

CHILD EMPLOYMENT

In each State and Territory, there are laws that place restrictions on the employment of children. The scope of these laws varies between each jurisdiction.

Victoria

The *Child Employment Act 2003 (Vic)* ("the Act") regulates the employment of children in Victoria. The Act aims to protect children from any potentially adverse effects of employment and ensures that work does not interfere with a child's education.

What is the definition of a child?  See *Child Employment Act 2003 (Vic)* s 3

Under the Act, a 'child' is defined as a person who is less than 15 years of age.

When may a child be employed in Victoria?  See *Child Employment Act 2003 (Vic)* s 8

A child may only be employed in the following circumstances:

- > in accordance with a child employment permit and with the prior written consent of the parent or guardian of the child;
- > in a family business; or
- > in accordance with a work experience arrangement, as defined under Part 5.4 of the *Education and Training Reform Act 2006 (Vic)*.

 See *Child Employment Act 2003 (Vic)* s 10

The minimum age for employment is 13 years old; however a child who is aged between 11 and 13 years may be employed where they are delivering:

- > newspapers, pamphlets or other advertising material; or
- > goods for a registered pharmacist.

There is no age limit for the employment of a child in a family business or in the entertainment industry.

 See *Child Employment Act 2003 (Vic)* s 20

A child may only be employed to perform "light work", defined under the Act as work that is not likely to be harmful to a child's health, safety, development, moral or material welfare.

When must a child not be employed in Victoria?  See *Child Employment Act 2003 (Vic)* s 11

Unless an exemption is granted by the Minister, a child must not be employed during school hours on any school day. A child must not engage in employment if the nature and extent of the employment will negatively affect the child's attendance at school or their capacity to benefit from instruction.

 See *Child Employment Act 2003 (Vic)* s 12

A child must not be employed to perform the following duties:

- > door-to-door selling;

- > employment on a fishing boat;
- > employment on a building or construction site; or
- > any kind of employment declared to be prohibited employment by the Victorian Government.

Child Employment Permits

Child Employment Officers at the Department of Economic Development, Jobs, Transport and Resources have the power to investigate and issue child employment permits. Where necessary, the permit must be issued prior to the child commencing work. To apply for a child employment permit you can make an application [online](#) or via post/fax.

Do family businesses and farms need to follow the same processes as other businesses for child employees?

Parents or guardians who employ their children in a family business or farm are not required to apply for a child employment permit to employ their own child or to observe the general conditions of employment relating to age restrictions, hours of work or rest breaks.

Parents are, however, required to directly supervise their children. If someone else is appointed as the child's supervisor, the family business exemption does not apply and a permit must be granted.

Do different conditions apply for the entertainment industry?

Yes. While there is no minimum age of employment in the entertainment industry, particular requirements under the *Mandatory Code of Practice for the Employment of Children in Entertainment* do need to be met for employees less than 15 years of age in Victoria. Where a baby is under 12 weeks, a registered nurse may be required at the workplace.

Working with Children Checks (WCC)

Unless exempt, an employer must ensure that WCC checks have been conducted and issued prior to allowing a person to supervise a child under 15 years of age.

Parents, guardians and extended family members, including grandparents, aunts, uncles or siblings, who employ their own children or family members are not required to submit a WCC check. Other categories of individuals who are exempt from obtaining a WCC check include the following:

- > a teacher who has a current registration with the Victorian Institute of Teaching (VIT);
- > a sworn Victorian State or Australian Federal police officer; and
- > a person who is not an Australian citizen and not ordinarily resident in Australia if they do not ordinarily engage in the supervision of working children in Victoria.

Hours of Work See *Child Employment Act 2003* (Vic) s 21

The Act states that a child can be employed, during the school term, for a maximum of:

- > three hours per day; and
- > twelve hours per week.

During school holidays, a child can be employed for a maximum of:

- > six hours per day; and
- > thirty hours per week, inclusive of rest breaks.

A child must not be employed to perform work on any day earlier than:

- > 6am or sunrise, whichever is later, or later than 6 pm or sunset, whichever is earlier, if the child is employed in street trading; and
- > 6am or later than 9 pm in any other case.

These hours do not apply to children working in a family business or in the entertainment industry.



See *Child Employment Act 2003* (Vic) s 22

A child must be given a rest break of at least:

- > thirty minutes after every three hours of work; and
- > twelve hours between finishing one shift and commencing the next.

Penalties for non-compliance under the Act range from \$1,000 to \$10,000.

Australian Capital Territory

In the ACT, the employment of children less than 18 years of age is governed by the *Children and Young People Act 2008* (ACT). Employment may be prohibited where it is deemed that it is contrary to the best interests of the child.

A child or young person may be employed on light work or be employed in a family business. A child cannot, however, be employed in a high risk employment, which includes an industry, occupation or activity declared by the Minister as high risk. Work in any of the following is regarded as high risk:

- > use of dangerous machinery;
- > use of dangerous substances;
- > handling harsh or toxic chemicals;
- > high elevation work;
- > service of alcohol;
- > gaming or gambling services;
- > nudity and display of genitals;
- > working with extreme temperatures; and
- > heavy construction and excavation work.

New South Wales

In New South Wales, child employment is governed by the *Industrial Relations (Child Employment) Act 2006* (NSW). An employer of a person aged less than 18 years must provide employment terms and conditions at least equivalent to those applying under the comparable industrial legislation. The Act overrides federal unfair dismissal laws where the state laws are more beneficial to a junior employee.

While there is no minimum age of employment as such, the employment of children is regulated in certain industries. Employment of children in entertainment, exhibition, still photography or door-to-door sales is regulated by the Office for Children – Children’s Guardian (“the OCCG”). Employers in these industries must be authorised to employ children and comply with the legislated Code of Practice.

Northern Territory

In the Northern Territory, a child is defined as a person under the age of 18 years. The *Education Act* (NT) states that a child must attend school between the ages of 6 and 17. Parents and employers may be fined or imprisoned where they prevent a school-aged child from attending school. After finishing Year 10, a child who has not reached 17 years of age must attend an approved education or training course or enter paid employment.

In accordance with the *Care and Protection of Children Act 2007* (NT), a child should not be required to work in a position that is exploitative or harmful to their physical, mental or emotional wellbeing. Children between the ages of 13 and 17 years can be employed in light work, providing it is not harmful to their health or development and does not interfere with their attendance at school or their capacity to benefit from instruction received.

While there is no minimum wage, the Act states that children under the age of 15 years are not permitted to be employed between the hours of 10pm and 6am.

There is no minimum age for the following work in the Northern Territory:

- > artistic performances;
- > children employed in family undertakings; and
- > children who are pupils for vocational or technical education.

It is mandatory for all employers who have contact with children in certain areas of employment to hold a Working with Children Clearance Notice or Ochre Card. Parents have the right to view a person's Ochre Card before a child commences employment.

Queensland

In Queensland, the employment of children is governed by the *Child Employment Act 2006* (QLD). A child is defined under the Act as being under the age of 18 years. A school-aged child is defined as being less than 16 years of age and required to be enrolled at a school. A child who is below the age of 16 years is not a school-aged child if the child has completed compulsory schooling or is for any other reason not required to be enrolled at school.

Under the Act, it is illegal to employ a school-aged child where an employer has not obtained a Parent's Consent Form or a Special Circumstances Certificate. A permit system exists under the legislation, however these are only granted in 'special circumstances'.

While the minimum age under the legislation is 13 years, children between the ages of 11 and 13 can perform supervised delivery work for items such as newspapers and advertising leaflets. A family business is exempt from the minimum age, maximum hours and break requirements.

Specific restrictions in the Act preclude school-aged children from working longer than:

- > four hours on a school day;
- > eight hours on a non-school day;
- > twelve hours during a school week; and
- > thirty eight hours during a non-school week.

School-aged children are unable to work between 10pm and 6am and must be given a rest break of:

- > one hour at the end of the fourth hour worked; and

- > twelve hours between finishing one shift and commencing the next.

South Australia

While there is no legislation that governs child employment in South Australia specifically, the *Education Act 1972 (SA)* restricts the employment of compulsory school-aged children, those being between the ages of 6 and 16, from working during school hours.

Tasmania

While Tasmania does not have legislation specifically addressing the employment of children, the *Education Act 1994 (Tas)* states that a child of compulsory school-age must be enrolled at school or provided with home education until the child completes the school year in which they turn 16 years of age. An employer must not employ or permit to be employed a school-aged child during the hours when the child is required to attend school.

The *Children, Young Persons and their Families Act 1997 (Tas)* provides that children aged under 11 years may not perform work where the job involves the selling of goods and services in a public place. Children between the ages of 11 and 14 years are prohibited from offering anything for sale in a public place between 9pm and 5am.

Section 8 of the *Collections for Charities Act 2001 (Tas)* provides that an organisation may permit a person under the age of 16 years to solicit for a charitable purpose where the person is under the supervision of an adult and, where the person is under 12 years of age, is under the immediate control of an adult.

Other restrictions on children's employment in Tasmania include:

- > a person must be 18 years of age or able to hold a security agents licence;
- > a person must be over 18 years of age to apply for a Tobacco Sellers licence, which is required to be able to sell tobacco or tobacco products however, there is no minimum age for people who can sell tobacco products in Tasmania in a business which holds a Tobacco Sellers licence;
- > there is no age restriction in Tasmania on a person selling alcohol, but they must have completed the Responsible Serving of Alcohol course;
- > there is a prohibition on the use, procuring or permitting of a child for prostitution or in the production of child exploitation material, including a prohibition on a child being on the premises used by a sex-worker; and
- > a person must not allow a minor (under 18) employed by them to have access to restricted publications or to sell a restricted publication.

Tasmania does not have any requirements for employers of young people to obtain a permit.

Western Australia

In Western Australia, child employment is governed by the *Children and Community Services Act 2004 (WA)*. The Act provides that children need to be 15 years of age to be employed.

Despite the minimum age requirements, children aged between 13 and 15 years of age may be employed in a shop, retail outlet, restaurant, in the delivery of newspapers or pamphlets or collection of shopping trolleys between 6am and 10pm where the work is outside school hours.

Children aged between 10 and 13 years of age may be employed to deliver newspapers, pamphlets, or advertising material provided that the work is between the hours of 6am and 7pm and outside of school hours. These restrictions do not apply where children are engaged in employment as part of an official educational program.

Frequently Asked Questions

Is 14 years and 9 months the legal working age?

This is a myth. The legislative requirements concerning the working age for children differ between each State and Territory.

What are the minimum pay rates for child employees?

Some Modern Awards provide for junior wages. Where junior rates are stipulated, child employees may be paid at those minimum rates. If the relevant Modern Award does not stipulate junior rates, child employees will be required to be paid at the minimum adult rates.

The Modern Awards that do not include junior wage rates include the following:

- > Building and Construction General On-Site Award 2010;
- > Cleaning Services Award 2010;
- > Nurses Award 2010;
- > Electrical, Electronic and Communications Contracting Award 2010;
- > Security Services Industry Award 2010; and
- > Quarrying Industry Award 2010.

What are the relevant school leaving ages for each applicable State and Territory?

The minimum school leaving age is as follows:

- > Northern Territory – 15 years of age
- > Australian Capital Territory – 15 years of age
- > New South Wales – 17 years of age or the completion of Year 10, whichever occurs first
- > Queensland – 17 years of age
- > South Australia – 17 years of age
- > Western Australia – 17 years of age
- > Tasmania – 17 years of age
- > Victoria – 17 years of age.

Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues.

Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on **(03) 8662 5222**.

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