

Child Employment Act review

Consultation paper

November 2020

1 Introduction and background

The *Child Employment Act 2003* (CE Act) regulates the employment of children under 15 years old in Victoria.

The past few years have seen changes to the employment landscape and to regulation around child protection. This may affect children in the workforce. We need to review the current CE Act to ensure that it remains responsive and effective.

The CE Act is designed to:

- set out the age, types of work and conditions that apply to child employment;
- protect children from doing work that could:
 - be harmful to their health or safety;
 - affect their moral or material welfare or development;
 - affect their attendance at school;
- protect children from any form of exploitation.

The employment of children under 15 is mainly regulated through a permit system. Children aged 11 years and over can do delivery work if their employer has a general industries permit. Similarly, children aged 13 years and over can be employed under a general industries permit.

There is no minimum age for children to work in the entertainment industry. This generally includes performing, modelling, photographic and television/film work. However, their employers must have a specific entertainment industry permit. A mandatory code of practice sets conditions around employing children in the entertainment industry. The code will be reviewed after the review of the CE Act.

Children of any age working in a family business (where the child's parent or guardian run the business and they directly supervise the child) do not need a permit.

Children are only permitted to do 'light work' (as defined in the CE Act) and cannot be employed in hazardous industries or perform dangerous tasks.

It is recognised that providing children under 15 with employment opportunities that do not interfere with their education or pose any risk to their health and safety can have a positive impact on their character and work ethic, as well as provide opportunities to meet people and develop their skills.

Questions:

- (i) Does the current CE Act strike an appropriate balance between protecting children in the workplace and providing them with employment opportunities?
- (ii) Could it be improved to better meet this objective?
- (iii) Could the CE Act be more focused on preventing risk?

2 Age limits

The CE Act sets out different minimum ages for child employment depending on the nature and type of work being done. For example, there is no minimum age for children to work in the entertainment industry or in a family business. Children are able to do delivery work from the age of 11 years and for all other types of work (if permits are in place) from the age of 13 years. Children aged 15-17 are not covered by the Act.

Questions:

- (i) Is it appropriate to stagger the minimum working ages for children depending on the type of employment?
- (ii) Should the Act regulate children over the age of 15 working in certain industries or in certain situations (this could be with or without a permit)?
- (iii) Are there any new or emerging risks or challenges in the workplace that might affect children and/or the age at which they do particular tasks or roles?

3 Definition of employment

Section 4 of the CE Act defines employment more broadly than the traditional employer/employee relationship. Under the Act, a child is employed when they:

- perform work; and
- where there is a contract for service or contract of service; or
- where that work is under another type of arrangement and is for a business operating for profit.

This definition was made to ensure that children are protected in a broad range of working situations, including where children are paid in goods and/or merchandise or not paid at all. However, the employment landscape is changing. This definition must be broad enough to capture all types of working arrangements and situations where children may be exposed to risk.

We also need to consider whether all parties involved in the employment of children are required to meet obligations under the Act. For example, there is often a chain of parties involved in the engagement of children, particularly in advertising. This could include the client, an advertising agency, a casting agency, and a production company.

Consideration also needs to be given to the way the Act interacts with other Victorian and Commonwealth legislation.

Questions:

- (i) Are there any issues with the current definition of employment?
- (ii) Are all types of employment/engagement captured? Should we include any other types of work or work-related activity (for example, casting, social media)?
- (iii) Are the current exclusions from the definition of employment and the permit requirements appropriate and risk-based?
- (iv) Should responsibility for compliance with the Act be attributed to any other parties involved in the employment process?

4 Approach to regulation

Wage Inspectorate Victoria (the Inspectorate) is the regulator of child employment in Victoria. Good regulation is proportionate and targeted. It is based on an assessment of risk, including the nature and size of the risks associated with non-compliance and the likelihood of those risks happening.

A risk-based, proactive and responsive regulatory model means resources can be allocated to where the biggest difference can be made, or where the biggest risks can be mitigated.

Questions:

- (i) What are the main challenges of complying with the current regulatory framework under the Act?
- (ii) Is the current regulatory framework effective in addressing the risks facing children in the workplace?
- (iii) Are record-keeping obligations clear and are they sufficient?

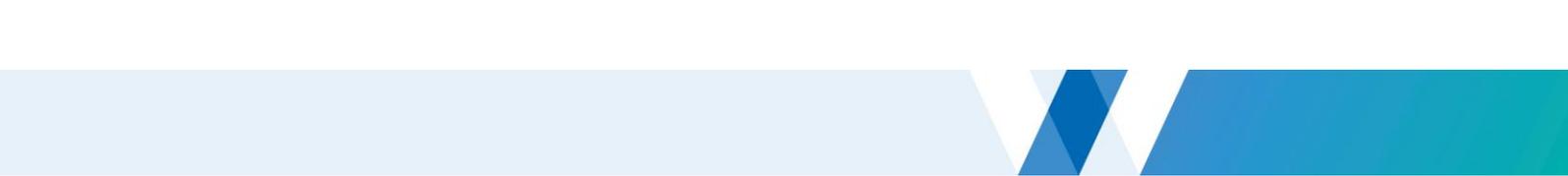
5 Permit system

The child employment permit is the key regulatory tool used to administer the objectives of the CE Act. There are two types of permits:

- 1 general industry permit
- 2 entertainment industry permit

This recognises that there are different considerations and risks associated with children working in the entertainment industry.

The employer must apply for, and hold, the child employment permit. Generally, separate permits are issued to the employer for each individual child they engage.



To get a permit to employ a child in Victoria, the employer must provide information about the child, the type of employment, and the conditions of employment such as hours of work, rest breaks and supervision. For a permit to be granted, the employer must be able to show that the work is safe and will not expose the child to any harm.

Questions:

- (i) Does the permit system provide appropriate protections for children in the workforce?
- (ii) Is the permit system needed in all circumstances/industries/age groups/environments or could it be more targeted?
- (iii) Would another type of system (for example, licensing/authorisation) be more effective and/or appropriate?