

Australian Capital Territory

Children and Young People (Employment) Standards 2009 (No 1)

Disallowable instrument DI2009–251

made under the

Children and Young People Act 2008, Section 887 (Standard Making Power)

1 Name of instrument

This instrument is the *Children and Young People (Employment) Standards 2009 (No 1)*.

2 Commencement

This instrument commences on the day after notification.

3 Children and young people employment standards

I make the attached Employment Standards for the employment provisions outlined at section 792: Children and young people employment standards.

Ms Joy Burch, MLA
Minister for Children and Young People

15 December 2009

Who Do These Standards Apply to?

The *Children and Young People (Employment) Standards 2009 (No 1)* apply to children and young people under the age of 18 in employment in the Australian Capital Territory.

The *Children and Young People (Employment) Standards 2009 (No 1)* are divided into two sections.

The first section applies to all children and young people under the age of 18.

The second section is a set of more detailed provisions which apply to children and young people under the age of 15.

Definitions

An Adult is a person of 18 years of age and older.

Appropriate Work Safety Standards ensure a child or young person in a workplace is not exposed to potential hazards.

Appropriate work safety standards must be assessed for each child or young person given their physical capabilities and their level of maturity.

Appropriate work safety standards may vary from using sun cream and wearing sun smart clothing to not allowing a child or young person under the age of 15 access to large mechanical equipment.

Chief executive means the chief executive administering the Employment provisions of the Children and Young People Act 2008.

A Child is a person under 12 years of age.

Consent means to agree to the employment described. Parental consent must be made in writing for a child or young person under the age of 15.

Informed consent means permission or agreement based on a clear understanding of the duties of the position, the safety measures in place, rights and responsibilities, remuneration, etc. In order to give informed consent, the individual concerned must have adequate reasoning faculties and be in possession of all relevant facts at the time consent is given.

Contrary to the best interests of a child or young person, refers to employment in which:

- a) The employment occurs during hours in which the child or young person is required to attend school, or a training or employment

- alternative approved by the ACT Department of Education and Training; or
- b) The employment is likely to interfere with the child or young person's ability to benefit from their education or training (assessed holistically); or
 - c) The employment is likely to harm the child or young person's health, safety, personal or social development (including by sexual or financial exploitation).

Employment includes both paid (by money or other means) and unpaid work. Employment means:

- a) Performance of work as an employee or contractor (under a written or unwritten contract of services or contract for services); or
- b) An apprenticeship, traineeship or other work-related training for a trade or occupation; or
- c) Work experience, other than work experience as part of a work experience program exempt from these standards. Work experience programs run by educational institutions may be exempt from these standards upon application to the ACT Department of Education and Training.

Family business employment occurs when the parent of the child or young person is the owner, director or partner of the business in which the child or young person is employed.

Light Work means work that is not contrary to the best interests of the child or young person.

A child and or young person under the age of 15 years can be employed under the *Children and Young People Act 2008* if the employment conditions meet the definition of light work.

A job may only be classified as light work if it is suitable for the physical, emotional and developmental competency of the child or young person. This includes the provision of adequate supervision and ensuring that the work is done under conditions where appropriate work safety standards to protect the child or young person from exposure to hazards or potential hazards are in place.

Compliance with the *ACT Children and Young People Employment Standards* and *ACT Children and Young People High Risk Employment Declaration* are conditions of suitability.

Parent / guardian is inclusive of those with parental responsibility.

Supervision encompasses:

Adequately supervised means -

- (a) for a child 3 years of age or younger: supervision by a parent or guardian at all times or a suitably qualified child development expert; and

- (b) for a child under 12 years of age: supervision by a parent or guardian, or a responsible adult approved by a parent or guardian.

Reasonable Supervision:

Supervision for a child or young person must be tailored to suit the level of responsibility and risk of the task; and the skill, capability and maturity of the child or young person.

Direct Supervision:

Direct supervision means the adult who is supervising the child or young person must remain with the child or young person and not undertake tasks that would prevent them from supervising the child or young person.

A Young person is a person at least 12 years of age and under 18 years of age.

ACT Children and Young People Employment Standards

CHILDREN AND YOUNG PEOPLE UNDER THE AGE OF 18

STANDARD ONE – BEST INTERESTS OF THE CHILD OR YOUNG PERSON

- 1.1 Any employment of a child or young person under 18 years of age must not be contrary to the best interests of the child or young person.
- a) Employment of a child or young person must not adversely affect the child or young person's ability to benefit from their education or training;
 - b) An employer must not employ a child or young person of compulsory education age (under 17) during school hours, if the child or young person is required by the ACT Department of Education and Training to attend school; or
 - c) Employment must not harm a child or young person's health, safety, personal or social development (including sexual or financial exploitation).

STANDARD TWO - OTHER COMMONWEALTH AND TERRITORY LAWS

- 2.1 Employers must operate in accordance with all other Australian Capital Territory and Commonwealth laws and regulations. This includes, but is not limited to, fair work, human rights, privacy and workplace safety legislation and relevant industrial instruments.

CHILDREN AND YOUNG PEOPLE UNDER THE AGE OF 15

The following provisions apply for the employment of children and young people under 15 years of age.

STANDARD THREE – DEVELOPMENTAL COMPETENCY

- 3.1 Consideration must be given to the child or young person's physical ability (e.g. size, strength, dexterity, hand-eye coordination) to undertake the requirements of the position. Particular consideration must be given to tasks such as lifting heavy objects and handling hot substances.
- 3.2 Consideration must be given to the impact of the work on the emotional development of the child or young person. The duties of the employment must be appropriate for the child or young person's age and not adversely influence their emotional maturity.
- 3.3 Consideration must be given to the impact of the work on the child or young person's physical and social development and societal expectations of age appropriateness.
- 3.4 The level of responsibility of the role must be consistent with the child or young person's capacity to perform the duties, regardless of age.

STANDARD FOUR – CONSENT

- 4.1 The child or young person must provide consent to undertake the specified employment. For children and young people who cannot verbally express their views, regard should be given by the proposed employer to other means of obtaining their consent.
- 4.2 A child or young person's consent to the employment may be revoked by the child or young person at any time. All current Australian Capital Territory and Commonwealth laws and regulations on the rights and obligations of employers and employees post resignation apply.
- 4.3 Parent / guardians must give informed written consent prior to their child or young person under 15 years of age beginning the employment. In making this decision, consideration should be given to the child or young person's capacity to provide their own consent.
- 4.4 Employers must seek consent from the child or young person and their parent / guardian prior to employing the child or young person.
- 4.5 Employers shall provide the child or young person's parent / guardian with adequate information to provide informed consent. The safety and privacy of the employer and other employees should not be compromised when providing information to parent / guardians.

STANDARD FIVE – DUTY OF CARE

Supervision

- 5.1 Employers must ensure each child and young person under 15 years of age is provided with adequate and reasonable supervision by a responsible adult, having regard to the age, sex and capacity of the child or young person.
- 5.2 Children aged 3 years and younger must be directly supervised by a parent / guardian at all times, or a suitably qualified child development expert.
- 5.3 Children under 12 years of age must be directly supervised by a parent / guardian or by a responsible adult approved by a parent / guardian.
- 5.4 Consideration should be given to the suitability of the adult supervising the child or young person, if the supervisor is not the child or young person's parent / guardian.
- 5.5 Children and young people under 15 years of age may engage in door to door sales only if accompanied by a parent / guardian or a responsible adult approved by a parent / guardian.
- 5.6 A child or young person under 15 years of age cannot be employed in outdoor work outside of daylight hours (e.g. pamphlet delivery, sports refereeing) unless directly supervised by a parent / guardian or directly supervised by a responsible adult approved by a parent / guardian.

Environment

- 5.7 Employers must provide and maintain a safe and healthy work environment. Particular consideration must be given to health and safety risks as they pertain to children and young people.
- 5.8 Employers must provide appropriate work safety standards to ensure a child or young person in a workplace is not exposed to potential hazards. This may vary from using sun screen and wearing sun smart clothing to not allowing a child or young person under 15 years of age access to large mechanical equipment.
- 5.9 Employers must ensure appropriate information, training and supervision is provided to children and young people regarding workplace health and safety including the use of required protective equipment.
- 5.10 Employers must ensure children and young people have reasonable access to appropriate toileting facilities, including facilities to wash hands with soap and water.

- 5.11 Where children and young people may need to change clothes, appropriate facilities must be available to dress and undress in private. For example, a lockable cubicle could be provided.
- 5.12 Employers must ensure children and young people have reasonable access to appropriate facilities for rest breaks.
- 5.13 Employers must ensure children and young people have reasonable access to water or other appropriate drinks.
- 5.14 Employers must ensure children and young people have reasonable access, whether provided by the employer or not, to food including appropriate storage for their food. Expectations about the provision of food should be discussed prior to commencing the employment.

Access to Parent or Guardian

- 5.15 Employers must ensure a child or young person has reasonable access to facilities to contact his or her parent / guardian.
- 5.16 In the event of a child or young person becoming ill or being injured, employers must take reasonable steps to ensure a parent / guardian or emergency contact for the child or young person is notified as soon as possible.

Performance Management

- 5.17 Employers must provide an appropriate induction to children and young people, including adequate instruction to undertake required duties.
- 5.18 Employers must take reasonable steps to ensure that while at work, a child or young person is not subjected to bullying, corporal punishment, deliberate social isolation, immobilisation or any other behaviour likely to intimidate, threaten, frighten or humiliate the child or young person.
- 5.19 Employers must ensure performance management techniques do not include corporal punishment, social isolation, immobilisation or any behaviour likely to intimidate, threaten, frighten or humiliate the child or young person. This includes behaviour likely to be perceived to have this effect.

STANDARD SIX – HOURS OF WORK

- 6.1 A child or young person under 15 years of age may undertake light work for up to 10 hours per week. Hours of work must be calculated to include all workplaces, not 10 hours for each workplace.
- 6.2 An employer must notify the chief executive, at least 7 days in advance if they wish to employ a child or young person for more than 10 hours in a week. The employment must be light work which is not contrary to the best interests of the child or young person.

- 6.3 A child or young person can be employed for a maximum of:
- a) 3 hours on any given day if the child is 3 years of age or younger;
 - b) 4 hours on any given day if the child is aged between 4 and not yet 12 years; or
 - c) 6 hours on any given day, unless authorised in writing by the Chief Executive, if the young person is aged between 12 and not yet 15 years.
- 6.4 A child or young person must not be employed for more than one shift on any one day.
- 6.5 A minimum of 12 hours must have elapsed between shifts for any child or young person.
- 6.6 Hours of work must not interfere with the child or young person's participation in education or training, or the likelihood of benefiting from their education or training.
- 6.7 A child or young person must not be employed before 6:00 am or sunrise (whichever is later), or after 10:00 pm, or as otherwise agreed to by the Chief Executive.
- 6.8 Employers must ensure children and young people take adequate rest breaks as children and young people may tire easily or not recognise fatigue.

STANDARD SEVEN – TRAVEL

- 7.1 Employers must take reasonable steps to ensure that children and young people have arrangements in place for safe travel to and from work appropriate to the age and maturity of the child or young person. Employers should check that a child or young person has arranged transport home. If working hours are changed within a shift, employers must ensure the child or young person is able to make a phone call to re-arrange their transport home.

STANDARD EIGHT – RISK

- 8.1 A child or young person must not be employed if the employment is considered to be high risk. High risk employment is described in the *ACT Children and Young People High Risk Employment Declaration*.
- 8.2 An employer may apply to the Chief Executive for a permit to employ a child or young person under the 15 year of age in high risk employment. A high risk permit will only be granted if the proposed employment is not likely to harm the child's or young person's health, safety, personal or social development. The permit may be subject to conditions as stipulated by the Chief Executive.

STANDARD NINE – FAMILY BUSINESS

- 9.1 Children and young people employed in family businesses are covered by the requirements set out for all employers in the *ACT Children and Young People (Employment) Standards (No 1)* as well as Chapter 21 of the *Children and People Act 2008*, the *Children and Young People Regulation 2009* and the *Children and Young People (High Risk Employment) Declaration 2009 (No 1)*.
- 9.2 A child or young person under 15 year of age cannot be employed in a family business for more than 10 hours a week, unless the family business notified the Chief Executive (refer to Standard 6.2 and 6.3).

STANDARD TEN – RECORD KEEPING

- 10.1 Employers of children and young people must keep up to date records as required by current legislation and regulations.
- 10.2 Required records must be kept for a minimum of seven years. Relevant legislation must be considered for all record keeping practices.
- 10.3 In addition, employers are required to keep the following records for children and young people under 15 years of age in employment:
- a) full name, address and telephone number of the child or young person;
 - b) child or young person's date of birth;
 - c) name address and contact telephone numbers for the child or young person's parent / guardian;
 - d) name, address and contact telephone numbers for an emergency contact person (adult) in the case that a parent / guardian is required and they cannot be contacted;
 - e) particulars of consent including record of written consent from the parent / guardian; and
 - f) the full name of responsible adults authorised to supervise the child or young person.