



Queensland Review of

Child LABOUR:

Summary of Findings
April 2005



commission for
children and young people
and child guardian



Commissioner's foreword

The Commission for Children and Young People and Child Guardian (the Commission), is mandated to protect and promote the rights, interests and wellbeing of children and young people in Queensland, and gives priority to those most vulnerable.

As part of this responsibility, the Commission initiated a review of child employment and child labour in Queensland in response to issues raised in the community. This report documents a summary of the research and consultation findings from this review.

To scope the review the Commission completed a review of the literature and existing protections, and initiated research projects to fill gaps in the knowledge base on child employment in Queensland. This work informed the development of the *Queensland Review of Child Labour: discussion paper* which was released for public consultation in the second half of 2004.

The research and consultation process provided young people with an opportunity to comment on their experiences at work and engaged community members, key government and non-government stakeholders. Feedback was gathered through:

- student surveys
- teacher surveys
- government and non-government stakeholder written submissions
- discussion paper surveys from the general public, and
- consultation forums discussion.

The student survey which collected feedback from 584 students aged 14 to 17 years across South East Queensland contributed greatly to the Commission's understanding of the experiences of young workers.

I would like to extend my thanks to all those individuals and government and non-government stakeholders who have taken the time to participate in this review.

I submit this report to Government for consideration and offer the Commission's assistance in consulting further on any of the issues raised in the report with implementing agencies where required.



Elizabeth Fraser
**Commissioner for Children and Young People
and Child Guardian**

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The Commission extends its thanks to the Review of Child Labour Interdepartmental Reference Group, and the Child Labour Working Group, as listed at Appendix One, for assistance in contributing to the review and this final report.

The Commission would also like to thank the range of non-government stakeholders who have provided submissions to the review and the teachers, children and young people, and other members of the community who responded to the surveys.

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Executive summary

Summary of process

In December 2002, with the support of Government, the Commission began a review of child labour in response to a rapidly-changing youth labour market and specific child labour issues which were identified in the community. The four key goals of the review were to:

- understand children's employment in Queensland and in other jurisdictions
- identify the nature and extent of any child labour risks in Queensland
- consider the current protections for children and young people in Queensland, and
- identify options which might improve protection for children.

In mid 2003, the Commission established the Child Labour Interdepartmental Reference Group and began phase one of the review - a review of the literature and an examination of the current Queensland protections and comparative interstate and overseas models. The Commission conducted targeted consultations with key stakeholders and undertook a range of specific research projects, including a large-scale survey project with students, to build a knowledge base in Queensland.

This work informed the *Queensland Review of Child Labour: discussion paper* (the discussion paper). This paper was released on 12 August 2004 with consultation continuing to the 8 October 2004. The Commission employed a variety of techniques to ensure that the review was accessible to a broad cross section of the community including rural, regional and metropolitan areas.

The Commission used the information obtained from this consultation to propose strategies and implementation options for consideration by Government. This summary provides an overview of the main themes from the review findings.

Summary of findings

Findings from the review indicated that the Queensland child employment context has changed considerably over the past 15 years, with more students working at younger ages and for longer hours. A high percentage are employed in industries such as retail and fast food. Research and consultation identified that despite the many benefits of work, there was also evidence concerning issues such as exploitation, abuse, injuries, negative impacts on education, and difficulties in children asserting their rights at work.

Light, safe, part-time work for children was identified as clearly acceptable to the community. However, there was also a recognition of children's particular vulnerabilities in the workplace and the importance of ensuring work does not interfere with education. There was also an expectation that children and young people at work should be accorded the same level of protections as in other sections of the community such as the education system.

The research and community feedback suggested there may be a need for greater child focussed child employment protections. The Government was seen as having an important role in promoting an appropriate balance between supporting the right

of children to safe and appropriate work opportunities, and their right to an education, and social and leisure time.

It was seen as important that any reform be consistent with the current range of protections for all employees. Feedback favoured a central point of coordination for service delivery easily accessible by the public and children. A specific legislative response was recommended in conjunction with a comprehensive educational strategy. It was emphasised that any system be simple, widely understood, serve educative and preventative functions, and be enforceable through appropriate penalties where required.

Finally, feedback indicated that all such measures should be developed within a child protection framework and focus on the best interests of the child. The feedback supported an holistic and comprehensive response across the education, industrial relations, and child protection sectors.

In summary, the consultation and research findings supported a coordinated child employment protection model made up of the following four strategies:

- 1) child employment legislation (core minimum standards and provision for prohibitions, exemptions and additional protections)
- 2) child specific employment service delivery (inspection, audit, regulation and enforcement)
- 3) a coordinating child employment policy function (child protection focussed policy, research, monitoring and education)
- 4) a child employment guide (including functions such as integration, promotion and education)

Any model developed should provide a cost effective and practical system, which is consistent with existing industrial relations policy. This includes minimum standards enforced through already active industrial relations and workplace health and safety inspectorates. Such a system would enable Queensland to improve standards for child protection at work, in accordance with relevant international treaties.

1. Background

Before 1999, the *Children's Services Act 1965 (Qld)* provided for a regulation and permit system for children's employment. This was repealed by the *Child Protection Act 1999 (Qld)*, which moved away from regulating all areas where harm may occur to children to focus on specific instances or risk of harm. The area of child employment was to be considered as part of the 1998 Review of Industrial Relations Legislation, which found the need for further research in the area of child labour.

Subsequently concerns for children at work were raised through the Young Workers Advisory Service (YWAS), Legal Aid Queensland (LAQ), and the Commission with respect to:

- school-aged children working excessive hours
- children and young people potentially working in adult entertainment and as topless waitresses and gaps in the laws relating to the 16-18 year old age group
- children's workplace conditions, health and safety, bullying and exploitation, including inappropriate clothing requirements, and
- no child-specific protections in the growing film, television and entertainment industries which employ children across all age groups for often long and irregular working hours.

In February 2002, the Australian Council of Trade Unions wrote to the Queensland Government expressing concern about Australia's failure to comply with two International Labour Organisation (ILO) Conventions:

- ILO Convention 138 requires regulating for a minimum age for employment of children and to ensure work for children under 18 years does not jeopardise their health, safety and wellbeing. The United Nations Committee on the Rights of the Child has expressed concern that Australian Federal and State laws are not compliant with ILO Convention 138.

The United Nations Convention on the Rights of the Child, to which Australia is a signatory, also requires a regulatory system to protect children at work, including regulation for a minimum age and restrictions on the hours and types of work for children.

- 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.

In November 2002 the Queensland Government approved federal ratification of this Convention. However, further issues were identified concerning gaps in the legislative protections for young people aged 16-18 years in the adult entertainment industry.

2. Scope and purpose

In December 2002 the Commission began a review of child labour to develop a better understanding of the risks, consider the adequacy of the existing protections and make recommendations regarding any required reforms.

Consideration was to be given to a range of options from criminal justice, industrial relations, educational and child protection perspectives including:

- the development of 'Codes of Practice' for specific industries
- regulations such as a minimum age, restrictions on type of work or maximum hours
- the extension of offence provisions in the *Criminal Code*
- the enhancement of screening/monitoring of employers (as part of the Review of Part 6 of the then *Commission for Children and Young People Act 2000*)
- strategies to educate children and young people on their rights as employees.

It was also intended that the Commission take account of recent interstate reviews and reforms.

3. Process of the review

In mid 2003 the Commission established an Interdepartmental Reference Group and began the research phase of the review. Targeted consultations helped identify key issues and engage stakeholders such as Commerce Queensland, the Queensland Council of Unions and YWAS.

The full extent of child labour issues in Queensland was unknown and very little research had been done. Therefore, the Commission conducted an extensive literature review, collated existing data and initiated specific research projects including:

- an analysis of complaints made to YWAS in 2002-03 by 200 young people under 18
- research by Kids Help Line on nationwide calls to their service
- analysis of the research and submissions to the Victorian 'Children at Work' review in 2001
- a scan of existing protections in Queensland and a range of alternative protective options
- a consultation workshop with young children (under eight years) through the 2003 Ideas Festival
- a focus group with the Commission's Community Visitors and client surveys, and
- two survey projects:
 - a survey of teachers at the 2003 Queensland Legal Studies Teachers Conference, and
 - a survey of school students.

This research informed the development of the *Queensland Review of Child Labour: discussion paper*¹. The discussion paper was released on 12 August 2004, with consultation continuing through to 8 October 2004. A survey was attached to the paper to gather feedback from individuals with general consultation questions included to guide stakeholder submissions.

The discussion paper was available on the Commission's web site and distributed by mail, email, web links and newsletters to a broad cross section of the community. The media release was distributed to more than 180 media outlets, and was reported in both print and electronic media, with the Acting Commissioner conducting a range of media interviews. The Commission also conducted eight non-government and two government consultation forums.

The Commission formed collaborative partnerships with peak stakeholders such as Commerce Queensland, the Queensland Farmers Federation and LAQ to engage them in the review and encourage the attendance of key groups at forums.

The paper was also distributed to all State Government Members of Parliament and Directors-General with submissions received from all relevant government

¹For further information please refer to Commission for Children and Young People and Child Guardian. (2004). *Queensland Review of Child Labour: discussion paper*. Brisbane: Author.

agencies as part of the consultation phase. Departmental officers also attended community forums.

The consultation also provided an opportunity for children to comment directly, including through the Commission's survey of school students. In addition to this, the Shop Distributive and Allied Employees Association (SDA), Queensland Branch, surveyed 324 workers under 18 years for their submission. Other submissions were also informed by the direct feedback and experiences of young people.

During the review the Commission received feedback from the following:

- 106 consultation surveys included a range of individuals (24% under 18 years) and stakeholders such as schools, employer and employee groups and non-government agencies
- 47 written submissions from government and non-government stakeholders representing a broad membership base across Queensland
- information received during 10 consultation forums
- surveys of 59 Legal Studies Teachers from around the state, and
- finally, the Commission has conducted surveys with 584 students, aged 14-17 years, from regional, rural and metropolitan areas.

4. Findings from research and consultation

4.1 Context

Australia has a high rate of employment for children and young people compared to other developed countries. For instance, 45.6 % of the 15 to 19 year old age group is in paid employment (compared to a mean of 26.2 % for Organisation for Economic Cooperation and Development countries)². Much of this employment is in casual and part-time work in the retail and services industries³.

Australian Bureau of Statistics data demonstrates that a large number of children and young people aged 15 to 19 in Queensland are working (150,300 in March 2004, which is 57% of the population)⁴. Feedback from surveys and submissions acknowledged the changing nature of child employment over the past 15 years. This included employment across a greater variety of industries, more students working and more casual employment, particularly in fast food and retail.

The SDA reported that 53.7% of respondents to a survey of over 600 of their young members were young people aged 17 years or under (31% of respondents were aged 15 when they started work). Employer groups noted similar experiences.

The following main themes were found in terms of the hours worked:

- The Department of Industrial Relations (DIR) noted that two thirds of the 15-17 year old age group work 15 hours or less each week, 4.2 % work more than 40 hours per week, and half of these work more than 49 hours per week.
This is similar to the SDA survey which shows that 74.7% of the under 18 group work under 18 hours per week, however other feedback indicated that children worked up to 20 to 40 hours per week.
- The SDA found the most common work shifts were three to six hours on weekends and on weekdays after school.

A high proportion of children and young people are casual employees, with this increasing markedly over the past ten years, particularly in retail where many young people are employed. Queensland has 31.1% casual employees compared to a national average of 26.9%⁵. Submissions from employer and union groups support this finding of a high rate of casual employment for young workers.

Forty-six per cent of young people aged 15 to 19 worked in retail in 2001, comprising 22% of the total workforce (the highest representation by age). This was followed by the accommodation, cafes and restaurants industry, with 11% of all young workers comprising 15% of the industry workforce⁶.

An increasing number of Queensland students are now balancing employment and study, with 47,300 Queensland secondary school students in part-time employment

² Dorman, P. (2001). *Child labor in the developed economies*. Geneva: International Labor Organisation.

³ Australian Industrial Relations Commission. (1998). *Junior rates inquiry*. Canberra: Author.

⁴ Australian Bureau of Statistics. (2004). *Labour force Australia spreadsheets*. (No. 6202.0.55.001). Canberra: Author.

⁵ Mangan, J. (1999). *Casual employment in Queensland: Current situation and implications for public policy*. Brisbane: Vocational Education Training and Employment Commission.

⁶ Australian Bureau of Statistics. (2002). *Census 2001, basic community profiles*. Canberra: Author.

in 2004 (up from 34% to 48% between 1987 and 2004)⁷. This is compared to a rise from 29% to 43% nationally.

To better understand the experiences of Queensland school students under 18, the Commission conducted surveys with 584 students aged 14 to 17⁸. The survey indicated that three quarters of this group were employed, and of those:

- 68.6% were employed on a casual basis
- 29.8% were employed in fast food/hospitality and 35.5% in the retail industry, and
- the most common reason for working was to save money (25%), to support themselves (16.5%), and to support the family business or income (10.2%).

Many agencies noted the positive benefits of work and emphasised that measures should not discourage such opportunities. The main benefits for children working were identified as:

- work experience – teamwork and the practical applications of skills learnt in the classroom
- personal development – social and communication skills, independence and self-confidence
- escape from boredom or a bad home environment – work can create links to supportive adults, and
- learning money management skills.

A small number of submissions also commented on the right of children to work and the need for some young people to work to support themselves⁹. The submissions identified four main reasons why children and young people work:

- income to support themselves if living independently or to contribute to family income
- discretionary income - to save for something, pay for debts or for lifestyle purchases
- work experience - particularly so for careers in the entertainment industry
- societal changes, including issues such as the deregulation of the labour market, increased use of casuals, changes to trading hours and the pressure of consumerism.

4.2 Child labour risks

The key risk factors for young workers identified were their relative inexperience, lack of training, maturity levels and their physical and psychological developmental capacity. Specific risks to their educational commitments were also noted.

Research and consultation highlighted that young workers are less aware of their rights at work and are less empowered to seek redress. These factors, combined with structural changes (such as more young students working, lower union

⁷ Australian Bureau of Statistics. (2004). *Labour force Australia spreadsheets*. (No. 6202.0.55.001). Canberra: Author.

⁸ 96.8% of surveyed students were in this age bracket.

⁹ 22% of students surveyed by the Commission were working to support themselves or to contribute to their family income.

membership and a high percentage of casual employment), highlight the importance of reviewing the current range of protections available to children and young people.

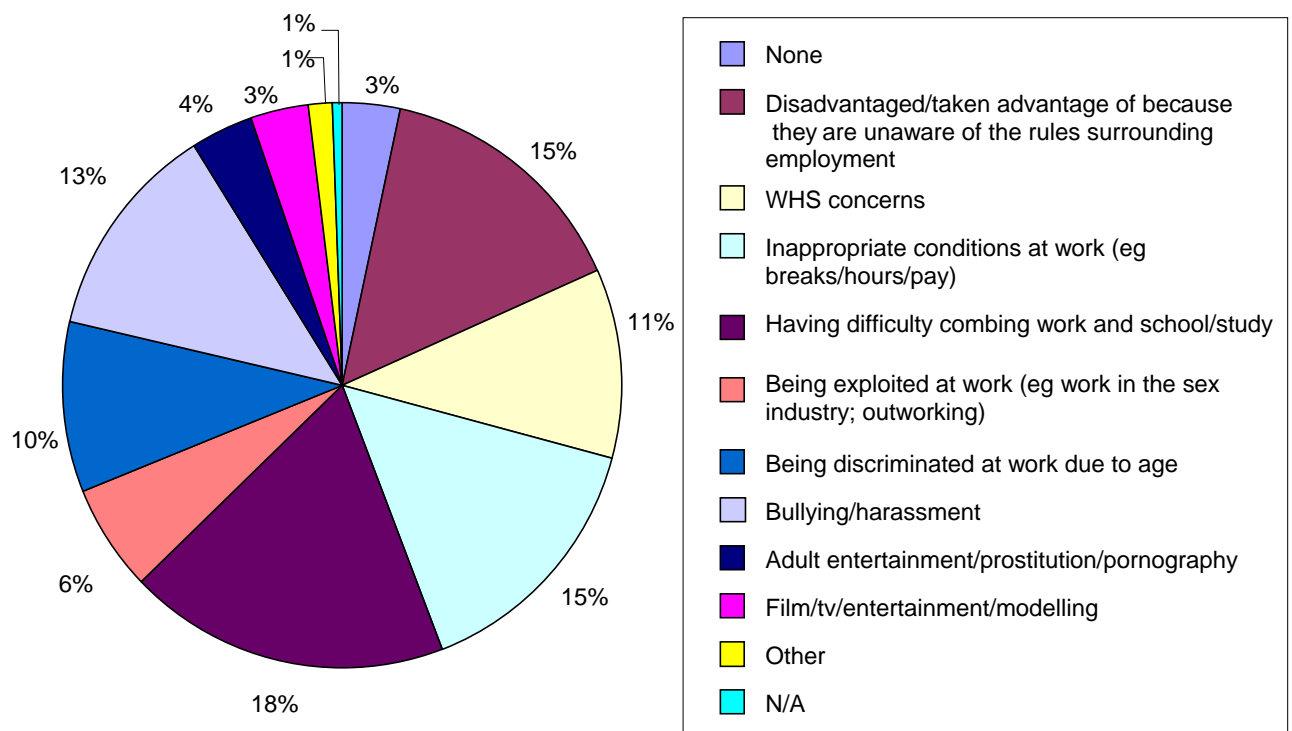
Consultation feedback identified a range of child labour issues, including injury, harm and exploitation of young workers, and particular concerns for the negative impacts of work on education. An analysis of the broad themes outlined in submissions found approximately 83% identified or acknowledged child labour risk areas in Queensland.

The discussion paper surveys identified the following most common risk areas:

- 'having difficulty combining work with school/study' – 18.5%
- 'inappropriate conditions at work (eg breaks/hours/pay)' – 15.1%
- 'disadvantaged/taken advantage of because unaware of the rules about employment' – 14.84%

The full range of issues is pictured in Graph 1 below.

Graph 1. Risk areas



In accordance with the framework provided by the ILO Convention 138, these risks fall within two broad categories:

- **Category one: Light work risks** – the issue of 'light' work (light, safe work which does not place the child at risk of harm or jeopardise their right to an education), and
- **Category two: Risks to health, safety and wellbeing** - risks to the 'health, safety and wellbeing' of young workers.

4.3 Category one: Light work risks

Research shows that while some work can support studies, work for long hours or at too young an age can impact on educational performance and retention. Specifically, an Australian Council of Educational Research report concluded that students working longer hours from younger ages (over five hours in year nine and over ten hours in year eleven), negatively impacts on school completion and continuing on to post-school education¹⁰.

Issues concerning the balance between study, work, leisure and family responsibilities were noted in many submissions. The SDA survey found that 60.6% of respondents listed 'having difficulty combining work and study' as one of the three most important issues.

Union feedback listed the negative effects that long working hours can have on children as:

- extremely high levels of fatigue
- negative effects on ability to concentrate
- incomplete homework
- poor results, and
- lack of preparation for exams.

Some submissions described the inflexibility of employers for rostering hours around school. The respondents to the SDA survey indicated a concern that if they refused shifts, they were limiting their opportunity for hours in the future.

Further specific issues raised in this 'Light Work' category included:

Issue	Examples
<p>Excessive hours</p> <p>The SDA survey found that 16.5% of school age respondents indicated they worked on weekdays between 9am and 3pm (with only 7.5% in study other than high school)</p>	<p>The following case study was reported: "Two young females in Year 11 on the Gold Coast, both living away from home. Both girls worked at a supermarket 30 hours a week to contribute to rent and living costs".</p>
<p>Working late at night or early in the morning</p> <p>This included the issue of the effects on schooling, the disproportionate amount of responsibility placed on young people, and public transport issues</p>	<p>The following examples was reported: "Year 11 and 12 students having to close up local fast food restaurant at 1 o'clock in the morning".</p>

¹⁰ Smith, E., & Green, A. (2001). *School students learning from their paid and unpaid work*. Canberra: Australian Council for Educational Research.

Issue	Examples
The spread of hours	“A young female in year 11 was told that as her brother was sick, she had to do his shift too. She worked 12 hours a day at the weekend and was refused overtime.” One submission gave an example of a young boy working 24 hours straight at his parent’s restaurant.
The control of hours or rostering by employers	Reports included students who are given extremely short notice of shifts and some were even called while they were at school.
Stripping young workers of hours once they turn 18	Examples were provided to the Commission of young people losing jobs or hours once they turned 18 due to the higher costs of wages for this group.

The issue of balancing work and study was also raised via surveys with both teacher and discussion paper responses nominating this as the most pressing concern (followed by ‘inappropriate conditions’). This was also identified as the primary issue by young workers surveyed by SDA. More detailed survey responses include:

- 75.4% of full time students (predominantly aged 14-17) surveyed by the Commission worked and 57.6% of students felt stressed from combining work and study
- across all surveys, approximately 50% reported that children generally start work under 15 years. The student survey found that 13% of students reported starting work under 12 years
- student surveys found 13.8% generally worked for more than 13 hours a week and 6.6% over 17 hours. The SDA survey found 23% of school aged respondents worked on weekdays after 9pm, and 8.7% prior to 9 am
- over a quarter (28.6%) of working students have had more than one job at the one time.

The submissions raised a range of further specific child labour issues within Category One including:

- Instances of children being exploited, underpaid, harassed or discriminated against and who were then denied appropriate redress due to their casual status or lack of deterrents for breaches. For example young workers falling outside of existing employment regulations, such as when asked to work as independent contractors, without formal contracts or illegally.

It was reported that there are areas where regulation exists but enforcement issues are apparent, such as: domestic help; cleaning, gardening, labouring, small businesses, and rural industries. The following industries were also identified as needing particular protection for young people: mining, construction and door-to-door sales.

- Inappropriate payment or lack of payment.

- Inappropriate conditions and breaks (such as scheduling breaks at the start of shifts).
- Children asked to take work clothes and mobile to school to be on call for after school shifts.
- Delayed start times, short and broken shifts and overly long shifts.
- Late night closes and lack of safe transport arrangements.
- Difficulties for short term casuals such as employers unfairly threatening loss of shifts and termination when issues about conditions were raised.
- The issue of unpaid “trial employment”. One specific complaint raised with the Commission involved a large retail employer who had engaged four children in unpaid work for one day a week under what they understood to be a traineeship. The children were told four weeks later that they would be on unpaid work experience for another month, with the promise of a possible school based apprenticeship for only two of the four young people involved.
- Examples of young workers forced into giving up their entitlements. This includes: workers as young as 13 being asked to sign documents purporting to be employment contracts to intimidate them into giving up Award provisions, and young workers having their pay unreasonably ‘docked’ for breakages etc.
- Discrimination or sexual harassment and unpaid wages, breach of contract, or misrepresentation by employers. Often the children have been working in their first job.
- Family businesses which are often small with low profit margins and therefore dependent on the owners and their children working long hours.

Qualitative comments from the discussion paper surveys are illustrative of these categories:

Having difficulty combining work with school/study

“As a teacher I am very concerned at the increased demand on young people to work long hours. Students are phoned at school and told to come into work”

“Students are working during school days, missing lessons”

*“15 year old female who works at **** was told if she could not attend her normal working hours during exams she would be dismissed. So she continued even though she felt very tired and stressed”*

Excessive hours being worked

“Several students at my school are regularly working 27+ hours in a variety of work settings”

“During high school I worked 40 hours per week whilst engaged in full-time study”

Rural areas

“Families and children on properties, especially over drought times, all work together daylight to dark”

Time of day/night

"My school age daughter, grade 9 (14 yrs) has worked till 12.45 am at a well known family restaurant before school"

"I work 20-25 hours a week and work till 12 at night on a school night"

Pressure from employers

"Lots of kids work too many hours, they tell me if they don't they won't be offered more hours or will be sacked (my own children say the same)"

Disadvantaged/taken advantage of because they are unaware of the rules surrounding employment

"Little knowledge of rights, lack of confidence to complain"

"Links to lack of knowledge about rules and their rights, inappropriate conditions, etc e.g. not being able to say no to late finishes, shifts during school times etc due to fear of not being offered more shifts"

Inappropriate conditions at work (eg breaks/hours/pay)

"The employer using the allocation of work hours/rostering as a form of penalty"

"Getting young people to do training or trial days and not being paid"

4.4 Category two: Risks to health, safety and wellbeing

The majority of submissions noted that children and young people faced greater risks of harm at work, related to factors such as their maturity and developmental stage, less experience and training. Various submissions noted the power imbalance between young workers and employers, raising significant child protection risks of exploitation and abuse within the work context.

The student survey found a quarter of working students had been injured at work. The SDA survey found that 13.7% of under 18's had been injured at work with the highest rate in the fast food industry. The Queensland Injury Surveillance Unit reports that children aged 15 to 17 years are twice as likely to be injured at work compared to adults and children as young as 10 had been injured at work¹¹.

The industries with the largest number of work related injuries for this age group were food retailing, construction, accommodation, cafes, restaurants and agriculture.

With respect to deaths at work, the National Occupational Health and Safety Commission¹², found that excluding commuting, there were 10 fatalities in 2000/01, including three in Queensland of young people aged 15, 17 and 19. In 2001/02 there were six fatalities, including a child aged 15, in Queensland.

¹¹Queensland Injury Surveillance Unit. (2004). *Half the Age—Twice the Risk. Occupational Injury in School Age Children*. Brisbane: Author.

¹²National Occupational Health and Safety Commission. (2001 & 2002). *National data set for compensation-based statistics*. Canberra: Author.

The following specific risks under Category two were identified during the review:

- The shift to **casual and part time work** which may involve less access to training, including training in occupational health and safety. Younger people are less likely to speak out about health and safety violations when employed casually, due to their precarious position in the workplace. They are less likely to receive training.
- **Health and safety on farms** – studies suggest that farm children are over-represented in both fatal and non-fatal work related accidents. Despite encouraging decreases in deaths on farms, a 2000 study found that Queensland had a high number of work-related deaths on farms for children aged 15 and under¹³. This may occur more in times of exceptional circumstances such as drought. For instance, due to the lack of childcare in farming communities, it is often necessary for children to accompany parents as they do farm work.
- The 1996 Senate Inquiry into **outworking**¹⁴ noted the negative effects on children under 15 in terms of their health, education and wellbeing. The Commission and unions have also received information on instances of children being exploited in outworking.
- The **film, television, theatre, modelling and photography** industries employ children across all age groups, and work can involve irregular and long working hours, exposure to adult themes and potential harm. The Commission has received inquiries and complaints concerning the level of protections in Queensland and the inconsistency across state boundaries with producers seeking legislative guidance such as that which exists in Victoria or New South Wales.

A range of issues were raised relating to conditions such as rest breaks and supervision, and it was noted that sometimes neither the child nor the parents want to report breaches for fear of not getting further work.

Concerns have also been raised about inappropriate modelling, photography and clothing requirements for young people. The inappropriate sexual depiction of minors in the modelling industry was also raised, as was the lack of regulation of modelling agents. The practice of requiring portfolios of models is an unregulated area which involves financial and other abuse risks, such as when private sessions are involved.

- **Door to door sales** – concerns have been raised about adult supervision, pay rates and the lack of protection when compared to protections for charitable collections in Queensland.
- **Adult entertainment, pornography and prostitution** – protection from work in pornography and indecent employment (for example topless waitressing and stripping) for children under 16 years is covered in legislation such as the *Criminal Code*, the *Liquor Act 1992*, and the *Classifications* legislation.¹⁵

However, there is less clear protection for children and young people aged 16 and 17 years and agencies at the consultation forum including the Crime and

¹³ Ferguson, K. (2000). *Final report of the farm safety survey*. Brisbane: Workplace health and safety, Department of Industrial Relations.

¹⁴ Senate Economic Reference Committee. (1996). *Outworkers in the garment industry*. Canberra: Australian Government Printing Service.

¹⁵ *Classification of Films Act 1991*, the *Classification of Publications Act 1991* and the *Classification of Computer Games and Images Act 1995*.

Misconduct Commission, reported that the coverage of laws is insufficient with respect to this age group.

Specific areas of concern included activities in unlicensed premises, premises not requiring adult entertainment permits but still involving topless waitressing, activities in private rooms or outside of permit areas and unregulated areas such as private stripping agencies. It was also reported that children under 16 years were engaged in such activities (which would in this case be covered by the criminal law).

Children were reported as working in the adult entertainment industry, the informal prostitution sector and as drug couriers by both submissions and the Commission's consultation forum.

With respect to the law in this regard:

- there is no higher penalty for the client of a prostitute where the prostitute is under 18 years, under *s 73 Prostitution Act 1999* (public soliciting or street walking).
- there is no law against a client of a sole operator prostitute (not publicly soliciting and not in a brothel) who is under 18 years.

Finally, there have also been concerns identified during the review regarding pornographic material. The *Criminal Code (Child Pornography and Abuse) Amendment Act 2005* only covers instances of involving children under 18 years in material which depicts a child under 16 years. Therefore a 16 or 17 year old could be involved in such work as long as they are not depicted as younger than 16 years¹⁶.

- **Bullying/harassment** – the sexual harassment and sexual discrimination of young women was raised, including many instances which go unreported. Young women aged as young as 13 have reported sexual harassment in the workplace, and there have been several cases of sexual assault, stalking, and rape of young women. Bullying, sexual harassment and discrimination remain significant areas of exploitation of children in employment. The effects on children are often serious, long-lasting, and can be devastating. Some young workers have also reported distress at being forced to wear revealing clothes as part of the 'uniform' at workplaces.

Further specific issues raised in submissions included:

- health and safety in retail/hospitality, including exposure to occupational violence
- health and safety in the manufacturing industry
- domestic labour
- street/roadside vending
- chemical exposure – DIR found that two fatalities occurred, both as a result from exposure to chemicals/substances. The most frequent mechanism of injury for under 15's was long term contact with chemicals/substances.

¹⁶ Maximum penalties have been doubled for procuring children for pornography, for producing child pornography, and for distributing child pornography.

Qualitative comments from the discussion paper surveys are illustrative of these categories:

Workplace health and safety

“Slippery and greasy floors, son perpetually burning arms/hands while deep frying. Inadequate WPHS instruction”

“I know of young males being employed within construction who are paid cash in hand and who were not required to obtain their safety ‘blue’ card”

Sexual exploitation

“There are numerous children hitching to the Sunshine Coast and engaging in illicit sex to raise money for the weekend.”

“One 15 year-old-girl was modelling, then became an exotic dancer at a club – parents supported her choice!”

Bullying/Harassment

“Physical abuse of young people working on trawler, have been traumatised”

“I am aware of juniors being bullied, always getting the ‘dirty jobs’, not getting breaks”

A commonly reported concern relevant to both Categories one and two related to young workers’ lack of knowledge of their rights at work. Feedback noted that young people are not empowered to raise concerns, have low union membership and a lack of knowledge about unions and other avenues of redress:

- more than half (53.6%) of working students in the Commission’s student survey reported that they did not know of their rights as an employee, and
- only 11.7% of working students answered that they belong to a union and 35% did not know if they belonged to a union.

Submissions noted that most young people, particularly those in their first job, suffer from a significant imbalance in ‘bargaining power’ with the employer. Young people are more likely to accede to a request from an employer irrespective of the inappropriateness of that request. It was stated that because young people are unaware of the rules, rights and regulations surrounding their employment, they have limited ability to negotiate. The student survey demonstrated that only 4.7% of children will report problems at work to an employer, 3% to a government agency and 2.3% to a union.

A 2001 survey of young casual employees across Australia found concerning results in this regard¹⁷. Of the 1409 respondents, 76% were aged between 15 and 17 years and 24% were from Brisbane. Results included:

- 55% did not know their correct rate of pay or award or were sure they were being paid the incorrect rate
- 30% did not know the number of breaks they were entitled to

¹⁷ Australian Young Christian Workers. (2001). *Don't bother coming in today: casual work, casual nature*. Granville: Author.

- 47% of respondents had not been provided with written conditions of employment, and
- 33% were working unpaid overtime.

4.5 Alternative models for protection

Chapter four of the discussion paper presented a range of options for discussion categorised into three main protective models (the details of interstate models are attached at Appendix Two):

- **Model one - general protections:**
 - 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, and
 - voluntary Codes of Practice for specific industries such as the film and television industry and door-to-door sales.
- **Model two - targeted protections:**
 - 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, and
 - specific conditions for areas such as family farms and business.
- **Model three - universal protections:**
 - 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, and
 - a criminal offence in response to sexually exploitative employment.

Queensland is an example of Model one, with a comparatively strong range of industrial relations conditions and workplace health and safety protections and inspectorate functions regardless of age. Most current protections in Queensland are not targeted at the specific risks for young workers. The review canvassed a range of alternative child-focussed models which adopt elements of the relevant international treaties (United Nations Conventions on the Rights of the Child and ILO Conventions 138 and 182) to varying extents.

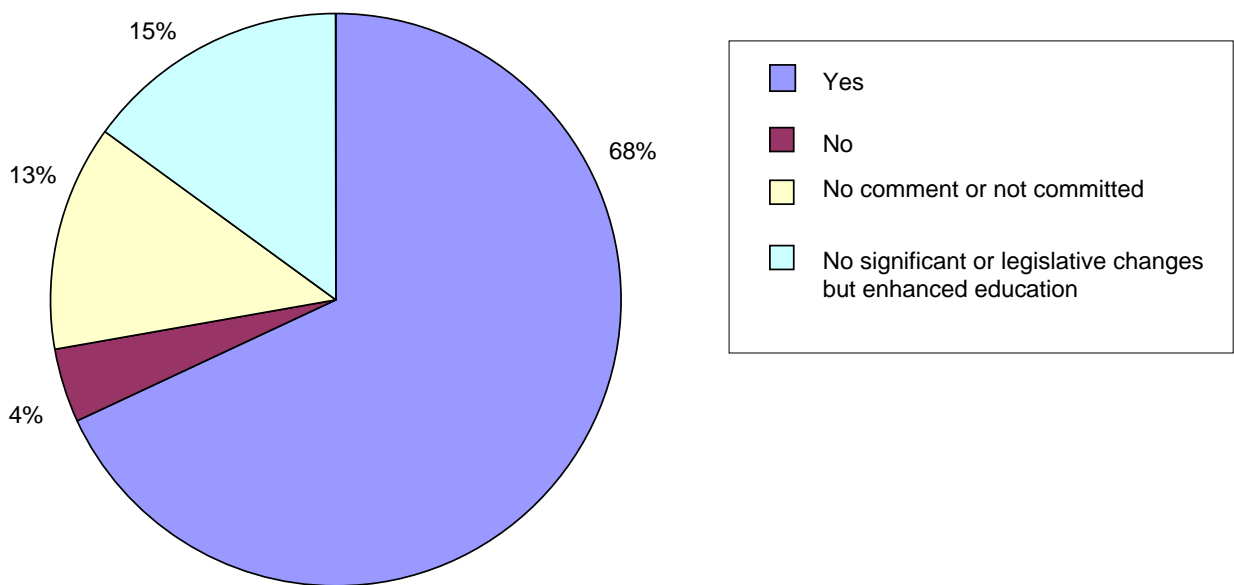
4.6 Feedback on alternative models

The majority of government and non-government feedback from surveys, forums and submissions supported enhancements to the current system to provide protections targeting the specific risks for young workers. The system was criticised by some submissions as being ad hoc in the way it relates to young workers, and for making it difficult to identify and enforce existing rights. Around 68% of submissions supported the need for additional child-focussed protections for young workers, with a further 12.8% making no comment on change options.

A minority of submissions favoured no or minimal change, although 14.9% still supported enhanced education strategies targeted at young people. This included suggestions for improved coordination and targeting of education on rights and workplace health and safety training prior to entering the workforce.

Some employer groups believe blanket regulation is unnecessary and will act to limit the employment opportunities for young people. Only two submissions favoured no child specific enhancements. However both would consider further evidence and also nominated changes to door-to-door sales protections as warranted.

Graph 2. Child specific protections



The overwhelming majority of submissions which commented upon reform options supported at least educational reforms (Graph 2). However, most preferred that this also include additional child-focussed protections.

Feedback favoured elements taken from Models two and three. The preference was for universally applicable minimum standards such as minimum age, maximum hours and offences for harm caused to children, in addition to industry specific protections. However, a significant number recommended a more comprehensive system of protections such those outlined in Model three, which is the model used in Victoria.

Further specific suggestions included:

- parental permission required to employ a child under 15 or a child who is attending school
- compulsory registration of employers of persons under 18 years of age
- that a Youth Employment Unit be established within DIR

- employees under 18 be provided with a written letter indicating the position, an Award summary, information on health and safety and unions which must be signed by the employee and their parent/guardian
- that the employment of children be identified as a risk for all employers and as such the Minister for Industrial Relations issue a new Regulation, in accordance with section 38 of the *Workplace Health and Safety Act 1995* for all employers employing people under the age of 18
- that young people are educated before commencing employment so they are armed with the knowledge and confidence to voice concerns.

4.7 Feedback on workplace health and safety

The majority of submissions which commented upon workplace health and safety protections favoured child-specific enhancements. The most common suggestion involved the targeting and resourcing of educational strategies. However a number also supported legislative restrictions on certain industries or types of work.

There was an identified need for more training in occupational health and safety of young people at work including the suggestion of a standardised set of criteria for training for industries at higher risk, such as the fast food industry. A public awareness campaign was also supported by stakeholders, as was the adoption of web-based interactive training modules as used overseas.

4.8 Feedback on specific issues

While some submissions favoured exempting family farms and businesses from further regulation, others identified these areas as presenting significant risks. The need to monitor young workers on farms, particularly during school hours was raised. The absence of readily available, affordable child care is also an ongoing issue which impacts on child safety on farms. This is particularly relevant because of the generally 'out of hours' nature of farming practices.

Key stakeholders were generally in agreement about the risks and the need for protections through an enhanced educational strategy. Exemptions for family farms from age limits and maximum hours was also suggested, as students who work on farms are generally learning skills from an early age, and become an important part of the workforce, particularly at busy times and on holidays.

Submissions also identified gaps in legislation in the area of sexual exploitation. These were also reported at the Commission's consultation forum. These included concerns over the coverage of protections for young people aged 16 and 17 years in unlicensed premises, in unregulated private businesses and in licensed premises where no adult entertainment permit is required or outside of the permit area. It was noted that the existing *Liquor Act 1992* and *Criminal Code* provisions do not apply to young people aged 16 and 17 years working as adult entertainers in 'peep shows' on unlicensed premises. Submissions, surveys and forums were in favour of ensuring this area was comprehensively dealt with under legislation.

A related point concerns the fact that there is no difference in penalty for the client of a sex worker (working outside the regulated industry) who is under 18 years compared to those who are over 18 years.

The largest single group represented in submissions was the entertainment industry. Submissions indicated widespread agreement on the risk factors in this area, and the special exemptions required for productions. There was agreement on the need for a Code of Practice and greater consistency across state boundaries, but preferences varied between the New South Wales and Victorian systems.

Further specific options which were commonly identified included:

- Criminal history checks for employers and/or supervisors of children (as in New South Wales and Victoria) were suggested by a range of stakeholders. This is due to the risks associated with the power imbalance between employer and young employee and also where they are working with an older person in a private dwelling/workplace on their own.

The inconsistency in this area is demonstrated by the fact that the person may be prevented from working in child related employment under the Commission's blue card screening process, but could work in a supervisory position with children as young as 13 years or younger under the current arrangements. Such contexts may involve significant power imbalances and unsupervised contact and is particularly relevant to work such as modelling, entertainment and photography due to the nature of the work.

The Commission suggests this issue requires further consideration to explore options for screening and preventing sex offenders from working in employment settings with children under 18.

- One suggestion was for the Department of Employment and Training system of "prohibited employers" for apprentices/trainees to be improved by including a link with the Anti Discrimination Commission of Queensland to identify employers with histories of sexual harassment or other inappropriate behaviour
- Enhancing compliance with international treaties and consistency with other states
- A comprehensive generic Code of Practice or targeting industries with large numbers of young workers or industries with higher risks for young workers
- Specific occupational management systems in industries with high numbers of children¹⁸
- Further research and continued involvement of children in the development of policy
- Research and policy frameworks which take account of the particular experiences and needs of specific groups of children, such as: Aboriginal and Torres Strait Islander children, children from culturally and linguistically diverse backgrounds and children with a disability

4.9 Feedback on implementation strategies

Most feedback favoured a more coordinated and integrated approach to regulating children's employment, and there was agreement on the need for a framework which prioritises the health, safety and wellbeing of children. The findings

¹⁸ Submission from Dr. Claire Mayhew

highlighted that this area requires an appropriate balance between educational, employment, criminal justice and child protection perspectives.

Feedback also favoured consideration of the establishment of a child employment service as an independent body without ties to unions or employer organisations. One example given was the New South Wales Children's Employment Unit in the Office of the Children's Guardian which is responsible for promoting the welfare of children in high risk industries, consulting with employers on risks, investigating complaints and education.

In addition, the important roles of the Department of Industrial Relations and of the Department of Education and the Arts were both highlighted.

Stand alone legislation was supported by a range of stakeholders, as was enforcement by existing regulatory bodies. The benefit of stand alone legislation would be its statutory recognition that the welfare of children at work is primarily the responsibility of the employer. Another benefit is that it would allow all aspects of protections to be responded to in a coordinated and comprehensive fashion.

It was also suggested that a general ruling by the Queensland Industrial Relations Commission on study commitments, rostering, and unpaid study leave would be of benefit in ensuring such protections become entrenched in Awards, and so flow on to other forms of agreements. The use of Awards to cover specific high risk industries was also raised as an appropriate strategy.

5. Conclusion

Feedback indicated that the framework for reform of employment protections for young workers should focus on their best interests, and aim to prioritise the health, safety and wellbeing of children and young people at work. The system should accord with best practice child protection evidence in advancing a comprehensive strategy across the education and industrial relations and child protection sectors.

A child protection framework which includes a preventative approach to the issues would emphasise strengthening protective factors and minimising risk factors. Measures require special provisions for children to accommodate their right to an education and respond to their specific needs and risk factors at work. Child-specific employment protections would assist in finding an appropriate balance between children and young people's right to work and the benefits associated with work and the right to education and leisure time.

Such a framework requires a coordinated and comprehensive policy strategy as the issues are relevant to a wide range of portfolios. This framework should also encourage positive ongoing partnerships with a range of government, non-government and industry stakeholders.

The protections proposed should be relevant to local community standards, and reflect the needs of a range of stakeholders, including those of children and young people, parents and industry. This requires the involvement of children and young people in the design and implementation of outcomes, and for materials that are age appropriate and targeted at their specific needs. Protective strategies should also recognise and support children's right to work and that many children need to work.

The model should adopt best practice and compliance with the relevant international Conventions through a system which is achievable, cost effective and consistent with community expectations. It is also important that the reforms are accompanied by a system of regular audits against key child-related outcomes, to measure the performance of the reforms. Such measures could include issues identified during the review such as workplace injuries and deaths, complaints data, client satisfaction measures and data on issues such as school performance and retention.

In broad terms, the research and feedback supported a child employment protection model which includes the following four strategies:

- 1) child employment legislation** (core minimum standards and provision for prohibitions, exemptions and additional protections)
- 2) child specific employment service** delivery (inspection, audit, regulation and enforcement)
- 3) a coordinating child employment policy function** (child protection focussed policy, research, monitoring and education)
- 4) a child employment guide** (including functions such as integration, promotion and education).

The overall purpose of the model and any legislative reform would be to protect children and young people under 18 years working in Queensland, and to take account of their health, safety and wellbeing. The strategies above were identified as providing a comprehensive response to the issues impacting on children and young people at work identified in the review. Such a model reflects best practice literature and is consistent with consultation feedback from key stakeholder's in Queensland.

With careful implementation and review against child safety and wellbeing measures, this model could provide for significant improvements in conditions and safety for young workers in Queensland.

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Appendix One: Child Labour Interdepartmental Reference Group

- The Department of Industrial Relations
- The Department of Justice and Attorney-General
- Department of Education and the Arts
- Department of Tourism, Fair Trading and Wine Industry Development
- The Department of Employment and Training
- The Queensland Police Service
- Department of Aboriginal and Torres Strait Islander Policy
- The Department of Communities
- Department of Child Safety
- Department of Primary Industries and Fisheries
- Disability Services Queensland
- Department of the Premier and Cabinet

Appendix Two: Australian child employment systems

The **Queensland** system, with a strong range of minimum conditions and health and safety protections for all employees regardless of age, represents Model 1. This system includes protections under the following legislation:

- The Department of Industrial Relations administers the *Industrial Relations Act 1999*, *Workplace Health and Safety Act 1995*, and operates an active industrial inspectorate and the Division of Workplace Health and Safety Queensland.
- Industrial instruments provide various conditions, and complaints may be heard in the Queensland Industrial Relations Commission or the Industrial Magistrates Court.
- The *Collections Regulation 1998* regulates supervision and hours for charitable collections by children, however, there are no similar provisions for commercial door-to-door sales.
- The *Liquor Act 1992* prohibits children from being in adult entertainment areas in licensed venues. The *Prostitution Act 1999* prohibits employment in brothels. Protection against children's involvement in pornographic films, photographs and images can be found through the *Classification of Films Act 1991*, the *Classification of Publications Act 1991* and the *Classification of Computer Games and Images Act 1995*.
- The Department of Justice and Attorney General administers legislation such as *the Criminal Code*, 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. 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. This Act and section is presently being reviewed. The *Education (Work Experience) Act 1996* regulates work experience, including a range of protections and limitations on hours and days per year, which are not replicated for the general youth workforce.
- 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.
- Although the *Child Protection Act 1999* does not contain any specific provisions that regulate the employment of children, the *Child Protection Act 1999* may apply where parents are unable or unwilling to protect the child from employment related harm.
- The Commission, through the *Commission for Children and Young People and Child Guardian Act 2000*, provides a range of complaints, advocacy, employment screening, community visitor, policy and research functions, in addition to the new child deaths review function. The Commission also provides training in advocacy and working with children, and
- The Anti-Discrimination Commission Queensland administers the *Anti-Discrimination Act 1991*.

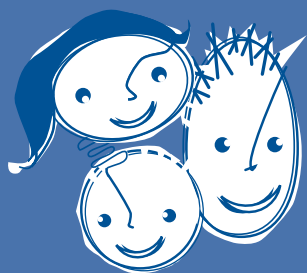
The interstate models are described below:

- **New South Wales** is the primary example of the targeted approach (Model 2), with a permit system and mandatory Code of Practice for children under 15 years, applying specifically to particular industries (entertainment, photography and door to door sales). The system also includes an offence for employment which jeopardises a child's physical or emotional wellbeing, and convicted sex offenders are prohibited from working with children.
- In **Western Australia**, the *Children and Community Services Act 2004*, includes a minimum age of 15 years (with defined light work exceptions), various penalties, and the capacity to issue specific prohibition notices. There is also a specific criminal offence for employment of children to perform in an indecent manner.
- In **South Australia** the *Industrial Law Reform (Enterprise and Economic Development – Labour Market Relations) Bill 2004* grants the Industrial Relations Commission power to create conditions for children through Awards, including prohibitions in certain industries, limits on hours, ages and supervision. The *Education Act 1972* limits work between school hours and after school where this interferes with education.

The **Northern Territory** *Community Welfare Act* provides for a minimum age of 15 for work between 10pm and 6am and creates an offence for employment of children which would jeopardise their health, safety and wellbeing. The *Education Act 1996* also limits work between school hours or after hours if it would impact upon study.

- In **Tasmania**, the *Children, Young People and their Families Act 1997* provides limits on ages and hours of work for street sales and entertainment. It also applies a general responsibility to not jeopardise the health, safety or wellbeing of children applying to all those with a duty of care for children and young people under 18 years.
- In the **ACT** the *Children and Young People Act 1999* prohibits employment of children under 15 years except for a range of specifically defined categories of light work, in addition to limits on the hours per week. There is also:
 - a specific provision concerning work during school hours or which would jeopardise the health, safety and wellbeing of children,
 - specific prohibition notices may be issued,
 - an offence concerning commercial sexual services is in the *Prostitution Act 1992*, and
 - a specific requirement concerning workplace health and safety issues for children.
- The 2002 **Victorian** review resulted in enhancements to their existing permit system. It is an example of the universal system (Model 3) and includes:
 - a minimum working age of 15 with employment allowed between 13 and 15 via permit,
 - 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,
 - limited to light work which is not harmful, and will not prejudice education, and
 - specific prohibitions in door-to-door sales and building and construction.





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