

Questionnaire of the Fourth Commission.

**AUSTRALIA**

**Working conditions for children.**

**1. Has your country provided for a legislation or protective measures concerning children at work?**

**In the affirmative, specify the purpose and main lines, particularly:**

- **minimum age for employment;**
- **differences in rights based on age;**
- **special working conditions for children.**

**2. What are the sanctions (applied or applicable) in case of breach of children's right at work?**

- ❖ Legislation and regulation of child employment substantially varies between states and territories.

All states, however, have chosen to partition child employment laws from the regulation of adult employment. While adult employment is generally regulated through specific industrial laws, child employment is regulated through welfare legislation.

The following summary of legislation governing child employment in the various jurisdictions in Australia has been extracted from an issues paper released by the Victorian government in November 2001, titled "Children at Work?".

- ❖ **Victoria**

Child employment in Victoria is regulated by the ***Community Services Act 1970 Part Three (Division Nine)***. It excludes from its definition of employment a number of specific activities, which include assisting occasionally in a parent's shop where attached to the family residence; posing occasionally for still photographs; or participating in non-profit, charitable, church, school, cultural or sporting activities.

The responsibility of administering this section of the *Community Services Act* has rested with Industrial Relations Victoria (part of Department of State and Regional Development) since 1987 and the unit employs a Child Employment Officer to oversee the administration of this legislation.

The *Community Services Act* imposes a general prohibition on children under 15 being engaged in employment (as defined by the Act) unless they have been issued with a permit to do so. Valid for a period of no more than 12 months, permits are issued under the authority of the Secretary of the Department of State and Regional Development. This authority is currently exercised by the Child Employment Officer. To obtain a permit, a child's parent or guardian is required to lodge an application form with the Child Employment Officer.

The Child Employment Officer can refuse to issue a permit if the application form does not include the required approvals from the child's school or parent/guardian. It may also be refused because the Child Employment Officer believes that the proposed employment situation will adversely affect the child's health, education, moral and material welfare. The Child Employment Officer may deem that the child is unfit to carry out the work involved or that, in the course of being employed, the child may be subjected to exploitation.

The Act also explicitly prohibits employment under certain conditions. Permits are restricted to the hours between 6am and 11pm, no child is permitted to use unsafe machinery, hazardous

chemicals or dangerous materials, and street trading is prohibited for all children under the age of 12.

The *Community Services Act* imposes joint responsibility for protecting the welfare of the children who work upon parents, schools, employers and government. A child's parent or guardian has primary responsibility to ensure that the child has a permit before they are employed. In some limited situations, permission to work must also be gained from the principal of the school attended by the child.

The Act makes it an offence for a potential employer to engage a child in employment or street trading unless the child has a permit authorising them to do so. The employer must also provide adequate food and rest breaks; pay at least the minimum rate of pay for the full period of employment; and provide full and proper supervision at all times.

**There is a maximum penalty of \$100 or one month's imprisonment for any breaches by a parent, guardian or an employer.**

Victorian law requires an employer to take appropriate actions to ensure an appropriate level of care for their employees. This duty derives from two principle sources: the common law, and occupational health and safety legislation.

At common law, employers owe their employees a general duty of care. This duty applies regardless of the age of the employee. The duty is more onerous to discharge where employees are under 15 and/or inexperienced. There are three aspects to this duty: the provision of competent staff; a safe place and system of work; and effective supervision.

While the *Community Services Act 1970* contains no additional or more onerous general duty of care on employers when employing children under 15, a duty of care is specified under existing occupational health and safety legislation. Again, this applies equally to children and adult workers.

#### ❖ Australian Capital Territory

**The Children and Young People Act 1999** regulates employment in the Australian Capital Territory (ACT). Chapter 10 of the Act deals with the employment of children under the age of 18 and those under the school leaving age of 15 years. The legislation applies to children who assist in a business, trade, calling or occupation carried out for private profit, whether or not the child or young person receives reward.

The employment of children under 15 is prohibited except where the child is engaged in doing 'light work' or work in a family business (s 170). This prohibition applies irrespective of whether the child is paid a wage, and to both employment relationships and situations where children are self-employed (ie sub-contracting arrangements) (s 169).

Light work is deemed to include baby-sitting, errands, casual work in a private home, golf caddying, clerical work, gardening, selling or delivering papers or advertising, entertainment at a place used for entertainment, amusement, or sporting activities, musical, radio, television (other than news) and film performances, modelling and circus performances (s 371).

However, such 'light' work is not permitted where there is a breach of the *Education Act 1937*, where that child is required to work more than 10 hours per week, or where the child's health, safety or personal or social development is prejudiced.

**Breaches under this Act attract a penalty of up to 100 penalty units (currently \$10,000) and/or up to one year's imprisonment.**

### ❖ New South Wales

Child employment in New South Wales (NSW) is legislated by the ***Children and Young Persons (Care and Protection) Act 1998*** and regulated by the ***Children (Care and Protection-Child Employment) Regulations 1993***. The *Children and Young Persons (Care and Protection) Act 1998* stipulates that 'a person who causes or allows a child to take part in any employment in the course of which the child's physical or emotional well-being is put at risk is guilty of an offence.'

The general approach of child protection legislation in NSW is management by exception. Section 223 (1) of the *Children and Young Persons (Care and Protection) Act 1998* stipulates that a person (other than the holder of an employer's authority) must not employ a child (defined as a person under 15 years) to take part in an entertainment or exhibition, to take part in a performance which is recorded for use in a subsequent entertainment or exhibition, or to offer anything for sale from door to door.

**Where an individual places a child's physical or emotional wellbeing at risk, there is a penalty of 200 penalty units (currently \$22,000). Other breaches of the Act attract a penalty of 10 penalty units (currently \$1,100).**

Exemptions to the legislation include employment for the purpose of a fundraising appeal, where the child is employed for the purpose of an occasional entertainment or exhibition and the net proceeds of which are for charity, or where there is an exemption by the regulations or by the Minister from being required to hold a permit.

There are detailed regulations accompanying the Act requiring the holder of the permit to comply with a Code of Practice (*Children (Care and Protection-Child Employment) Regulations 1993*). This Code of Practice covers matters such as record keeping, hours of work, breaks (ie food, drink, toilets), personal insurance (if the child is not covered by the *Workers Compensation Act*), payment of award rates, and notification of parents in the case of injury or illness.

In addition to this legislation, the NSW *Child Protection (Prohibited Employment) Act 1998* and the *Commission for Children and Young People Act 1998* both prohibit convicted sex offenders from working with children. All employers must obtain a 'Prohibited Person Declaration' from any person seeking or currently performing paid or unpaid work, which primarily involves direct and unsupervised contact with children. Staff must declare whether or not they are a 'prohibited person'. Where an employee is declared a prohibited person, he/she is required to cease child-related employment within one month of the declaration.

In addition, all people commencing paid employment that primarily involves direct and unsupervised contact with children, including foster carers and ministers of religion, must submit to a 'Working with Children Check' against any relevant criminal record, apprehended violence order or any relevant disciplinary proceeding.

### ❖ Northern Territory

Legislation regulating child employment in the Northern Territory is incorporated in the ***Community Welfare Act 1996*** and the ***Education Act 1996***.

Under s 93 of the *Community Welfare Act 1996*, employment of a child between the hours of 10pm and 6am is prohibited for a child under 15, unless there is consent of the Minister.

**Breaches of the Act attract fines of up to \$1000 or imprisonment for six months.**

### ❖ South Australia

There are no specific child employment laws in South Australia. Child employment in this State is largely regulated through specific provision in the relevant State Award, such as the Retail Award, the Actors Feature Film (South Australia) Award and the Actors Television Award. If children are employed, and not provided with minimum conditions and provisions as identified by the award, the employer may be prosecuted under the *Industrial and Employee Relations Act (1994)*. A number of pieces of legislation do, however, contain prohibitions or restrictions on the employment of children, such as the *Education Act 1972*, the *Mines and Works Inspection Act 1920* and the *Lottery and Gaming Regulations Act 1993*.

Recent attempts to introduce child employment legislation were not successful. The *Industrial and Employee Relations (Workplace Relations) Amendment Bill 1999*, which contained provisions allowing for prohibitions on the employment of children under 13 in certain industries, stalled in the Upper House and was withdrawn.

### ❖ Western Australia

In Western Australia, the ***Child Welfare Act 1947*** provides that:

- Children under the age of 12 are prohibited from engaging in street trading;
- Children between the ages of 12 and 15 are prohibited from engaging in street trading during school hours, and between 7pm and 6am; and
- Children under the age of 15 are prohibited from employment outside street trading hours, during school hours or between 9.30pm and 6am.

**Breaches of these conditions attract a fine of \$2000 for first offences and \$5000 for a subsequent offence.**

In 1999, a Code of Practice was introduced under occupational health and safety legislation, applying to workplaces where children and young people are present and addressing the greater risks involved in managing the health and safety of children. This Code of Practice covers information on the general duties of employers towards employees, focusing on hazard identification, risk assessment and risk reduction.

### ❖ Tasmania

The Tasmanian Office of Youth Affairs (Department of Education) administers legislation relating to child employment. ***The Children, Young Persons and their Families Act 1997***, which applies to children under the age of 16, stipulates that a person who has a duty of care in respect of a child must not take action, or fail to take reasonable action, which results in the child suffering significant harm as a result of physical injury, sexual abuse or neglect. The Act prohibits procuring or inducing a child under the age of 11 to offer anything for sale in a public place. It is also unlawful to induce or procure a child under 14 to be in a public place between the hours of 9pm and 5am for the purpose of offering anything for sale. The Act also deals with public performances and is comparable with the Victorian *Community Services Act 1970*. The Act allows the Minister to declare a public entertainment to be 'restricted', thus making it unlawful to induce a child under 14 to participate. An exemption is given for performances that are solely for the benefit of a charity or school, or for religious purposes.

**Breaches of the Act incur a maximum penalty of \$5,000, two years' imprisonment or both.**

## ❖ Queensland

There is no specific legislation regulating or prohibiting child labour in Queensland. The *Industrial Relations Act 1999 (Qld)* contains only one provision specifically concerning young people under 18: this being they are prohibited from engaging in Queensland Workplace Agreements.

The *Child Services Act 1966 (Qld)* provided limited protection for children in employment. It has been replaced by the *Child Protection Act 1999 (Qld)*, which does not regulate child employment.

Employment regulation is, however, encompassed in several pieces of regulation such as the *Collections Regulations 1988*, *Mining and Quarrying Safety and Health Act 1999 (Qld)* and the *Education (General Provisions) Act 1996 (Qld)*.

In addition, the *Commission for Children and Young People Act 2000 (Qld)* requires all prospective employees in prescribed child-related employment to consent to a criminal history check prior to their employment.

### **Any recent cases in your country on violation of children's right at work?**

In Victoria, since 1987 there has been only one prosecution for failing to observe child employment laws. Yet, evidence suggests that non-observance is common and costly to both the children involved and the community.

**(From Victorian Government Issues Paper "Children at Work", Nov 2001, p32)**

### **3. Specify, if need be, the concrete measures likely to improve the conditions of children at work in your country.**

There is little evidence that there is a significant problem of exploitative child labour in Australia, but there are concerns that legislation in some states is not adequate to protect children properly, especially where they are working in dangerous industries, and in particular on farms.

In Victoria, the government released an issues paper on 14 November 2001, titled "Children at Work?", as a starting point for a review of the regulation of employment of children under 15 in that state. Reasons for the review are outlined below:

- Currently, there are limited resources devoted to the **enforcement** of child employment laws in Victoria.
- Currently, the penalties contained in Division 9 of the *Community Services Act 1970* relate to allowing a child to be employed or engaged in street trading, begging for alms, and endangering the safety of the child employee where a public performance is involved. However, there are no penalties in the *Community Services Act* imposed on an employer for: underpaying the child employee; engaging them in a prohibited industry or function; or employing them outside the prescribed hours. In addition, the penalties for breaches of the Act have not been updated since the inception of the Act. Currently breaches of Division 9 of Part 3 of the Act attract up to a \$100 fine or one month imprisonment (s 76), or \$1,000 or 12 months imprisonment (s 80). Arguably, the penalties for breaches of child employment law are now so low they have little effect or consequence.
- There is a lack of awareness in Victoria regarding child employment legislation. Aside from a regional campaign run in Mildura in 1999, the information currently distributed through Industrial Relations Victoria's website and the work of community organisations, there has been no public community strategy about child employment or the permit system. Moreover, the information that is available has not been translated into any other languages. This may be a particularly important issue for outworkers, who predominantly come from non-English

speaking backgrounds. The result is that the requirements relating to child employment are largely unknown across the Victorian community.

The Victorian Trades Hall Council, in a submission, recommended a ban on children under 13 working, and a ban on children under 15 working in the state's four most dangerous industries, those of agriculture, transport and storage, construction and manufacturing, and also called for a large increase in penalties.

In an article in *Australian Children's Rights News*<sup>1</sup>, Professor Patrick Parkinson from the University of Sydney, voiced concerns about the protection of children in employment in New South Wales. He points out in the article:

There are no restrictions on the hours that children can work, and nor does the law prescribe a minimum age for working..... There is no law which prevents 11-year-old children doing 30 hours work each week as long as it is not in school hours, or working a 12 hour day on a Saturday..... Nor are there many laws which aim directly to protect children from dangers in the workplace, either as employees or visitors..... A range of laws restrict young people from engaging in certain occupations, but the laws are piecemeal and somewhat incoherent. For example, a 16-year-old can work down the mines but not be in charge of a petrol pump. The *NSW Children and Young Persons (Care and Protection) Act* has a vague offence of putting a child's physical or emotional well being at risk in employment. However, no prosecutions have ever been brought under this section.... Hundreds of young people each year are permanently disabled or have to be off work for 6 months or more due to workplace accidents. ....The greatest dangers for children and young people are construction sites and farms. WorkCover NSW estimates that a tractor death occurs on Australian farms once every 11 days and that one in every four people killed in tractor accidents is a child under 16 years. Between 1990 and 1996, the number of children who died from accidents on farms in NSW and Queensland averaged nearly one per month; 37% of these accidents were attributable to farm machinery or vehicles. No law prohibits children under 16 riding on tractors.

He concludes by saying:

The advantage of having appropriate child labour laws is that they set community standards. They send clear messages about what is acceptable and what is not, what is beneficial to children and what is not, what is dangerous, and what is not. Families need to know this as much as anyone else. It is the role of parliament to set such community standards after proper consultation and debate.

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<sup>1</sup> Patrick Parkinson, AUSTRALIAN CHILDREN'S RIGHTS NEWS NO. 30, September 2001