

# Chapter Four –

## Alternative models for protecting young workers

---

## 4.1 Three models for discussion

When the Government announced this child labour review, a number of specific protection options were suggested for consideration by the community. These were:

- Codes of Practice for the entertainment industry
- child employment regulations for age, type of work and hours
- criminal offences – such as in adult entertainment areas, and
- improved education for young people about their rights in the workplace.

To discuss these options, this Chapter presents three main models for child employment protections, which help summarise the kind of protections available. The elements of each are interchangeable.

The first model describes the current Queensland system which includes a comparatively strong range of protective measures for all employees regardless of age. If further protections are warranted, they should complement and build on the positive elements of the existing system.

### Model 1: General employee protective measures

- broad based minimum standards for all age groups
- community education and information
- no minimum age or maximum hours (or very low minimum age)
- voluntary work place health and safety Code of Practice for young workers
- voluntary Codes of Practice for specific industries such as film, television and door-to-door sales

The Queensland system includes the following range of positive protections:

- The Department of Industrial Relations (DIR) administers the *Industrial Relations Act 1999*, which prohibits children and young people under 18 from engaging in Queensland Workplace Agreements. The Department also provides an active industrial inspectorate to enforce and monitor compliance with this Act and other award conditions.
- Industrial instruments provide for conditions of employment including wage rates and hours, generally regardless of age. Certain entitlements do not apply to casual employment, however the *Industrial Relations Act 1999* and the Queensland Minimum Wage ensure minimum wages and working conditions apply to all employees, including juniors.
- Complaints may be heard in the Queensland Industrial Relations Commission or the Industrial Magistrates Court.
- The Young Workers Advisory Service (YWAS), funded through the Department of Industrial Relations, provides a complaints and advocacy mechanism for workers under 25 in Queensland.
- Under the *Workplace Health and Safety Act 1995*, employers have a duty-of-care to create safe and healthy workplaces, and Workplace Health and Safety Queensland monitors compliance.
- The *Collections Regulation 1998* states that a child under 15 must not act as a charity collector without consent of parents or guardians. The child must be accompanied by an adult, and only collect between 9am and 5pm. However, there are no provisions for commercial door-to-door sales.
- The *Liquor Act 1992* prohibits children from being in adult entertainment areas in licensed venues, including as a performer.



- The *Prostitution Act 1999* prohibits employment in brothels.
- The Department of Justice and Attorney-General administers legislation that focuses on the welfare of children with regard to the misuse of drugs and other criminal activities, including indecent treatment offences.
- The *Mining and Quarrying Safety and Health Act 1999* prohibits employment of a person under 16 as an underground worker.
- The *Education (General Provisions) Act 1989* states that a parent shall not employ or cause to be employed his or her child (up to 15) during school hours (8am to 4pm) unless special dispensation has been granted.<sup>61</sup> The *Education (General Provisions) Act 1989* is presently being reviewed, and it is anticipated that consultations in relation to the review will take place this year. The *Education (Work Experience) Act 1996* regulates work experience, including limitations on the maximum number of days which can be worked in a year. The maximum is 30 days a year.
- Apprenticeships and traineeships are covered by the *Industrial Relations Act 1999* and the *Training and Employment Act 2000*, and concerns can be raised with the Training Ombudsman.
- The *Child Protection Act 1999* covers issues of harm where parents are the employer, or where the parents are unwilling or unable to remove a child from an abusive employment context.
- There are two relevant Commissions in this area in Queensland:
  - The Commission for Children and Young People and Child Guardian, which provides a range of advocacy, policy, monitoring, research, training, complaint functions for children and young people. The Commission also administers a suitability check for people working with children and young people.
  - The Anti-Discrimination Commission Queensland, which administers the *Anti-Discrimination Act 1991*, providing an important source of redress in instances of discrimination against young people at work.

In conclusion, the system provides a range of protections for all workers, regardless of age. This approach emphasises the employer's duty of care responsibilities for all employees, and this is complemented by enforcement and audit functions.

However, evidence from the literature suggests that children may be more at risk than adults in terms of their development, experience, training and knowledge of their rights at work. Younger workers can also experience difficulty negotiating and enforcing their rights due to their age and inexperience.<sup>62</sup> In response to such issues, the current protections in place in Queensland are complemented by educational guidelines,<sup>63</sup> the Young Workers Advisory Service and the Industrial Relations Education Committee.

This review aims to ensure that Queensland continues to respond proactively to any child labour issues identified, and to discuss any additional protections which may contribute to the existing safety net.<sup>64</sup>

<sup>61</sup> Under the *Youth Participation in Education and Training Act 2003*, the minimum age is rising in 2006 to 16 or completion of year 10, and two further years (or until 17) study is also required, including a range of flexible study and vocational education options.

<sup>62</sup> Anderson, J. (2000). *Employment of children-Who is responsible?* Carlton: Jobwatch Inc.

<sup>63</sup> For example, see footnote 68, and Workplace Health and Safety. (2002). *Safety sense*. Retrieved May 21, 2004, from <http://www.whs.qld.gov.au/safetysense/index.htm>

<sup>64</sup> For example, the Minister for Employment, Training and Industrial Relations, states that YWAS has helped to make Queensland workplaces safer and fairer for young workers, but that more is needed to be done to stamp out exploitation and bullying, in response to their specific disadvantages. Barton, T. (2004, 18 May). *Press release: \$500 000 recovered for ripped off young workers*. Retrieved May 21, 2004, from <http://statements.cabinet.qld.gov.au/cgi-bin/display-statement.pl?id=1201&db=media>



## Consultation Question 3 – current protections

What are your thoughts on the existing protections in place in Queensland for children and young people at work? In particular, you may wish to comment on the following areas:

- comprehensive industrial relations protections for all employees regardless of age
- a balance between work and study
- criminal protections
- education about the rights of children at work
- child-specific policies and laws
- specific protections for different age groups, or industries.

The following two models canvass other protections targeted specifically at children and young people. These approaches are drawn from a broad range of industrial relations systems, many of which do not provide the same level of conditions and entitlements provided for Queensland employees. However, they are provided to elicit community feedback on their child-related features.

### Model 2. Targeted protective measures

- community education, training and information
- a minimum age and maximum hours for children under 15, with exceptions for light work
- inspections, monitoring and penalties for breaches
- restrictions in areas such as entertainment, door-to-door sales, or specific conditions or prohibitions through regulation or permits
- specific offences concerning exploitative or indecent employment
- specific conditions for areas such as family farms and business

### International conventions

The United Nations Convention on the Rights of the Child states that children have a right to be protected from exploitation or harm at work, including a right to an education. It also states that governments should regulate for a minimum age and conditions of employment (Articles 32 and 36). In addition, two International Labour Organisation (ILO) Conventions prescribe this targeted approach:

- ILO Convention 138 requires a minimum working age of 15, with young workers aged between 13 and 15 limited to light, safe work which does not effect school. It also requires that work for children under 18 not harm children's health, safety or morals.<sup>65</sup>
- ILO Convention 182 prohibits the worst forms of child labour such as slavery, the sale and trafficking of children, forced labour, prostitution, pornography, illicit activities and work which is likely to harm the health, safety or morals of children.<sup>66</sup>

<sup>65</sup> Convention 138 is a core ILO Convention and 127 of 176 member countries have ratified. International Labour Organisation. (2004). *Convention No. 138 ratification*. Retrieved March 1, 2004, from [www.ilo.org/ilolex/english/convdisp2.htm](http://www.ilo.org/ilolex/english/convdisp2.htm). This is not ratified in Australia.

<sup>66</sup> The Federal government is currently in the process of ratifying convention 182.

Examples of this model can be seen in a number of jurisdictions, including:

### **New South Wales:**

- employment which jeopardises a child’s physical or emotional wellbeing is an offence
- a person (without an employer’s authority) must not employ a child under 15 to take part in an entertainment or performance, or offer anything for sale from door-to-door
- convicted sex offenders are prohibited from working with children
- a mandatory Code of Practice applies to entertainment, still photography and door-to-door sales.

### **Western Australia:**

- a general law prohibiting employment of a child under 15 except for:
  - children aged 13 to 15 in retail or deliveries between the hours of 6am and 10pm
  - children aged 10 to 12 in delivery work between 6am and 7pm with adult supervision
  - work in a family business or in performances
- a specific criminal offence where a child is employed to perform in an indecent manner
- a law which allows for specific prohibition notices for particular instances of harmful employment.

### **South Australia:**

- The *Industrial Law Reform (Fair Work) Bill 2004*, grants the Industrial Relations Commission power to create specific conditions for children through the Award system, including prohibitions in certain industries, limits on hours, breaks and supervision.

### **Model 3: Universal Protective Measures**

- a permit system with regulations on minimum age, hours, conditions and exceptions
- comprehensive regulation of specific industries such as film and television, door-to-door sales and photography
- a criminal offence in response to sexually exploitative employment

### **Victoria:**

Victoria recently completed a review of their child employment system, which resulted in enhancements to their existing permit system. It includes the following features:

- a minimum working age of 15 with employment allowed between 13 and 15 through a permit system
- no permits are required for family businesses or farms
- no minimum age set for work in a family businesses or in entertainment
- a police check required for certain employers and supervisors of children
- children limited to light work which is not harmful, and will not prejudice education (e.g. entertainment)
- prohibits employment in door-to-door sales, building and construction
- a mandatory code of practice for the entertainment industry.

### The European Union:<sup>67</sup>

- general prohibition of employment of children under 15 with exceptions for cultural, artistic, sporting or advertising activities, light work if over 14 and in specified light work over 13
- rigorous health and safety standards for children, with prohibitions from harmful exposure to physical, biological and chemical agents
- regulated hours in terms of span, quantity and breaks.

**Ireland**, which provides a recent example of reform:

- general protections for children under 18, with varying restrictions for those under 16, and specific conditions attached to each child's work
- children may not be employed in full time work, or work between 8pm and 8am
- children aged 14 to 15 can only do light work under a permit system
- children aged 15 can work only eight hours a week during school terms
- the employer is responsible for compliance i.e., to identify age, obtain parental permission, maintain separate records and provide an official summary of conditions of employment.

### The United States:

- a minimum age of 16 specified for work in non-agricultural employment and some agriculture work
- children aged 14 to 15 can be employed (except in mining and manufacturing) if work does not affect education, health or wellbeing
- some hazardous occupations are generally prohibited for those under 18
- family farms are exempt from the regulations.

## 4.2 Summary of options

This final section of the paper discusses possible options for change in Queensland. The impact of any options should be considered to ensure children and young people can still access safe and positive work experiences, and that the system rewards and fosters good practice. Any changes should also complement the existing system, be workable, respect the rights of children to work, the role of the family and the responsibility of the employer.



<sup>67</sup> Various European nations operate models which are consistent with these basic requirements, including some minor variations and additional specific protections. This includes the Netherlands, Norway, Sweden, Switzerland and the United Kingdom.

### Option 1. Light work, minimum age and maximum hours

A common approach to restricting child employment to light work is to create a minimum age and maximum hours for children under the compulsory schooling age, with links to particular types of light work categories.

Queensland law does not generally limit the types of work for children, nor provide a minimum age for employment or limit the hours of work outside of school hours. The extension of the participation phase for learning outlined in the *Youth Participation in Education and Training Act 2003*, provides an opportunity to consider how work and study can best be balanced.

If limitations on hours and ages are supported in Queensland, this could be achieved through strategies such as:

- community education
- regulating general minimum standards, together with permits, inspections and/or penalties
- limiting restrictions to particular industries
- expanding current school hours restrictions to include work after hours
- specific policies about work and study in education systems
- specific conditions for family businesses or farms
- a permit system (for those under 18, or under 15).

Such measures may limit the hours worked depending on a child's age, the school calendar, or both. One example would be to limit the hours a child aged 10 to 14 can work to 12 hours a week during the school term, and require a licence for children under 10, or those who wish to work over 12 hours.<sup>68</sup>

### Option 2. Health, safety and wellbeing

The Queensland Workplace Health and Safety system emphasises the duty-of-care of employers through a range of educational materials and voluntary guidelines entitled *Children and young people at workplaces*.<sup>69</sup>

If community feedback indicates a need for an extension of current protections, age-based protections could apply to specific employment situations, industries or more generally. For example, some states restrict work in dangerous industries such as construction and transport, while other industries, such as the farming sector, limit particular types of work, like working with dangerous chemicals.

The models above provide a range of options for protecting children's health and safety, including:

- integration, coordination and/or distribution of existing information and guidance
- minimum child specific standards, with regulation only in the case of breaches
- minimum standards for all children under 18, with more specific conditions for children under 15
- limiting protections to children under 15, or to particular industries
- prohibition notices for work which would jeopardise the wellbeing of a child
- Codes of Practice or regulation in particular industries with large numbers of young workers or dangerous types of work.

<sup>68</sup> Parkinson, P. (2001). The child labour problem in Australia. *Australian Children's Rights News*, 30, p. 7-8.

<sup>69</sup> Department of Industrial Relations. (2000). *Children and young people at workplaces*. Brisbane: Author.



## Outworkers

There is a need to respect cultural differences in this area, and recognise that any remedies introduced to improve children's safety would be intimately linked to the welfare of their parents. The Queensland Department of Industrial Relations has developed an outworkers' strategy which applies to all workers.<sup>70</sup> Feedback from this review of child labour may help identify whether this issue affects children in Queensland, and if so, whether any protections are required to be tailored to children's specific needs.

## Health and safety on farms

A number of education campaigns are underway to improve safety on farms,<sup>71</sup> which may be contributing to a decrease in the rate of work-related deaths.<sup>72</sup> Most states do not apply child employment laws to family businesses and farms. However, certain jurisdictions include minimum conditions for light, safe work which does not interfere with education for all children under the compulsory schooling age. In more regulated areas, specific types of work are controlled, or there are specific prohibitions.

## Film, television, theatre and photography

In relation to work in film, television, theatre and photography, there are industry guidance notes and draft codes of practice,<sup>73</sup> which are designed to complement relevant state legislation, regulations and/or awards. If further protections are warranted in Queensland, one option to consider is the New South Wales Code of Practice which applies to door-to-door sales, film, television and photography. It requires children to have access to carers, regulates conditions, types and hours of work, dietary and change facilities and criminal history checks for adults supervising children.

## Adult entertainment and sexually exploitative employment

Specific options for further protections in adult entertainment and sexually exploitative employment include:

- expanding existing criminal provisions, as in New South Wales
- a specific offence covering indecent performances
- industrial relations regulations.

Finally, there may be a need to improve coordination and targeting of information, enforcement and avenues of redress across agencies, to respond to both health and safety risks and light work risks for young workers.<sup>74</sup>

---

<sup>70</sup> This includes a Code of Practice, employs a community liaison officer and a research project is underway.

<sup>71</sup> For example the Work Place Health and Safety, 'Safety on the Land' program, the 'Giddy Goanna' program, Ferguson, K. (2000). *Final report of the farm safety survey*. Brisbane: Workplace Health and Safety, Department of Industrial Relations; and Farmsafe Australia materials such as, Farmsafe Australia. (2003). *Child safety on farms fact sheet one: Key risks and solutions*. Moree: Author.

<sup>72</sup> Workplace Health and Safety, Department of Industrial Relations, personal communication, August 19, 2003.

<sup>73</sup> Gailey, L. & Read, T. (1995). *Film and television industry safety guidance notes*. Melbourne: Australian Film Television and Radio School, Australian Film Commission, Screen Producers Association of Australia, Media Entertainment and Arts Alliance. Screen Production Safety Review Committee. (2002). *Occupational risk management in the Australian film and television industry: a draft national code of practice*. Retrieved May 24, 2004, from <http://www.alliance.org.au/hot/submissions/ftsafety.pdf> and Australian Entertainment Industry Association. (2003). *Guidelines to OHS in the entertainment industry*. Retrieved May 24, 2004, from [http://www.alliance.org.au/images/2003/ohs\\_liveento3.pdf](http://www.alliance.org.au/images/2003/ohs_liveento3.pdf)

<sup>74</sup> For example the New Zealand Department of Labour is currently conducting a review of child labour with the purpose of improving information available, coordinating across agency enforcement and data collection.

## Coordination and Education

Workplace Health and Safety Queensland believes that one reason young workers are injured is that they are not made aware of their rights to be properly trained, supervised and provided with a safe working environment.<sup>75</sup> Queensland has a range of existing publications available which deal with certain aspects of this issue, or with more general employment issues.<sup>76</sup>

There may be a need to improve coordination and integration of information and provide clear guidance to both the community and young workers about acceptable practices. This could be achieved through Codes of Practice, fact sheets, curriculum material, or through induction programs and/or permits.

A central point may be required to coordinate policy, research and information, contributing to:

- partnerships with industry
- enhanced information collection, reporting and monitoring on the extent of child labour
- enforcement of existing protections, and
- research and policy development concerning the issues impacting particular groups of children such as children with a disability, Indigenous children or children from diverse cultural and linguistic backgrounds.

## Complaint and Advocacy

Options for targeted complaint, support and advocacy mechanisms could include:

- independent reviews of workplaces, or audits of particular industries
- improved access for children to information on rights and conditions in the workplace, including coordination of existing educational materials and curriculum targeting
- changes to limitations and time limits for complaint mechanisms
- specific training for agencies with responsibility for the safety of children.

The Commission is interested in hearing your views on protective options to ensure Queensland children and young people continue to receive the best possible protections in the labour market. The consultation question below and the attached survey are included to guide feedback on such options.

<sup>75</sup> Department of Industrial Relations, Workplace Health and Safety. (2002). *Safety sense*. Retrieved May 21, 2004, from <http://www.whs.qld.gov.au/safetysense/index.htm>

<sup>76</sup> See for example:

- Office of Fair Trading. (2003). *PSST! Post school survival tips*. Brisbane: Author.
- Department of Industrial Relations. (2000). *Know your rights and responsibilities at work: Tips for entering the workforce*. Brisbane: Author.
- Department of Industrial Relations. (2000). *Children and young people at workplaces*. Brisbane: Author.
- Farmsafe Australia publishes a number of resources such as, Farmsafe Australia. (2003). *Child safety on farms fact sheet one: Key risks and solutions*. Moree: Author.

## Consultation Question 4 – alternative options

What is the best way to protect young workers?

- comprehensive minimum standards for all employees regardless of age
- training, induction, information, education and record keeping
- Codes of Practice
- age related workplace health and safety law, regulation and/policy
- minimum working age(s) and maximum hours for young workers
- restricting children under 15 to light work which is safe and does not interfere with their education
- child specific employment protections in law or policy
- criminal law concerning sexually exploitative employment.

Who should be responsible for children and young people’s safety at work?

Which features from other jurisdictions would work well in Queensland, and what are the advantages and disadvantages of each of the three models?

Are there areas which need particular protections or exemptions, such as family businesses, and industries with high numbers of young workers?

In conclusion, this discussion paper has summarised information on child employment and child labour risks, current protections in place, and alternative protective options. The Commission would like to hear your ideas on these issues. Key stakeholders may wish to provide more detailed submissions by responding to the consultation questions posed throughout the paper. A survey is also attached to allow all interested parties to provide comments on their experiences and knowledge of these issues.



*“It’s unfair for kids under 18 to be up at the crack of dawn to do work.”*

**Phoebe, 8 years old**