minister for Higher Education and Skills makes the following Order:

Part 1 - Preliminary

1. Title

This Ministerial Order may be cited as **Ministerial Order 724 - Work Experience Arrangements (Non-School Providers)**.

2. Authorising provisions and commencement

This Order is made under sections 5.4.4, 5.4.11 and 5.10.4 of the *Education and Training Reform Act 2006*, and comes into operation on 1 January 2014.

3. Purpose

3.1 The purpose of this Ministerial Order is to:

- (a) provide an operational framework for the provision of work experience for:
 - (i) Victorian Students enrolled in an Accredited Senior Secondary Course at a Non-School Provider undertaking Arrangements in Victoria; and
 - (ii) Victorian Students enrolled in an Accredited Senior Secondary Course at a Non-School Provider undertaking Arrangements in another State or Territory; and
 - (iii) Overseas Students enrolled in an Accredited Senior Secondary Course at a Non-School Provider undertaking Arrangements in Victoria or another State or Territory;
- (b) require a CEO of a Non-School Provider, before making an Arrangement for a Student who is a Child, to ensure that:
 - (i) the Employer obtains a Child Employment Permit issued pursuant to the CE Act; and
 - (ii) that any Supervisor has a current Assessment Notice; and
- (c) make other provisions to ensure appropriate arrangements are in place for a Student under an Arrangement.

4. Definitions and interpretation

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

Academic Year	in respect of any Non-School Provider, means that portion of the year beginning with the first day of operations of that year and ending with the last day of operations of that year as determined by that Non-School Provider.
Accredited Senior Secondary Course	means a course leading to a senior secondary qualification or any other course pertaining to year 11 or 12 that is registered as accredited on the State Register as being suitable for the purposes of a qualification.
Act	means the <i>Education and Training Reform Act 2006</i> (Vic).
Arrangement	means a work experience arrangement made under section 5.4.3 of the Act.
Arrangement Form	means the form prepared in accordance with clause 17 of this Order to be completed by the CEO, Employer, Student and Parent (where the Student is under 18 years of age).
Assessment Notice	has the meaning given to that term in section 3 of the WWC Act.
CE Act	means the <i>Child Employment Act 2003</i> (Vic).
CEO	means the Chief Executive Officer (however described) of a Non-School Provider or a delegate authorised by the Chief Executive Officer.
Child	means a person under the age of 15 years.
Child Employment Permit	means a permit issued under Division 2, of Part 2 of the CE Act.
Child Safe Standards	means the standards made from time to time by the Minister for Families and Children under section 17 of the <i>Child Wellbeing and Safety Act 2005</i> ,
Compliance Codes	means any of the compliance codes developed by WorkSafe Victoria.
Department	means the Department of Education and Training.
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.
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.
FW Act	means the <i>Fair Work Act 2009</i> (Cth).
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-School Provider	means a TAFE Institute or a Registered Provider.
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).
Overseas Student	means a person as defined under section 1.1.3 of the Act and who is enrolled in an Accredited Senior Secondary Course at a Non-School Provider.
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 Non-School Provider.
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 1A 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> .
Registered Provider	means a person or body registered under section 4.3.10(1) of the Act to provide an Accredited Senior Secondary Course or registered Senior Secondary Qualification.
Scheduled carcinogenic substance	has the meaning under regulation 1.1.5 of the OHS Regulations.
Senior Secondary Qualification	means qualifications described under the senior secondary certificate of education in the Australian Qualifications Framework.
State Register	means the State Register maintained under Part 4.6 of the Act.

Student	means a person, other than an Overseas Student, enrolled in an Accredited Senior Secondary Course at a Non-School Provider.
Supervisor	means the person/s nominated by the Employer to undertake Direct Supervision of a Student under an Arrangement.
TAFE Institute	means an institution created under section 3.1.11 of the Act and includes the TAFE division of a university with a TAFE division.
Work Experience Coordinator	means an employee of the Non-School Provider as nominated by the CEO of that Non-School Provider.
WWC Act	means the <i>Working With Children Act 2005</i> (Vic).

Part 2 - Prerequisites for Arrangements

5. Requirements of CEO in relation to Employers

- 5.1 Prior to entering into an Arrangement, the CEO must ensure that the Employer acknowledges, by completing the Employer Acknowledgement, to the CEO 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 5.1(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 OHS authority relevant to that Employer; and
 - (ii) will meet the requirements as outlined in clause 5.1(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 CEO, or the Work Experience 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 fee for services to employees or contractors, respectively;
- (f) by engaging the Student, the Employer will not exceed the permitted number of Students, in accordance with clause 11 of this Order;
- (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 is responsible for carrying out the Employer's obligations under the Arrangement, including but not limited to:
 - (i) ensuring the health, education and moral and material welfare of the Student will not suffer; 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) if the Student is a Child, the Employer has obtained a Child Employment Permit and ensured that any Supervisor has a current Assessment Notice;
- (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.

6. Requirements of CEO in relation to an Arrangement

- 6.1 The CEO will only enter into an Arrangement in accordance with the provisions of the Act and this Order.
- 6.2 Prior to the commencement of the placement under the Arrangement, the CEO 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 CEO completing the CEO 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 CEO is provided to each of the relevant parties.

6.3 Prior to entering into an Arrangement, the CEO must be satisfied that:

- (aa) the Student is of or over the age of 14 years;
- (ab) the Non-School Provider will comply with the Child Safe Standards for the duration of the proposed Arrangement;
- (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 is not prohibited employment within the meaning of section 12 of the CE Act;
- (d) the distribution of work experience days during the Academic 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 Non-School Provider;
- (e) the Student has the capacity to undertake a work experience placement without exposing themselves or others in the workplace to any unreasonable level of risk;
- (f) 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;
- (g) where the Student is required to undertake travel for the purposes of the Arrangement, that the travel arrangements are in accordance with clause 15 of this Order;
- (h) 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 16 of this Order;
- (i) the Non-School Provider has nominated a Work Experience Coordinator for the Student during the course of the placement under the Arrangement;
- (j) the Work Experience Coordinator has arranged with the Student an appropriate time to contact the Student (by any appropriate means):
 - (i) at least once during the course of the placement under the Arrangement; and
 - (ii) if the placement under the Arrangement includes placement days in more than one term, at least once during each of those terms.

- (k) the Student has the contact details of the Work Experience Coordinator to report any incidences of harassment, bullying or violence during the course of the placement under the Arrangement;
- (l) with respect to OHS:
 - (i) the Student will undertake and satisfactorily complete the OHS Program prior to commencing the placement; and
 - (ii) 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 to ensure that the OHS Program meets the needs of the relevant Student;
- (m) the CEO has disclosed to the Employer any necessary health information in relation to the Student of which the CEO 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 CEO 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 CEO 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.

7. Arrangement for Students who are Overseas Students

- 7.1 When an Arrangement is made for work experience 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.

8. WorkSafe Insurance and Public Liability Insurance

- 8.1 All Students under an Arrangement are covered under the WorkSafe Insurance Policy held by the Department.
- 8.2 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 CEO of a Non-School Provider in respect of a Student - either:
 - (i) by that Non-School Provider, with the insured being the Non-School Provider and the Student; or

- (ii) by the Employer, with the insured being the Employer and the Student, if the CEO of that Non-School Provider has advised the Employer at least four (4) weeks prior to the Student commencing the placement under the Arrangement that the Non-School Provider does not have public liability insurance as set out in clause 8.2 of this Order.

Part 3 - Limitations on Arrangements

9. Maximum number of days of Arrangement

- 9.1 The number of work experience days or hours for a Student in an Academic Year is counted by adding all placement days or hours specified in each Arrangement for a Student in that Academic Year.
- 9.2 The number of work experience days for a Student must not exceed:
 - (a) 40 days during any Academic Year; and
 - (b) 10 days during any school term (subject to clause 9.4(a) of this Order).
- 9.3 The total number of placement days under an Arrangement must:
 - (a) not exceed a total of 10 days (subject to clause 9.4(b) of this Order); and
 - (b) be a period falling within the Academic Year.
- 9.4 A CEO may suspend the operation of section 5.4.7(1) of the Act by allowing:
 - (a) a Student to be employed under an Arrangement for more than 10 days but not exceeding 15 days during any school term; and
 - (b) the period of employment of the Student to exceed a total of 10 days but not exceeding 15 days during any school term in respect of the Arrangement,in the following circumstances:
 - (i) where a Student requires an extended period of employment to acquire particular skills as part of the Student's educational program; or
 - (ii) to enable a Student to learn more about the workplace.

10. Hours of work experience

- 10.1 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, or if the Student is a Child between the hours of 9.00 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.

11. Determining the number of students who may be engaged by an Employer

- 11.1 Subject to clause 11.3 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.
- 11.2 For the purposes of this clause 11 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.
- 11.3 An Employer may engage more than the permitted number of Students allowed under clause 11.1 of this Order where:
 - (a) the Employer certifies, in writing, that Direct Supervision will be provided for all Students with that Employer;
 - (b) the CEO is satisfied that exceeding the maximum number permitted under clause 11.1 of this Order will not be detrimental to the health, education and moral and material welfare of any Student in that workplace;
 - (c) the CEO, or the Work Experience Coordinator, will undertake to attend the workplace as frequently as is reasonably practicable; and
 - (d) the number of Students will not exceed one Student for each employee of the Employer.

Part 4 - General provisions concerning Arrangements

12. Making and Varying an Arrangement

- 12.1 A Student may be placed with an Employer for work experience as part of the Student's education if the CEO, the Employer, the Student and the Parent (where the Student is under 18 years of age) have made an Arrangement .
- 12.2 An Arrangement may only be varied or amended in writing signed by each of the CEO, the Employer, the Student and the Parent (where the Student is under 18 years of age).

13. Cancelling an Arrangement

- 13.1 An Arrangement may be cancelled at any time by written notice from:
 - (a) the CEO to the Employer; or
 - (b) the Employer to the CEO,sent to each of the other parties.

- 13.2 A cancellation of an Arrangement is effective immediately upon receipt of written notice by the relevant party.
- 13.3 No reason or period of notice for the cancellation of an Arrangement is required to be given by either the CEO or the Employer to each other party.
- 13.4 An Employer must not cancel an Arrangement prior to consulting the CEO unless it is in circumstances where it is not reasonable to require the Employer to do so.

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

- 14.1 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 the Student that is more than that minimum payment.
- 14.2 The minimum payment referred to in clause 14.1 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 placement under the Arrangement, such as daily travel and incidental costs incurred.
- 14.3 No payment is to be made to a Student engaged under an Arrangement if the work experience placement is with a Commonwealth Department or a body established under a Commonwealth Act.
- 14.4 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.
- 14.5 In this clause, *payment* does not include payment in kind.

Example: A gift card or voucher must not be used to pay students engaged under an Arrangement.

15. Travel arrangements

- 15.1 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.
- 15.2 Where it is proposed that as part of an 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 Work Experience Travel and Accommodation Form attached to this Order; and
 - (b) the Employer or the Supervisor completing the Work Experience Travel and Accommodation Form attached to this Order.

16. Accommodation arrangements

- 16.1 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 Work Experience Travel and Accommodation Form attached to this Order.
- 16.2 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.

17. Arrangement Form

- 17.1 The Arrangement Form attached to this Order must be used in respect of all Arrangements in Victoria or in a Reciprocating State.
- Note:** The Arrangement Form is not to be used for Arrangements in a state or territory which is not a Reciprocating State.
- 17.2 An Arrangement must not commence unless the Arrangement Form has been completed in accordance with clause 6.2 of this Order.
- 17.3 The CEO must retain a copy of the completed Arrangement Form for all Students undertaking work experience for a period of 5 years or as otherwise specified by the PR Act or in any other relevant legislation from time to time.
- 17.4 If the industry to which the Arrangement relates includes potential exposure of the Student to scheduled carcinogenic substances and/or other hazardous substances the CEO 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 - Child Employment Permit and Working with Children Checks

18. Child Employment Permit and Working with Children Check

- 18.1 The CEO must not enter into an Arrangement for a Student who is a Child unless the CEO is satisfied that:
- (a) the Employer has a current Child Employment Permit; and
 - (b) any proposed Supervisor has a current Assessment Notice.
- 18.2 Prior to the commencement of the Arrangement, the CEO must obtain from the Employer a certified copy of the Employer's Child Employment Permit and a certified copy of the current Assessment Notice of any proposed Supervisor.
- 18.3 The CEO must retain a certified copy of the Employer's Child Employment Permit and of any Supervisors current Assessment Notice for a period of 5 years or as otherwise specified by the PR Act or in any other relevant legislation from time to time.

- 18.4 Prior to the commencement of the Arrangement, the CEO must obtain from the Employer a written assurance that the Employer will advise the CEO immediately if:
- (a) there is a relevant change in circumstances with respect to a Supervisor as specified in section 20(2) of the WWC Act; and/or
 - (b) a Supervisor is issued with an interim negative notice or a negative notice within the meaning of section 3 of the WWC Act.

19. Declared Industries

For the purpose of section 5.4.11 (5) of the Act, all industries and trades are declared to be classes of dangerous employment where there is a higher than usual possibility of a student, who is a Child, being exposed to the risk of physical injury.

Part 6 – Interstate Arrangements

20. Application of Part 6

This Part only applies to work experience undertaken by Students and Overseas Students in a Reciprocating State or in another State or Territory where the CEO 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. Eligibility to undertake interstate arrangement

A Victorian Student who is a Child must not be allowed to undertake work experience interstate.

22. Arrangements with Employers in other States or Territories

- 22.1 A CEO 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.
- 22.2 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 CEO must be satisfied of the following matters:
- (a) those listed at clause 6.3 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 proposed Arrangement is not prohibited employment within the meaning of the legislation that relates to child employment in the State or Territory in which the Employer operates; and
 - (d) the Student or the Parent (where the Student is under 18 years of age) 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.

22.3 Before permitting an Overseas Student to undertake an Arrangement in a Reciprocating State or another State or Territory, a CEO 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.

22.4 A CEO must not enter into an Arrangement which relates to an Overseas Student where the CEO 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 work experience. For the avoidance of doubt, a Student who is a Child is subject to the transitional provisions as referred to in clause 24.2 of this Order.

Part 7 - Transitional

24. Transitional Provisions

24.1 For the period from 1 January 2014 until 30 June 2014, this Order does not apply to any placement undertaken under an arrangement made on or before 31 January 2014.

24.2 The provisions as specified in sections 54 and 55 of the *Child Employment Act* apply.

25. Transitional Provisions – Ministerial Order No. 949

For the period 1 January 2017 until 30 June 2017, the amendments made to this Order by Ministerial Order 949 do not apply to any placement undertaken under an Arrangement entered into on or before 31 December 2016.

Dated the 20th day of December 2013

The Hon. Peter Hall, MLC
Minister for Higher Education and Skills