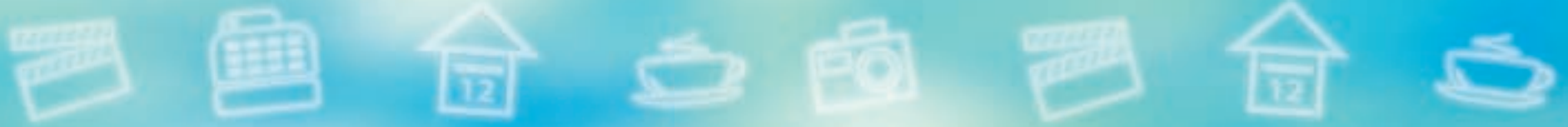


Child Employment Act 2003



Child Employment General Information



The Child Employment Act 2003

The Victorian Government recognises that some children under the age of 15 undertake both paid and unpaid work. The community expects that the nature and extent of this work be regulated so that children under the age of 15 years are protected from risks associated with employment.

From 12 June 2004 the employment of children will be regulated by the *Child Employment Act 2003* (the Act). The Act aims to ensure that work does not adversely affect a child's education and that the health, safety and moral welfare of children at work is protected.

The Child Employment Act replaces the child employment provisions of the *Community Services Act* that have been in place since 1970. The old provisions will be repealed upon commencement of the new legislation.

Who does the Act apply to?

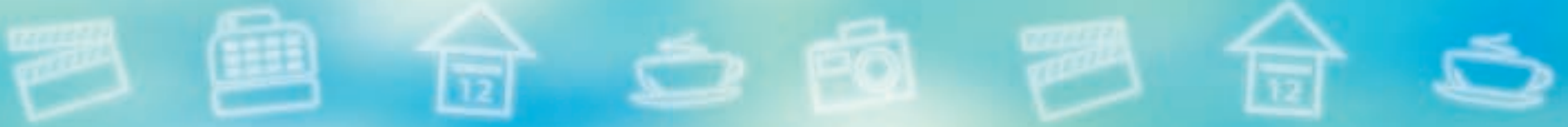
The Act applies to the "employment" of children under 15 years of age. Once a child reaches 15 years, the Act no longer applies.

How is the employment of children regulated under the Act?

The Act maintains the existing permit system, but exempts children working for family businesses. It sets out some general limitations relating to the employment of children, which include a minimum age of employment as well as the type of employment and number of hours to be worked. The Act prohibits some types of employment. The Act also introduces the requirement for police checks on employers and supervisors in workplaces, but these will not be required for parents, guardians, grandparents, aunts, uncles or siblings.

What does the term "employment" include?

Work undertaken by a child is considered to be "employment" under the Act when a child takes part or assists in any business, trade or occupation carried on for profit. It includes both paid and unpaid work, and applies to a child who is engaged as an employee or independent contractor.



Determining whether a particular activity is “employment” under the Act will be decided on a case by case basis.

Factors to be taken into account include:

- the nature, regularity and duration of the activity performed by the child;
- the intention of the parties; and
- whether the activity is integral to the business in question.

Some of the activities which do not constitute employment include:

- participating in a church service or religious program;
- participating in an occasional project or entertainment the net proceeds of which are applied for the benefit of a church or school;
- performing an activity for a non-profit organisation;
- participating in a sporting activity (including coaching, refereeing or umpiring); and
- visiting farms and participating in activities for enjoyment and entertainment, as a normal part of family life and social interaction.

Even though these activities are not considered employment, the child may only be engaged in light work (see “light work” definition). When performing activities for a non-profit organisation in a public place or in door-to-door fundraising, the child may not work earlier than 6am or sunrise (whichever is later) and no later than 6pm or sunset (whichever is earlier) unless accompanied by an adult.

What type of employment or activity can children under 15 be employed to do?

A child may only be employed to perform light work. Light work is defined under the Act as work or any other activity that:

- is not likely to be harmful to a child’s health or safety, moral or material welfare or development; and
- is not such as to prejudice the child’s attendance at school or his/her capacity to benefit from instruction.



Some examples of light work include:

- going on errands;
- casual work in or around a private home;
- golf-caddying;
- clerical work;
- gardening;
- street trading;
- deliveries including newspapers, pamphlets and pharmacy orders;
- entertainment;
- farm related chores; and
- work as a shop assistant.

In determining whether work is “light”, consideration must be given to the nature and environment of the workplace.

A Child Employment Officer can provide advice on whether a particular activity constitutes light work.

Prohibited employment

There are some types of work which are prohibited by the Act, meaning children under the age of 15 are not permitted to engage in them. They are:

- door-to-door selling;
- employment on a fishing boat, other than a boat operating on inland waters;

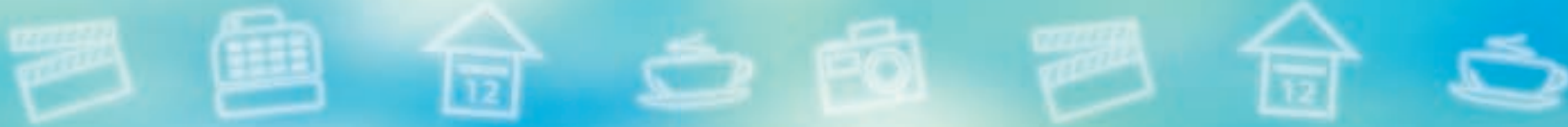
- employment on a building or construction site (whether commercial or residential) at any time before the buildings on the site are at lock-up stage; and
- any other kind of employment prohibited by the Governor in Council.

This prohibition applies to all employment arrangements in these areas including children who are employed by their parents.

Employment in the Entertainment Industry

A mandatory code of practice for the employment of children in the entertainment industry, which will set down regulations specific to that industry, will be developed within 12 months.

Until that time, the Act will have application but with some exclusions. The general limits placed on hours and rest periods under the Act do not apply in the entertainment industry, although a permit may set down special conditions as determined by a Child Employment Officer.



General Conditions of Employment

There are some general conditions which apply to the employment of children.

Minimum age

The minimum age of employment of a child permitted by the Act is generally **13 years**.

However, a minimum age of **11 years** applies to the following work:

- delivering newspapers or other pamphlets and advertising material; and
- making deliveries for a registered pharmacist.

There is no minimum age for the employment of a child in a family business (by his/her parents) or in the entertainment industry.

Employment not to be during school hours

As in the past, a child must not be employed during school hours on a school day unless an exemption from school has been granted.

Hours of work

The maximum number of hours, including rest breaks, a child can work are:

During school term	Outside school term
A maximum of 3 hours per day and 12 hours per week (inclusive of rest breaks)	A maximum of 6 hours per day and 30 hours per week (inclusive of rest breaks)

The starting and finishing times must be:

All employment (other than street trading)	Street trading
<ul style="list-style-type: none"> • No earlier than 6am • No later than 9pm 	<ul style="list-style-type: none"> • No earlier than 6am or sunrise (whichever is later) • No later than 6pm or sunset (whichever is earlier)

Note: Street trading means any selling in a public open place used or accessed by the public.

Rest breaks

A child must be given a rest break of at least 30 minutes (paid or unpaid) after every 3 hours of work. In addition, there must be a 12-hour break between finishing one shift and commencing another.

Reference should also be made to the relevant award or agreement which applies at the workplace, in relation to entitlements to breaks.

Child Employment Permits

Under the *Child Employment Act* children under the age of 15 years are required to have a permit in order to work. This requirement has existed since 1970.

Who applies for a permit?

The parent or guardian of the child is required to apply for a permit by written application. The prospective employer is required to enter details about the job, including supervision arrangements and any police check authorisation(s) (see "Police Checks" for more details). Both parties are required to sign the application form. The principal of the child's school also needs to sign the application if the work is to be performed during the school term.

When must a permit be obtained?

A permit must be obtained before employment of a child commences.

How long will it take to issue a permit?

Due to the requirement for police checks in certain circumstances (the Act requires the Commissioner of Police to issue a police check within 14 days), permit applications may take longer to process than in the past. However, subsequent applications within 12 months of a police check should not take as long when supported by a statutory declaration.

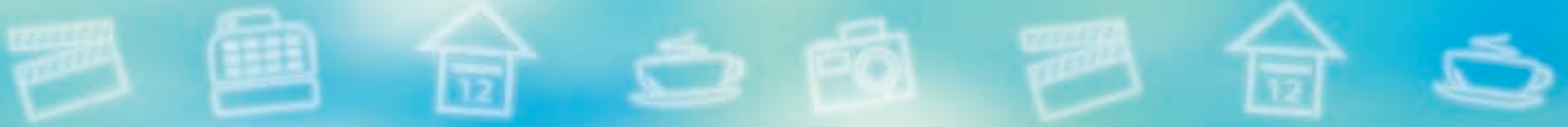
To ensure that permits are obtained when required, applicants should allow sufficient time to plan and lodge their applications. Child Employment Officers can advise on process and timing issues.

A permit is issued for a period up to 12 months. A permit may cover breaks in employment and if these are likely, advice should be obtained from a Child Employment Officer before lodging an application.

Does a parent who employs his/her own child have to apply for a permit?

No. Previously parents were required to apply for a permit where they employed their child, unless the child was working in a shop attached to the family home.

From June 12 any parent who employs and directly supervises his/her own child in a family business is exempt from the requirement to apply for a permit. It should be noted, however, that the child may not engage in prohibited employment, may only undertake light work and cannot be employed during school hours.



As in the past, extended family members are not exempt from applying for a permit, although they are exempt from the requirements for a police check. Extended family members are:

- grandparents;
- aunts and uncles; and
- siblings.

Work experience

A child who is engaged in accordance with a work experience arrangement under the *Education Act 1958* is not required to have a permit unless they are engaged in employment in declared high risk industries (i.e. declared by Order of the Minister for Education and Training under the *Education Act*).

What happens if a child is employed without a permit?

It is an offence for a person to employ a child, or for a parent or guardian to allow a child to be employed, without a permit. Penalties of up to \$10,000 apply under the Act.

What are the criteria for assessment of a permit application?

A permit will be issued if all of the criteria established by the Act are met.

These include:

- that the child will not suffer physically, educationally, morally or materially as a result of the employment;
- that the child will not be exploited; and
- that the proposed employment does not fall outside the general limitations.

In addition a permit cannot be issued until a police check has been completed on the employer and a direct supervisor of the child at the workplace (see “Police Checks” section).

Conditions of a permit

A Child Employment Officer may impose conditions on a permit to clarify the limitations placed on the child’s employment so that the child does not face hazards in the workplace.

As well as ensuring that the employment will not fall outside the Act’s general limitations, a permit may impose any other conditions determined to be appropriate. For example, a permit may limit employment to a particular locality, activity or event, or may prohibit the use of particular equipment.

Supervision

A child employed subject to a permit issued under the Act must be directly supervised by the employer or another appropriate adult. Direct supervision involves physical proximity to a child and therefore the capacity for the supervisor to oversee and control what the child is doing.

A supervisor should be provided with appropriate training. In particular, the supervisor should be trained to recognise health and safety hazards including teasing, bullying and harassment.

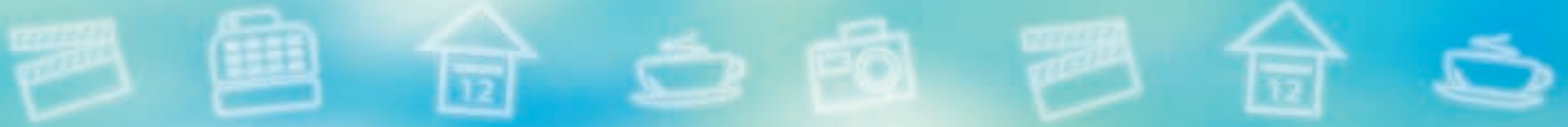
Police checks

Police checks are a report on a person’s criminal history. Police checks are required for all employers, except for parents, guardians and extended family. Extended family includes grandparents, aunts, uncles and siblings.

In addition to employers, some other persons will be required to consent to a police check. Persons who will directly supervise a child and **who will not themselves be directly supervised by an employer or another person who has undergone a police check** will be required to consent to a police check.

Applicants for permits should contact a Child Employment Officer (see page 8) if they have any queries about permits or police checks.





Child Employment Officers

With each application for a permit, the prospective employer and supervisor (if applicable) must complete the Victoria Police **CONSENT TO CHECK AND RELEASE NATIONAL POLICE RECORD** form. An application for a Declaration of Suitability also requires completion of the consent to a police check. If a police check has been conducted in the past 12 months a statutory declaration may be sufficient.

Employers are responsible for ensuring that a child is not directly supervised by any person whose name was not included on an Application for a Child Employment Permit or for whom a Declaration of Suitability has not been issued.

Employers should refer to the more detailed brochure *Child Employment – Police Checks* available from Industrial Relations Victoria.

Existing permits

The *Child Employment Act* contains provision for a permit issued under the *Community Services Act* and in force before 12 June 2004 to continue in force in accordance with its terms.

The Act provides for the appointment of Child Employment Officers. The role of Child Employment Officers is to:

- provide information to employers, parents, children, schools and the community about the Act; and
- investigate applications for permits and ensure compliance with the Act.

Child Employment Officers also have powers to ensure that employers comply with the provisions of the Act, regulations and permit conditions. The officers may enter a workplace and amongst other things, inspect and copy records, inspect or view work processes and interview employees.

To contact a Child Employment Officer, telephone 1800 287 287.

Offences and Penalties

There are a number of offences under the Act with penalties of up to \$10,000.

Offences include:

- employing a child without a permit;
- breaching a permit condition; and
- obstructing and hindering a Child Employment Officer

Prosecutions of offences under the *Child Employment Act* are heard in the Industrial Division of the Magistrates Court.

Information Brochures

Copies of the following information brochures may be downloaded from www.irv.vic.gov.au or obtained from a Child Employment Officer:

- *Child Employment – General Information*
- *Child Employment – Family Businesses*
- *Child Employment – Entertainment Industry*
- *Child Employment – Farms*
- *Child Employment – Retail and Hospitality Industries*
- *Child Employment – Police Checks*



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

www.irv.vic.gov.au

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