

Child Employment Guide



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Purpose

The purpose of the *Child Employment Act 2006* and the *Child Employment Regulation 2006* is to protect all children working in Queensland.

These laws aim to protect children from being required to perform work that may be harmful to their health and safety, or physical, mental, moral and social welfare.

The laws are also designed to ensure that work does not interfere with a child's education, particularly for the period when the child is required to be at school. Therefore the bulk of the Act relates to school-aged children.

In recognition of the unique requirements of work in the entertainment industry, this industry is exempt from some of the general provisions that apply to children working in other industries. Instead, conditions specific to the entertainment industry form part of the legislation.

The Child Employment Guide is divided into two sections, the first deals with the general child employment conditions that apply across industries and the second contains information on the employment of children in the entertainment industry.

The Act is effective as of 1 July 2006.

Amendments covering the entertainment industry take effect as of 1 January 2007.

Child Employment Guide (*other than* the entertainment industry)

What you need to know

In Queensland, the employment of children (those under 18 years of age) is governed by the *Child Employment Act 2006* and the *Child Employment Regulation 2006*.

The legislation protects children from being required to perform work that may be harmful to their health and safety, or that compromises their mental, moral or social welfare. The Act and Regulation also limits the hours of work of school-aged children to ensure that their studies aren't adversely affected.

*A school-aged child is a child who is under 16 years **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 (i.e. completion of year 10) or is for any other reason not required to be enrolled at a school.*

For example, a child is not a school-aged child if they:

- are 16 years of age or older but have not completed year 10 of their schooling, or
- have completed year 10 of their schooling (or are for any other reason not required to be enrolled at a school) but are under 16 years of age.

The new laws set the age at which children can work at 13, although those between 11 and 13 can perform supervised delivery work for items such as newspapers and advertising leaflets.

Specific restrictions introduced by the Act include preventing school-aged children from being required to work longer than:

- 12 hours during a school week
- 38 hours during a week that is not a school week
- four hours on a school day
- eight hours on a day that is not a school day.

School-aged children are not allowed to work between 10pm and 6am. Children between 11 and 13 years of age who are performing supervised delivery work are not allowed to work between 6pm and 6am.

Parents are also required to play their part. The Act makes it illegal to employ a school-aged child until an employer has obtained a parent's consent form. The form must be signed by the child's parent and include information for the employer about the hours when the child is required to be at school. A new form must be completed when those hours change. The employer must keep the signed consent form on file.

The Act and the Regulation outline offences and penalties for employers who do not comply with the law. These laws also prohibit the employment of children while nude or partially nude.

Enforcement of the child employment laws will be carried out by inspectors who will monitor compliance and investigate and deal with alleged contraventions.

Definitions

School-aged child

A school-aged child is a child who is under 16 years 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 (i.e. completion of year 10) or is for any other reason not required to be enrolled at a school.

More information on when a child is required to be enrolled at a school is available in the *Education (General Provisions) Act 2006*.

Young child

A young child is a child who is not old enough to be enrolled for compulsory schooling. While it is not envisaged that there will be many instances where young children will work, there are occasions where this could happen, e.g. young children working in the entertainment industry.

Work

The term 'work' has a broad application including work that is carried out for labour only or substantially for labour only and work performed under piecework rate arrangements as well as under a traditional employment arrangement. 'Work' does not include genuine independent subcontracting arrangements. Participating or assisting in a business carried on for profit is included under this definition, even where the child does not receive payment or other reward. This definition also includes work performed as a supervisor.

'Work' does not include domestic chores. Domestic chores have been deliberately excluded from the definition of work in recognition of the differences between true work and activities performed as a chore or a family obligation.

Work carried out as part of work experience, vocational placements, apprenticeships, traineeships and charitable collections covered by other legislation are not subject to the requirements of this Act.

Parent

A parent is the child's mother, father or another person who exercises parental control over the child. However, a person temporarily acting in the place of the parent is not considered to be a parent.

Where the child is an Aboriginal or Torres Strait Islander, a parent includes a person who is regarded as such under Aboriginal or Torres Strait Islander custom.

Where a person has been granted guardianship under the *Child Protection Act 1999*, or where a person has been granted parental responsibility through a decision of a Federal or State court then that person is considered to be the only parent of the child. In these cases, no other person, including the child's biological parent, would be regarded as the child's parent under this Act.

Family business

A family business is a business wholly owned by a close adult relative of the child. Family businesses are exempt from the minimum age, maximum hours, prohibited hours and break requirements imposed under the Act.

Other requirements such as work prohibited under a regulation and employer obligations with respect to safeguarding children while at work, contact with parents and record keeping requirements apply to children working in a family business.

Parental consent requirements apply to family businesses except where the employer is the parent.

Restrictions on school-aged or young children working

The following work restrictions apply only to the work of school-aged and young children.

Age restrictions

The Act prohibits the employment of children below the ages specified in the Regulation.

Generally the minimum age for employment is 13 years. This is lowered to 11 years where the child carries out supervised delivery work that involves delivering newspapers, advertising material or similar items between the hours of 6am and 6pm.

Maximum hours of work

School-aged children

The Act restricts employment of school-aged children outside of the hours stipulated by the Regulation. The Regulation differentiates between the hours that a school-aged child can work on a day when they are required to attend school and a day when they are not required to attend school.

On a school day a school-aged child can work a maximum of four hours. On a day when a school-aged child is not required to attend school they can work a maximum of eight hours.

A distinction is also made between the maximum hours a school-aged child can work during a school week and a non-school week. A school week is a week, commencing on a Sunday, when the child is required to attend school on any day of that week. During a school week a school-aged child can work a maximum of 12 hours. During a non-school week a school-aged child can work a maximum of 38 hours.

In calculating the hours a child has already worked, if the child worked for more than one employer during the period, the hours the child worked for all employers, in total, must be counted.

Unless an industrial instrument provides otherwise a school-aged child must be given at least a one hour break after the end of the fourth hour.

An industrial instrument includes an award or certified agreement made under state or federal legislation, a Queensland Workplace Agreement (QWA), an industrial agreement, an enterprise flexibility agreement (EFA), or a code of practice made for outworkers in the clothing industry or for labour market programs.

Young children

A young child can work up to four hours a day and 12 hours per week.

Maximum allowable hours of work for school-aged and young children

| | On a school day | On a non-school day | During a school week | During a non-school week |
|-------------------|-----------------|---------------------|----------------------|--------------------------|
| School-aged child | 4 | 8 | 12 | 38 |
| Young child | N/A | 4 | N/A | 12 |

**A school week is a week commencing on a Sunday, when the child is required to attend school on any day of that week.*

Note: The Act makes it an offence for an employer to require or permit a school-aged child to perform work when they are required to attend school. A parent commits an offence under the Education General Provisions Act 2006 if he/she allows a child to work when they are required to be at school.

Shifts

Unless an industrial instrument provides otherwise, a school-aged or young child must not work more than one shift on a single day.

Breaks

Unless an industrial instrument provides otherwise, a school-aged child must be given at least a one hour break after the end of the fourth hour.

A school-aged or young child must have a 12 hour break after completing work with an employer before starting work again, with the same employer.

| Shifts per day | Break during shift | Break between shifts |
|----------------|---|----------------------|
| 1 | 1 hour after the end of the fourth hour | 12 hours |

Prohibited Hours

In addition to the prohibition on employing school-aged children when they are required to be at school, a school-aged or young child must not work between the hours of 10pm and 6am. A further restriction prohibits children between the ages of 11 and 13 years from carrying out delivery work between the hours of 6pm and 6am.

| Application | Prohibited hours |
|---|----------------------|
| School-aged and young children | Between 10pm and 6am |
| Children between the ages of 11 and 13 years carrying out delivery work | Between 6pm and 6am |

Supervision

The Regulation provides that school-aged or young children involved in delivery work or the exchange of money must be appropriately supervised by an adult and must have an adult near to, and in regular contact, with the child.

Exemptions

The restrictions upon age, hours, shifts and breaks listed above do not apply to children working in a family business or in the entertainment industry. Specific restrictions apply to the employment of children working in the entertainment industry.

The restrictions upon the age when children may work do not apply in the case of voluntary work, but all other restrictions do apply.

The above restrictions do not apply if the child is permitted or authorised under an Act or a special circumstances certificate to do the work, or work in the way, or when, the Regulation states the child may not work. See comments in the 'special circumstances certificate' section of this Guide.

Authority to work

A school-aged or young child must obtain parental consent before starting work. The information to be included in the parent's consent form as prescribed by the Act is outlined below.

If a school-aged child does not have a parent or if the child is living independently from his/her parent, the child can apply to the Chief Executive of the Department of Justice and Attorney-General for a special circumstances certificate. This certificate authorises the child to work when not required to attend school.

An employer commits an offence if they require or permit a school-aged or young child to work unless they have a parent's consent form (see the 'parent's consent form' section of this guide) or a special circumstances certificate (see the 'special circumstances certificate' section of this guide).

An employer also commits an offence if they require or permit a school-aged or young child to perform work when the child is required to attend school as stated in the parent's consent form or special circumstances certificate.

Parent's consent form

By signing the consent form, a parent gives consent to their child working within the restrictions set by the legislation and provides information about when the child is required to be at school. After completion, the form must be given to the child's employer. The employer is required to keep the form and ensure that the child is not required or permitted to work during the hours when the child is required to attend school as stated on the form.

Where a school-aged or young child is employed by one of their parents, completion of the parent's consent form is not necessary.

Where a child started work for the employer before this Act came into force, completion of a parent's consent form is not necessary. However a parent is obliged by the Act to complete and give a parent's consent form to a school-aged child's employer whenever a change in the child's school hours occurs (e.g. at the start or finish of a school semester). The Act states that the parent must do this within 14 days of becoming aware of the change.

The parent's consent form must be the form approved under the Act.

A copy of the form is provided in the centre of this booklet. You may copy this form, or download a copy from www.justice.qld.gov.au.

The form must contain the following details:

- child's name
- child's date of birth
- prospective employer's name
- name of any other employer the child works for
- hours the child works for any other employer
- parent's name
- hours the child is required to be at school
- statement that the parent consents to the child performing work
- signature of a parent.

Special circumstances certificate

The Chief Executive of the Department of Justice and Attorney-General may grant a special circumstances certificate to allow a child to work under circumstances that the child would ordinarily not be allowed to work due to restrictions imposed by the Regulation.

However, a special circumstances certificate will only be granted where the Chief Executive believes that the work will not interfere with the child's schooling or will not be harmful to their health or safety or their physical, mental, moral or social development.

A special circumstances certificate can also be applied for by a school-aged child who has no parents or is living independently of their parents. In such cases the special circumstances certificate would serve as an authority (in lieu of a parent's consent form) for an employer to employ the child outside the hours the child is required to attend school.

An application for a special circumstances certificate may be made by the child or an adult on the child's behalf. The application must be supported by the child and by the child's employer or proposed employer.

A special circumstances certificate may be issued subject to conditions and may be reviewed at any time. An affected person who is dissatisfied with a decision of the Chief Executive to grant or not grant a special circumstances certificate may appeal against the decision. For further information see the 'Appeals' section of this guide.

It is an offence for an employer to require or permit a child to work in contravention of a special circumstances certificate.

Chief Executive may prohibit or limit the work a child may do

The Chief Executive may prohibit a child from performing work that would ordinarily be permissible or prohibit a child from working for a stated employer by issuing a work limitation notice.

The Chief Executive will only issue a work limitation notice if it is reasonably believed that the work may interfere with a child's schooling or be harmful to their health or safety or their physical, mental, moral or social development.

An application for a work limitation notice may be made by any person or the Chief Executive may instigate these proceedings on his or her own initiative.

Prior to issuing a notice, the Chief Executive is obliged to notify the employer or proposed employer in writing and give him/her the opportunity to respond in writing submitting reasons as to why such a notice should not be issued. The employer's submission must be given to the Chief Executive within seven days of receiving the Chief Executive's notification.

If a work limitation notice is issued, the employer or proposed employer affected by it must be given the notice. Any person affected by this decision must also be given a copy of the Chief Executive's decision.

Where the Chief Executive rejects an application for a work limitation notice, the Chief Executive must inform affected persons.

A work limitation notice may be reviewed by the Chief Executive at any time considered appropriate.

An affected person who is dissatisfied with a decision of the Chief Executive may appeal against this decision. For further information see the 'Appeals' section of this guide.

Requirements for all children under 18 years of age

Certain conditions of employment apply to all children (i.e. anyone below the age of 18 years). These conditions apply whether the work is paid, unpaid, voluntary or for a family business. These conditions include prohibitions upon employing children while nude or dressed in a sexually provocative manner, employers' duties with respect to contacting parents, safeguarding children and record keeping requirements.

Prohibition on nudity and sexually provocative clothing

An employer must not employ a child under the age of 18 years:

- while the child is nude
- clothed in a way that the child's sexual organs or anus are visible, or
- if the child is five years or older, the breasts of the child are visible.

Employer's duty about ability to contact a parent

If while at work a child is injured or becomes ill to an extent that the child can no longer work, the employer must take all reasonable steps to contact the child's parent.

The employer is also obliged to take reasonable measures to ensure that the child is able to contact his/her parents while at work and allow the child to do so in reasonable circumstances.

Employer's duty to safeguard children while they are at work

An employer must take reasonable steps to ensure that while a child is at work the child is not subjected to deliberate or unnecessary social isolation, or any other behaviour likely to intimidate, threaten, frighten or humiliate the child.

Employers must give age appropriate induction training to all children working for them.

A copy of this guide must be displayed at the workplace so that it can be easily read by any children employed there.

The Working with Children Check

The Working with Children Check applies to certain child related service environments. However, just because you are employing children and young people doesn't necessarily mean you need a blue card. You may need a blue card if the usual functions of your employment includes or is likely to include providing services or conducting activities directed mainly towards children and young people.

Regardless of whether or not a blue card is required, it is prudent for an employer to consider how they might foster safe environments for children and young people in their workplace.

Further information about risk management or the blue card requirements can be accessed at www.bluecard.qld.gov.au or by telephoning the Blue Card Contact Centre on **(07) 3211 6999** or **1800 113 611**.

Record keeping requirements

Any employer of a child is required to keep certain basic employment records. Records that must be kept include:

- the full name of the employer
- the address of the premises where the child works
- the child's full name, address, and home phone number
- the name, address and home and business phone numbers of a parent of the child
- the name, address, and home and business phone numbers of a person who the child's parent nominates as being responsible for the child if the child's parent cannot be contacted
- the child's date of birth
- the nature of work that the child is required to perform
- a copy of any special circumstances certificate or work limitation notice relevant to the child's employment.

Employers of a school-aged or young child are also required to keep the following information in their records:

- the number of hours worked by the child during each day and week
- the times at which the child started and stopped work
- the details of work breaks including meal breaks
- the parent's consent form for the child.

If the child is over 16 or has completed year 10 (i.e. not a school-aged or a young child), the employer is also required to obtain a copy of a form of identification, stating the child's date of birth, issued under an Act or by the child's school. Examples of suitable forms of identification include a passport, birth certificate or school identification card. The date of birth of a school-aged or young child is contained in the parent's consent form.

Some overlap exists between the records required to be kept under this Act and the requirements of the *Industrial Relations Act 1999*. It is acceptable to combine the information required under both Acts into a single record but care should be taken that all information required by both Acts is kept.

Retention of Documents

Records are required to be kept for a minimum of two years. They must be kept in Queensland at a workplace of the employer.

Enforcement

Enforcement of child employment laws will be carried out by inspectors. The Act describes the functions and powers of inspectors, including monitoring compliance, investigating and dealing with alleged contraventions and informing children, parents and employers of their rights and obligations.

To carry out their duties inspectors are given legal powers which includes the power to enter workplaces and inspect records required to be kept under the Act and Regulation.

Proceedings for offences

Any person who does not comply with the Act and the Regulation may be prosecuted in an Industrial Magistrates Court. Maximum fines for non-compliance are prescribed in the Act and the Regulation.

Appeals

Appeal from decisions of the Chief Executive

A person who is dissatisfied with a decision of the Chief Executive about a special circumstances certificate or work limitation notice may appeal the decision to the Queensland Industrial Relations Commission (QIRC). Appeals must be commenced within 21 days of a person being given an information notice about a decision or otherwise being notified of a decision unless the QIRC allows for an extension of time.

Appeal from decision of an Industrial Magistrates Court

A person dissatisfied with a decision of the Industrial Magistrates Court in relation to offences against this Act may appeal to the Industrial Court of Queensland.

Child Employment Guide

(for work in the entertainment industry)

What you need to know

In Queensland, the employment of children (those under 18 years of age) is governed by the *Child Employment Act 2006* and the *Child Employment Regulation 2006*.

The legislation protects children from being required to perform work that may be harmful to their health or safety, or their physical, mental, moral or social development. These laws also ensure that work does not interfere with children's schooling.

To achieve these objectives the Act and Regulation set minimum ages for work, limit the hours of work of school-aged and young children and place obligations on employers who employ children.

Work in the entertainment industry was deliberately excluded from some of the general restrictions applying to minimum age and hours. Where the entertainment industry has been exempted, separate provisions have been created. For instance no minimum age applies to children working in entertainment, however to ensure the protection of young children greater supervisory conditions are stipulated for children working in entertainment.

Two sets of restricted hours are prescribed for school-aged or young children working in the entertainment industry. These hours are categorised into permitted hours in recorded entertainment and permitted hours in live entertainment. Permitted hours for work in live entertainment are more restricted than those in recorded entertainment.

The hours during which work may be performed for recorded and live entertainment including the maximum working hours per day and the maximum number of working days in a week are prescribed for a number of age groupings.

Employer obligations have been developed to cater for the unique needs of the entertainment industry. For instance, specific employer obligations including, but not limited to, collection and travel arrangements, the provision of accommodation, food and drink, and provision of amenities apply when employing children in the entertainment industry.

These employer obligations apply in addition to the obligations developed for all industries.

Child employment laws prohibit the employment of children in adult entertainment and related activities by prohibiting the employment of children while they are nude or partially nude. The entertainment laws also prohibit the employment of children around others who are nude or semi-nude. Under certain circumstances, which are spelt out in greater detail in this guide, children under 12 months of age may be exempt from these prohibitions.

The Act and Regulation outline offences and penalties for employers who do not comply with the law. Enforcement of the child employment laws will be carried out by inspectors who will monitor compliance and investigate and deal with alleged contraventions.

Parents are also required to play their part. The Act makes it illegal for an employer to employ a school-aged child until they have obtained a parent's consent form. The form must be signed by the child's parent and include information for the employer about the hours when the child is required to be at school. A new form must be completed when those hours change. The parent's consent form must be kept by the employer.

Definitions

School-aged child

A school-aged child is a child under 16 years **and** required to be enrolled at a school. A child below the age of 16 years is not a school-aged child if the child has completed compulsory schooling (i.e. completion of year 10) or is for any other reason not required to be enrolled at a school.

More information on when a child is required to be enrolled at a school is available in the *Education (General Provisions) Act 2006*.

Young child

A young child is a child not old enough to be enrolled for compulsory schooling.

Note

The Preparatory Year the Queensland Government has introduced across the state from 2007 will increase the starting age for compulsory schooling by six months from 2008. The Preparatory Year is not part of the compulsory schooling requirements.

Baby

A young child includes a baby. For the purposes of the entertainment industry a baby is defined as a child under 12 weeks.

Parent

A parent is the child's mother, father or another person who exercises parental control over the child. However, a person temporarily standing in the place of the parent is not considered to be a parent.

Where the child is an Aboriginal or Torres Strait Islander, a parent includes a person who is regarded as such under Aboriginal tradition or Torres Strait Islander custom.

Where a person has been granted guardianship under the Child Protection Act 1999 or where a person has been granted parental responsibility through a decision of a Federal or State court then that person is considered to be the only parent of the child. In these cases no other person, including the child's biological parent, would be regarded as the child's parent under this Act.

Family business

A family business is a business wholly owned by a close adult relative of the child. Family businesses are exempt from the prohibited working hours and break requirements imposed under the Regulation.

Parental consent requirements apply to family businesses except where the employer is the parent.

Work

The term 'work' has a broad application including work that is carried out for labour only or substantially for labour only and work performed under piecework rate arrangements as well as under a traditional employment arrangement. 'Work' does not include genuine independent subcontracting arrangements. Participating or assisting in a business carried on for profit is included under this definition, even where the child does not receive payment or other reward. This definition also includes work performed as a supervisor.

'Work' does not include domestic chores. Domestic chores have deliberately been excluded from the definition of work in recognition of the differences between true work and activities performed as a chore or a family obligation.

Work carried out as part of work experience, vocational placements, traineeships and charitable collections covered by other legislation are not subject to the requirements of this Act.

Work in the entertainment industry

The broad application of the term 'work', applies equally to the entertainment industry. Work in the entertainment industry involves performance work, for example acting, appearing in promotional events, dancing, doing voice-overs, modelling, including photographic modelling, playing a musical instrument or singing.

Working front of house or backstage is not considered work in the entertainment industry for the purposes of this Regulation. Such work is covered by the general provisions that apply to other industries.

Work considered entertainment

The Regulation has broken entertainment into the two categories of live and recorded entertainment.

Live entertainment includes:

- (a) theatre
- (b) musical theatre
- (c) opera
- (d) circus entertainment
- (e) fashion parades
- (f) performances in a shopping centres
- (g) promotional events.

Recorded entertainment includes:

- (a) film or a similar production
- (b) television
- (c) advertising
- (d) radio
- (e) photographic modelling
- (f) performances recorded only for use in subsequent entertainment or a subsequent exhibition
- (g) any other entertainment that is not live entertainment.

Restrictions on school-aged or young children working

The following work restrictions apply only to the work of school-aged and young children.

Age restrictions

No minimum age is imposed on children working in the entertainment industry. However employers employing younger children have additional 'care' obligations. Details of these obligations are spelt out under the heading Supervision.

Maximum hours of work

There are two sets of hours prescribed for school-aged or young children working in the entertainment industry. There are separate hours prescribed for recorded entertainment and for live entertainment.

Permitted hours for work in live entertainment are more restricted than those in recorded entertainment.

Permitted working hours for school-aged or young children working in recorded entertainment

| Age | Hours during which school-aged or young child may work | Maximum working hours a day | Maximum number of days of work in the previous 7 days |
|-------------------------------------|--|-----------------------------|---|
| Under 3 years | 6am to 6pm | 4 | 3 |
| At least 3 years but under 8 years | 6am to 11pm | 6 | 4 |
| At least 8 years but under 16 years | 6am to 11pm | 8 | 5 |

Permitted working hours for school-aged or young children working in live entertainment

| Age | Hours during which school-aged or young child may work | Maximum working hours a day | Maximum number of days of work in the previous 7 days |
|--------------------------------------|--|-----------------------------|---|
| Under 2 years | 9am to 6pm | 4 | 1 |
| At least 2 years but under 6 years | 9am to 6pm | 4 | 3 |
| At least 6 years but under 10 years | 9am to 10pm | 4 | 4 |
| At least 10 years but under 12 years | 9am to 11pm | 6 | 4 |
| At least 12 years but under 16 years | 9am to 11pm | 8 | 4 |

Notes

* Children who have completed year 10 are not school-aged children whatever their age, and their working hours are not limited by this schedule.

Restrictions on working hours do not apply where the child carries out work in a business, or for a corporation, that is totally owned by a close adult relative of the school-aged or young child. Close adult relative of a child means an adult who is a parent, grandparent, aunt, uncle, sibling or step sibling of the child.

Shifts

A child may only work one shift per day, unless the shift was interrupted once to enable the child to attend school.

Breaks

One hour break

A child is entitled to a minimum one hour break under the following circumstances:

- by 1pm if the child started work before 10am that day, or
- after the fifth consecutive hour of work, if they have not already had the one hour break referred to above.

10 minute break

Children under 13 years must be given at least 10 minutes paid break at the end of each 50 minutes worked, unless the child is starting a one hour break referred to above.

12 hour break between shifts

A child is entitled to a 12 hour break between finishing work on one day and recommencing work on the next. The purpose of this break is to ensure that the child has adequate time for rest, leisure, education or to fulfil any other non-work obligations. Therefore the child should not work with any employer during this break.

Prohibited Hours

Maximum of 4 hours work per day on a school day

A child may not work for more than four hours on a day the child is required to attend school for at least 3 hours.

9pm restriction

A child may not work later than 9pm in recorded entertainment if the child must attend school the following morning.

40 hour week

During a seven day period the total of the following activities must not exceed 40 hours:

- any hours the child works for any employer
- the hours the child is required to attend school, including any hours the child is required to participate in an external program under the *Education (General Provisions) Act 2006*. An external program includes being tutored on set, at home or through a distance education program.

Activities recognised as Work for the purposes of calculating hours worked

For calculating the total hours a child has worked, each of the following must be counted:

- any time beyond 45 minutes spent by the child in travelling from the child's home to the place of work
- any time beyond 45 minutes spent by the child in travelling from the final place of work for the day to the child's home
- where the employer is responsible for bringing the child to work, any time between the child's arrival at the place of work and the child starting work
- where the employer is responsible for taking the child home from work, any time between the child's finishing work and the start of the child's journey home from work.

In effect, for the purposes of determining the total number of hours worked, all of the time the child is at work is counted with the exception of the one hour break the child is required to take as stipulated previously.

Supervision

Supervision of babies

A baby may only be employed if one of the baby's parents is present at all times.

In addition, where a baby is employed for more than one hour on a single day, a registered nurse or midwife must be present at all times.

Supervision of children

Children are to be directly supervised by one of their parents or by a person with specified child care qualifications.

Supervision of children under 6 years of age

Children under 6 years may be supervised by a registered nurse, a midwife or a person with an early childhood or child care qualification under the *Child Care Regulation 2003*.

Supervision of children over 6 years of age

Children 6 years or over may be supervised by a person with a school age carer qualification under the *Child Care Regulation 2003*.

Ratios of supervisors to children

The ratio of supervisors to children is prescribed as follows:

- one supervisor for up to two children under three years
- one supervisor for up to four children who are at least 3 years old but not yet school-aged
- one supervisor for up to eight school-aged children.

For example, in calculating the number of supervisors needed, if an employer employed three children under three years of age at least two supervisors would be required.

It should be noted that for a child to be directly supervised, their supervisor must not be given other duties by the employer.

Exemptions

The restrictions upon hours, shifts and breaks listed above do not apply to children working in a family business.

The above restrictions do not apply if the child is permitted or authorised under an Act or a 'special circumstances certificate' to do the work, or work in the way, or when, the Regulation states the child may not work. See comments in the 'special circumstances certificate' section of this guide.

Authority to work

A school-aged or young child must obtain parental consent before starting work. The information to be included in the parent's consent form as prescribed by the Act is outlined below.

If a school-aged child does not have a parent or if the child is living independently from his/her parent, the child can apply to the Chief Executive of the Department of Justice and Attorney-General for a special circumstances certificate. This certificate authorises the child to work when not required to attend school.

An employer commits an offence if they require or permit a school-aged or young child to work unless they have a parent's consent form (see parent's consent form section of this guide) or a special circumstances certificate (see special circumstances certificate section of this guide).

An employer also commits an offence if they require or permit a school-aged child to perform work when the child is required to attend school as stated in the parent's consent form or special circumstances certificate.

Parent's consent form

In the parent's consent form a parent gives consent to their child working within the restrictions set by the legislation and provides information about when the child is 'required to be at school'*. After completion, the form is to be given to the child's employer. The employer is to keep the form and ensure that the child is not required or permitted to work during the hours when the child is required to attend school as stated on the form.

Where a school-aged or young child is employed by one of their parents, completion of the parent's consent form is not necessary.

Where a child started work for the employer before this Act came into force, completion of a parent's consent form is not necessary. However a parent is obliged by the Act to complete and give a parent's consent form to a school-aged child's employer whenever a change in the child's school hours occurs (e.g.

at the start or finish of a school semester). The Act states that the parent must do this within 14 days of becoming aware of the change.

The parent's consent form must be the form approved under the Act. A copy of the form is available in the middle of this booklet. You can also download copies from www.justice.qld.gov.au or you may photocopy the original form.

The form must contain the following details:

- child's name
- child's date of birth
- prospective employer's name
- name of any other employer of the child
- hours the child works for any other employer
- parent's name
- hours the child is 'required to be at school'*
- statement that the parent consents to the child performing work
- signature of a parent.

* The hours the child is required to attend school include any hours the child is required to participate in an external program under the *Education (General Provisions) Act 2006*. An external program includes being tutored on set, at home or through a distance education program. Also included, is any informal arrangement entered into between the child and the school the child attends.

Special circumstances certificate

The Chief Executive of the Department of Justice and Attorney-General may grant a special circumstances certificate to allow a child to work under circumstances that the child would ordinarily not be allowed to work due to restrictions imposed by the Regulation.

However, a special circumstances certificate will only be granted where the Chief Executive believes that the work will not interfere with the child's schooling or will not be harmful to their health or safety or their physical, mental, moral or social development.

A special circumstances certificate can also be applied for by a school-aged child who has no parents or is living independently of their parents. In such cases the special circumstances certificate would serve as an authority (in lieu of a parent's consent form) for an employer to employ the child outside the hours the child is required to attend school.

An application for a special circumstances certificate may be made by the child or an adult on the child's behalf. The application must be supported by the child and by the child's employer or proposed employer.

A special circumstances certificate may be issued subject to conditions and may be reviewed at any time. An affected person who is dissatisfied with a decision of the Chief Executive to grant or not grant a special circumstances certificate may appeal against the decision. For further information see the Appeals section of this guide.

It is an offence for an employer to require or permit a child to work in contravention of a special circumstances certificate.

Chief Executive may prohibit or limit the work a child may do

The Chief Executive may prohibit a child from performing work that would ordinarily be permissible or prohibit a child from working for a stated employer by issuing a work limitation notice.

The Chief Executive will only issue a work limitation notice if it is reasonably believed that the work may interfere with a child's schooling or be harmful to their health or safety or their physical, mental, moral or social development.

An application for a work limitation notice may be made by any person or the Chief Executive may instigate these proceedings on his or her own initiative.

Prior to issuing a notice, the Chief Executive is obliged to notify the employer or proposed employer in writing and give him/her the opportunity to respond in writing submitting reasons as to why such a notice should not be issued. The employer's submission must be given to the Chief Executive within seven days of receiving the Chief Executive's notification.

If a work limitation notice is issued, the employer or proposed employer affected by it must be given the notice. Any person affected by this decision must also be given a copy of the Chief Executive's decision.

Where the Chief Executive rejects an application for a work limitation notice, the Chief Executive must inform affected persons.

A work limitation notice may be reviewed by the Chief Executive at any time he or she considered appropriate.

An affected person who is dissatisfied with a decision of the Chief Executive may appeal against this decision. For further information see the Appeals section of this guide.

Employer duties for school-aged, young children and babies

Due to the unique requirements of the entertainment industry some employer obligations have been developed to ensure appropriate protection is afforded children of school age or younger, including babies working in this industry.

Prohibition on inappropriate roles and situations

Restrictions are imposed on the way in which a school-aged or young child may work. For instance, children may not be employed in inappropriate roles or situations. When determining whether a role is appropriate, the employer must consider the child's age, emotional and psychological development, maturity and sensitivity.

The Regulation also imposes some specific restrictions when employing children, including that children may not be:

- exposed to scenes or situations likely to distress or embarrass them
- made distressed to obtain a more realistic depiction of a particular emotional reaction
- present while another person is nude or partially nude.

The term partially nude includes the person being clothed in a way that his/her sexual organs or anus are visible or in the case of a female five years or older, her breasts are visible.

Under the following circumstances children under the age of 12 months may be allowed to be present while another person is nude.

- The child's parent, who is not the employer, has provided written consent to the employer for the child being employed while the other person is nude or partially nude. In the consent form, the parent will need to specify the state of undress the parent is consenting to. For example if the person is to be

clothed in such a way that breasts are visible the parent would give consent for the child to be present for this. The consent form does not give blanket consent for the child to be present when a person is in any state of undress. The child may only be present for those activities specified in writing by the parent.

- The parent must be present for the whole period that the child is present when the other person is nude or partially nude.

The Regulation prohibits the employment of a child while nude or dressed in a sexually provocative manner, however as this applies to all minors (under 18 years of age) further detail may be found under the section relating to Requirements for children under 18 years of age.

Restrictions on Work Performed by Babies

The Regulation imposes additional restrictions when a baby is employed. A baby is defined as a child under 12 weeks of age. While some restrictions apply regardless of the length of time the baby is employed others vary depending on whether the baby is employed for more or less than one hour per day.

Restrictions common to the employment of babies regardless of the length of time the baby is employed

A baby may only be employed if one of the baby's parents is present at all times.

A baby must not be employed unless the employer is satisfied that the baby is in a fit condition to be employed.

A baby must not be exposed to:

- harmful lighting
- irritating or contaminated cosmetics
- persons with a contagious medical condition.

Where a baby is employed for one hour or less on a single day

In the case of a baby being employed for one hour or less on a single day, the parent must provide the employer with the following advice regarding the baby's health.

- That the baby was born in good health and delivered full term.
- The baby's birth weight was at least 3 kilograms.
- The baby has not had a post-natal problem.
- The baby is feeding successfully.
- The baby's weight gain from birth has been satisfactory.

Where a baby is employed for more than one hour on a single day

An employer must not employ a baby for more than one hour on a single day unless the employer has received advice from a registered nurse or midwife:

- on the baby's suitability to work
- that the work environment is unlikely to distress the baby.

In addition a registered nurse or midwife must be present at all times.

Child Employment Guide

An employer must inform the parent of a child about the existence of this Child Employment Guide and supply the parent with a copy of it if so requested.

Employer's duty about collection of child and travel home

Employers must take reasonable measures to ensure that children are collected from work by a parent of the child or another person authorised in writing by the parent.

However if the child is at least 13 years the child can travel alone if:

- the child lives within 10 kilometres from the place of employment and can be home by 6pm, or
- the child's parent has given written consent and the child can be home before 8.30pm.

If the child is to travel home alone, the employer is obliged to take steps to ensure that the child starts the trip within 30 minutes of finishing work for the day.

'Home' means the place where the child is living, including temporary accommodation the child is residing in while on location.

Employer's duty to provide food and drink

The employer is required to provide appropriate and nutritious food to the children working for the employer. When catering for children consideration should be given to the child's age, taste and any cultural or dietary requirements that the child may have. For example, while adults may enjoy an Indian curry for lunch, children may not.

The employer is required to make the food available at reasonable times, which would include during meal breaks and breaks for morning and afternoon tea.

The employer is also required to make water and other suitable drinks available to children at all times.

Employer's duty to protect from extremes of climate

The employer is obliged to ensure that children are suitably clothed and otherwise protected from injury or illness that may be caused by climatic conditions including the sun, wind, rain, and cold weather.

Employer's duty about facilities for dressing and undressing

The employer must provide facilities that allow a child to dress and undress in private while at work. This includes while on set or location.

Employer's duty to provide recreation materials and rest facilities

The employer must provide rest facilities and recreation materials for children while at work. The facilities and materials should be suitable to the age and the requirements of the children employed.

Employer's duty about unfitness for work and infectious disease

In addition to the standard employer obligations regarding contacting parents in the case of illness or injury (these are explained under the relevant heading) specific provisions have been developed for school-aged and young children working in the entertainment industry. These include that an employer must not permit these children to work if they are unfit for work due to illness or injury or if they are carrying or have been exposed to a contagious medical condition that may risk the health of another person.

For a child who is not yet of school-age, the employer must notify a parent or another person nominated by the parent if the child becomes ill or is injured at work or has been exposed to a contagious medical condition.

Employer's duty about presence of parent

The employer must permit a parent to be at the workplace at all times while the child is at the workplace. The exception to this is if the exclusion of the parent is for a limited time and only for health and safety reasons or if the parents' presence would cause unnecessary disruption to the production. For instance a parent may be excluded temporarily during the filming of a special effects scene.

This exception does not apply where a child is nude or partially clothed or in the vicinity of another person who is nude or partially clothed. In such cases a parent must be present the entire time.

Employer's duty to provide accommodation

If the child is required to spend time away from home because of work commitments, the employer must provide the child and, if the parent so desires, the parent, with accommodation while they are away. That is, the employer must arrange and pay for accommodation of a reasonable standard.

Employer's duty to engage teacher

Where the employer wishes the child to work during the hours that the child would normally be engaged in their educational program, there are a number of ways in which such absences can be managed:

- the principal or delegate may negotiate an alteration to the student's educational program which accommodates the employment but maintains participation at a level that is equivalent to full-time participation at the school site (for example the student attends school for half a day and undertakes work at home which is completed around the entertainment work commitments)
- the principal may consider implementing a flexible arrangement for the student, where the principal is able to ensure that the school's obligations in respect to developing and implementing such an arrangement can be met. For a flexible arrangement to be approved, the child must be receiving part of their educational program from a provider other than the school in which they are enrolled (for example a tutor on set)
- the parent may change the student's enrolment to a School of Distance Education
- the parent may seek an exemption for their child, which the principal may grant if the time period is less than 1 year. The principal may choose to grant the exemption on the condition that the student continues to receive education from a registered teacher while working.

In situations where the child is to be tutored at the work site, the employer must engage an appropriately qualified and registered teacher.

The employer must also provide a suitable place and facilities for the teaching to be carried out or for the child to be able to complete work set by the school if an alteration to the child's educational program requires this.

Record keeping requirements

Employers are obliged to keep some additional records for school-aged and young children. Details of the additional information required can be found under the Record Keeping section of this guide.

Requirements for children under 18 years of age

Certain conditions of employment apply to all children (i.e. anyone below the age of 18 years). These conditions apply whether the work is paid, unpaid, voluntary or for a family business. These conditions include prohibitions upon employing children while nude or dressed in a sexually provocative manner, employers' duties with respect to contacting parents, safeguarding children and record keeping requirements.

Prohibition on nudity and sexually provocative clothing

An employer must not employ a child under the age of eighteen years:

- while the child is nude
- clothed in a way that the child's sexual organs or anus are visible
- if the child is five years or older, the breasts of the child are visible.

This prohibition is not exclusive to children working in the entertainment industry but applies to all children working in Queensland. However children working in the entertainment industry may be exempt under the following circumstances.

- If the child is under 12 months.
- The child's parent has provided written consent to the employer to the child being employed in such a manner. The parent will need to specify the state of undress they are consenting to. The consent form does not give blanket consent for the child to be employed in any state of undress.
- The parent is present for the whole period that the child is nude or partially nude.

Employer's duty about ability to contact a parent

If while at work a child is injured or becomes ill to an extent that the child can no longer work, the employer must take all reasonable steps to contact the child's parent.

The employer is also obliged to take reasonable measures to ensure that the child is able to contact his/her parents while at work and allow the child to do so in reasonable circumstances.

Employer's duty to safeguard children while they are at work

An employer must take reasonable steps to ensure that while a child is at work the child is not subjected to deliberate or unnecessary social isolation or any other behaviour likely to intimidate, threaten, frighten or humiliate the child.

Employers must give age appropriate induction training to all children working for them.

A copy of this guide must be displayed at the workplace where it can be easily read by any children employed there.

The Working with Children Check

The Working with Children Check applies to certain child related service environments. However, just because you are employing children and young people doesn't necessarily mean you need a blue card. You may need a blue card if the usual functions of your employment includes or is likely to include providing services or conducting activities directed mainly towards children and young people.

Regardless of whether or not a blue card is required, it is prudent for an employer to consider how they might foster safe environments for children and young people in their workplace.

Further information about risk management or the blue card requirements can be accessed at www.bluecard.qld.gov.au or by telephoning the Blue Card Contact Centre on **(07) 3211 6999** or **1800 113 611**.

Record keeping requirements

Any employer of a child is required to keep certain basic employment records. Records that must be kept include:

- the full name of the employer
- the address of the premises where the child works
- the child's full name, address, and home phone number
- the name, address and home and business phone numbers of a parent of the child
- the name, address, and home and business phone numbers of a person who the child's parent nominates as being responsible for the child if the child's parent can not be contacted
- the child's date of birth
- the nature of work that the child is required to perform
- a copy of any special circumstances certificate or work limitation notice relevant to the child's employment.

Employers of a school-aged or young child are also required to keep the following information in their records:

- the number of hours worked by the child during each day and week
- the times at which the child started and stopped work
- the details of work breaks including meal breaks
- the parent's consent form for the child
- details of any medical conditions or needs
- details of any dietary restrictions
- the names of persons authorised by the parent to collect the child and
- the address or location where the child is working on each occasion.

If the child is not a school-aged or a young child, the employer is also required to obtain a copy of a form of identification, stating the child's date of birth, issued under an Act or by the child's school. Examples of suitable forms of identification include a passport, birth certificate or school identification card. No verification is required for school-aged or young children as the child's age will have been stated in the parent's consent form given to the employer.

Some overlap exists between the records required to be kept under this Act and the requirements of the *Industrial Relations Act 1999*. It is acceptable to combine the information required under both Acts into a single record but care should be taken that all information required by both Acts is kept.

Retention of Documents

Records are required to be kept for a minimum of two years. They must be kept in Queensland at a workplace of the employer.

Enforcement

Enforcement of child employment laws will be carried out by inspectors. The Act describes the functions and powers of inspectors, including monitoring compliance, investigating and dealing with alleged contraventions and informing children, parents and employers of their rights and obligations.

To carry out their duties inspectors are given legal powers which includes the power to enter workplaces and inspect records required to be kept under the Act and Regulation.

Proceedings for offences

Any person who does not comply with the Act and the Regulation may be prosecuted in an Industrial Magistrate's Court. Maximum fines for non-compliance are prescribed in the Act and the Regulation.

Appeals

Appeal from decisions of the Chief Executive

A person who is dissatisfied with a decision of the Chief Executive about a special circumstances certificate or work limitation notice may appeal the decision to the Queensland Industrial Relations Commission (QIRC). Appeals must be commenced within 21 days of a person being given an information notice about a decision or otherwise being notified of a decision unless the QIRC allows for an extension of time.

Appeal from decision of an Industrial Magistrates Court

A person dissatisfied with a decision of the Industrial Magistrates Court in relation to offences against this Act may appeal to the Industrial Court of Queensland.

Children and Young Workers Code of Practice 2006

The *Children and Young Workers Code of Practice 2006* has been introduced under the *Workplace Health and Safety Act 1995*. It complements the *Child Employment Act 2006* by addressing the workplace health and safety concerns of having children and young workers within the workplace.

The code of practice identifies a number of hazards that can represent particular risks to young workers when compared with older, more experienced workers and offers practical advice on how to ensure the workplace health and safety of children and young workers.

A copy of the code is available at www.justice.qld.gov.au.

Need to know more?

Industrial Relations Services Unit

An information service for child employment laws.

Call **(07) 3225 2299** or visit www.justice.qld.gov.au

Industrial Relations (Workplace Health and Safety Queensland)

Provides advice on health and safety in the workplace.

Call **1300 369 915** or visit www.justice.qld.gov.au

Anti-discrimination Commission

Provides information and deals with complaints such as discrimination and sexual harassment at work.

Call **1300 130 670**

If you're a member of a union you can contact them directly, or if you wish to join a union, contact:

Queensland Council of Unions

Call **07 3846 2468** or visit www.qcu.asn.au

Australian Workers Union

Call **07 3221 8844** or visit www.awu.net.au

Notes

The Department of Justice and Attorney-General can assist you with advice on your rights and responsibilities at work.

- Industrial Relations Services Unit (07) 3225 2299
- Workplace Health and Safety Queensland 1300 369 915
- Telephone Interpreter 131 450
- or visit www.justice.qld.gov.au

**Local call cost (mobiles and payphones may be extra)*

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