

Review of Tasmanian Child Labour Laws

July 2012

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Introduction

On the 29th July 2011, the Minister for Workplace Relations, David O'Byrne, MP, announced a review of Tasmanian child labour laws. The purpose of the review is to help ensure that underage workers are protected by industrial laws, and not subjected to exploitation, or working in unfair or dangerous conditions.

Casual employment for young people is seen by many as a traditional and legitimate way for children to earn 'pocket money' or small amounts of income for personal discretionary use, and so can be a valuable pathway for children to come to appreciate and develop good work practices for the future. Delivery work and babysitting, for example, have a long history in Australia of being used in this way. Volunteering by children is also actively encouraged in various spheres. For example, some schools include volunteer work for charitable organisations as part of their curricular activities, and use it as a means to help children appreciate the diversity of the community and varying circumstances. Some sporting and interest groups for children also expect varying levels of volunteer work by the children involved, as part of their commitment to the organisation or as an expression of the organisation's values. In some cases children earn awards or badges for completing certain amounts of volunteer work.

Work in family enterprises is another large area where children have traditionally been involved. While it is difficult to quantify as there are no child labour reporting requirements attached to such a situation, it is considered normal practice in a number of industries for children to be involved in the family enterprise. An obvious area is on the family farm. Children also help out in shops and restaurants. Work may be ad hoc and can take place in the same location where a child lives.

A preliminary assessment of Tasmanian legislation suggested that the current laws protecting children in the workplace provide some general protections. However, the relevant provisions occur across a number of pieces of legislation, which are managed by different government departments. This creates a potential for confusion in the workplace regarding requirements and a subsequent difficulty for compliance. Consequently, the legislation will be reviewed to assess whether:

- current laws are sufficient and appropriate to legally protect children employed in Tasmania;
- any laws should be changed, strengthened or simplified to better protect children; and
- there should be increased education and compliance assessments to ensure the current laws are well understood and complied with.

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I. Background information

I.1 Extent of child employment in Tasmania

It is difficult to obtain statistics for the incidence of employment for children under 15. It is compulsory for children to be in full-time education to the age of 16, and children of compulsory school age are not permitted to be employed during school hours. In addition, all students that complete year 10 continue participating in education and training until they turn 17, unless they gain a senior secondary or vocational qualification. Students are only exempt from this post year 10 requirement if they are in employment (or a combination of employment and education) for no less than 25 hours per week. Vocational education programmes, which may contain a component of on-the-job training, generally become available when a student is in year 10, which in most cases is when the student is 15 turning 16 years.

The Tasmanian Department of Education does not maintain records of children's paid employment while in full-time education. However, research was recently undertaken by the Justice and International Mission Unit of the Uniting Church in Australia, Synod of Victoria and Tasmania on issues around managing work and school for those under 16 years of age in Tasmania. The Uniting Church developed a survey for Tasmanian children under 16 years who were undertaking paid work at the same time as undertaking education. The survey was promoted through various avenues including Tasmanian primary and high schools, and different social network sites. The survey¹, which closed at the end of July 2011, sought information on :

- The effect of working on schooling
- Treatment in the workplace
- Safety in the workplace
- Conditions of work eg breaks, rosters
- Perceived benefits of work.

The response to the survey was very small (47 respondents), so it does not provide a full picture of the extent of children in paid employment. However, the matters raised by the respondents provide an indication of issues that should be considered further. These are raised later in this report when looking at specific issues.

The most recently available census statistics are from the national Australian census conducted in 2006, and are divided into age groupings commencing at 15-19 years, then 20-24 years, 25 -34 years, etc to 75 years and over. At 18 years a person is legally considered an adult.

Some relevant Tasmanian 2006 census statistics regarding employment for the 15-19 years age groupings are as follows:

¹ Uniting Church in Australia, Synod of Victoria and Tasmania, 'Report of survey undertaken in August 2011 of the experience of those under 16 years of age who study and undertake paid employment'

Labour force status by age by sex – 15-19 years

Males:

Worked full-time	2,853
Worked part-time	2,854
Away from work	205
Hours worked not stated	188
Total	6,100

Females:

Worked full-time	1,513
Worked part-time	4,595
Away from work	271
Hours worked not stated	214
Total	6,593

Employment type by hours worked by age – 15-19 years

Employee not owning business:

None (a)	455
1-15 hours	4,935
16-24 hours	1,318
25-34 hours	985
35-39 hours	1,898
40 Hours	1,534
41-48 hours	553
49 or more	297
Not stated	391
Total	12,366

Owner Managers of incorporated enterprises

None (a)	0
1-15 hours	7
16-24 hours	0
25-34 hours	4
35-39 hours	0
40 Hours	0
41-48 hours	0
49 or more	6
Not stated	0
Total	17

Owner Managers of unincorporated enterprises

None	4
1-15 hours	35
16-24 hours	11
25-34 hours	3
35-39 hours	7
40 Hours	10
41-48 hours	3
49 or more	9
Not stated	4
Total	86

(a) includes employed workers who did not work in week prior to Census night

Contributing family members

None	5
1-15 hours	52

16-24 hours	3
25-34 hours	6
35-39 hours	3
40 Hours	9
41-48 hours	3
49 or more	0
Not stated	4
Total	85

Employment type not stated

None	11
1-15 hours	62
16-24 hours	17
25-34 hours	11
35-39 hours	15
40 Hours	14
41-48 hours	3
49 or more	3
Not stated	3
Total	139

The above statistics should also be put in the context of the total number of people in the various age ranges in Tasmania. In 2006 there were 16,856 males and 15,966 females – a total of 32,822 people – in the 15-19 age group. As a percentage, the numbers of people in the 15–19 age bracket who are employed in some capacity is around 20%.

A new Australian census was taken on 9 August 2011, but at the time of writing the results from this were not yet publicly available².

The Australian Bureau of Statistics also completed a study on child employment in Australia in 2006.³ The Bureau conducted a Child Employment Survey throughout Australia in June 2006 as part of the ABS monthly Labour Force Survey. Information was sought on children aged 5-14 years who had worked in the last 12 months. In particular, details on children's employment status, when they worked, working arrangements, and reason for working were sought. The survey reported that 5,300 children aged between 5 and 14 years worked in the last 12 months in Tasmania. This represented 8.1% of Tasmanian children in that age group, and only Western Australia, Northern Territory and Australian Capital Territory had a higher percentage. Of the Tasmanian children, 1,400 worked school holidays only, 1,000 worked school terms only, and 2,900 worked both school holidays and school terms. However, it should be noted that the Tasmanian statistics have a relative standard error of 25% to 50%, and so should be used with caution.

² The first release of 2011 Census results will be June 2012.

³ Australian Bureau of Statistics, 2006, 6211.0 Child Employment, Australia (available online)

1.2 Existing regulatory regime in Tasmania

1.2.1 Employment generally

On 1 January 2010 the industrial relations referral of powers to the Commonwealth came into operation. This had the effect of the Commonwealth's Fair Work Ombudsman assuming, under the *Fair Work Act 2009*, many of the functions previously undertaken under the individual States and Territories industrial relations legislation.

The Commonwealth legislation covers all constitutional corporations, and Tasmania also referred its powers covering all other private sector employment, community sector employment and local government employment to the Commonwealth. The State retained responsibility for public sector employment.

All employers covered by the national workplace relations system have an obligation to give each new employee a Fair Work Information Statement before, or as soon as possible after, the new staff member starts employment. It provides basic information on national standards for employment matters and contains information about:

- The National Employment Standards (NES)
- The effect on an employee's NES entitlements when there is a transfer of business
- Modern awards
- Agreement making under the *Fair Work Act 2009*
- Individual flexibility arrangements
- The right to freedom of association
- Termination of employment
- Right of entry (including the protection of personal information by privacy laws); and
- The role of the Fair Work Ombudsman and Fair Work Australia

The National Employment Standards (NES) comprise ten minimum standards of employment entitlements for employees covered by the national workplace relations system. The ten standards are:

- Maximum weekly hours of work
- Requests for flexible working arrangements
- Parental leave and related entitlements
- Annual leave
- Personal/carers leave and compassionate leave
- Community service leave
- Long service leave
- Public holidays
- Notice of termination and redundancy pay
- Provision of a Fair Work Information Statement

The obligations regarding the Fair Work Information Statement and meeting the minimum standards of employment entitlements apply to relevant employees regardless of age.

The Fair Work Act contains an express exemption for child employment legislation, which allows States and Territories to have their own specific child employment legislation should they wish. However, it also has some areas specifically pertaining to children and young people. These are:

- Explanation of enterprise agreements: s180(6)(b) & s181(5)(b)
- Review of bargaining impact on young people: s653
- National minimum wage for junior employees: s294
- Deductions or payments: s326(1)(d) – a parent or guardian must approve in writing ‘deductions or payments’ (that benefit the employer) for a worker under 18
- Individual flexibility arrangements: s144 (4)(c) modern awards, s203(4) enterprise agreements – worker must be better off. Young people under 18 must have written consent of parent/guardian: s144(4)(e)(ii) modern awards, s203 (7)(a)(ii) enterprise agreements
- School based apprentices and trainees: s126 awards & s 199 agreements – payment of loadings in lieu of annual leave etc where no detriment: s199(2))

1.2.2 Employment of children

Tasmania does not have legislation specifically addressing the employment of children and young people.

In practice some limits on the employment of this group is achieved through the compulsory education requirements established under the *Education Act 1994* and the *Youth Participation in Education and Training (Guaranteeing Futures) Act 2005*. Under section 4 of the *Education Act 1994*, a parent of a child must ensure their child of compulsory school age is enrolled at a school or is provided with home education until the child completes the school year during which he or she attains the age of 16 years, and under section 6 must ensure that the child attends school or receives home education. In addition, under section 82 of the Act a person must not employ or permit to be employed a school-aged child during the hours when the child is required to attend a school.

The *Youth Participation in Education and Training (Guaranteeing Futures) Act 2005* then states that students must participate in an eligible option (which is a prescribed training or education program) for one year after they turn 16, or until they reach 17 years, or achieve a certificate III vocational qualification. The only exemption to this is if they are in approved employment for not less than 25 hours a week.

Exemptions are allowed from the compulsory education requirements, but only where it is of benefit to the child’s education, or for particular training purposes. Under section 5 of the Education Act, the Secretary of the Education Department may, upon application by the parent, grant an exemption from the requirement to be enrolled at a school if satisfied that it is in the best interests of the child’s, or children’s, education. The legislation does not specify any other factors that need to be taken into account. Consequently, some children

may be permitted to work if it is authorised by the Secretary of the Education Department and usually accompanied by an exemption pursuant to section 5 of the Act. However, the Department employs Social Workers who have responsibility under section 14 of the Act as authorised persons to investigate non-attendance at school. If Principals discover children are working rather than attending school they will then investigate the matter and if that work is not viewed as being educationally beneficial to the child and the child is actually required to attend school at that time, the employer will be notified and warned that they will be prosecuted under the Act if the behaviour continues. It should be noted that any decisions by the Secretary to grant an exemption are subject to privacy protections and not publicly released.

Of course, work outside of school hours is not regulated by these Acts. Nevertheless, there are other pieces of legislation that work towards ensuring a child in employment is safe. In addition, the social security regime in Australia is well developed and assists in ensuring that generally a child does not need to go to work to support the basic needs of their family, although an early Longitudinal Surveys of Australian Youth report estimated that around 10 per cent of students were working to meet personal living expenses, pay for their education or to supplement the family income.⁴ This is a significant proportion for Australia.

Some specific awards stipulate minimum age requirements for the particular industry covered, and other employment conditions. However, awards covering the private sector in Tasmania are no longer administered by the State, but by the Commonwealth body Fair Work Australia under the *Fair Work Act 2009*.

Under the provisions of the *Workplace Health and Safety Act 1995* (WHS Act) an employer is required to ensure that an employee is competent to do the work, and to provide a safe workplace for an employee. In particular, an employer must provide any information, instruction, training and supervision reasonably necessary to ensure that each employee is safe from injury and risks to health (s9(1)(c)). This applies to employing young people, as there are no age limitations on this provision in the WHS Act. These responsibilities will not decrease under the new national Model Work Health and Safety legislation – in fact, the scope of the safety requirements will be increased.

Regulation 44B of the *Workplace Health and Safety Regulations 1998* requires a person to hold a high risk work licence (or equivalent licence or certificate of competency) in order to perform high risk work. High risk work includes engaging in scaffolding, rigging or dogging work, and anyone operating certain classes of cranes and hoists, boom-type elevating work platforms, mobile concrete placing booms, forklift trucks, order picking forklift trucks, boilers, turbines and reciprocating steam engines. One of the eligibility criteria for obtaining a licence is that the person is at least 18 years of age. This is part of a national licensing system that restricts employment in identified high risk occupations to licensed persons who are at least 18 years old and have attained nationally recognised training and qualifications.

The Workplace Health and Safety Act also addresses safety in mines. Under the new mine safety provisions in the Act a mine operator must develop, implement, maintain and review a

⁴ L. Robinson, School students and part-time work, LSAY Research Report no.2, ACER, Melbourne, 1996, p. v

documented health and safety management system to protect the health and safety of mine workers and other persons who may be exposed to risks arising from mining operations. Inspectors appointed under the Act may audit and review the health and safety management system and any of its component elements at any time, and may require that the health and safety management system be amended, reviewed or revised by the mine operator. This would include the identification of any worker felt to be at risk in the workplace or from the workplace activities due to a lack of skill etc. due to their age and consequent lack of experience etc. Workplace Standards Tasmania administers the inspectorate for this Act.

There are also some limitations through the ability of a young person to undertake driving tasks or operation of certain equipment due to a legislative entitlement to hold a licence based on capacity and age. For example, a person must be at least 20 years of age to obtain a full driving licence for a car, and the youngest age a person can obtain a licence for a heavy vehicle is 19 years of age.

The *Children, Young Persons and their Families Act 1997* states that it is the responsibility of an adult to prevent abuse or neglect or certain behaviour (S13). Section 3 describes abuse or neglect as meaning sexual abuse, or physical or emotional injury or other abuse or neglect. Under s91 it is an offence to fail to protect a child from harm.

The Children, Young Persons and their Families Act also contains some specific restrictions in relation to public entertainment by children (s93) and trading by children in public places (s94).

Under section 93 a person must not procure, induce, permit, counsel or assist a child to take part in a public entertainment which, in relation to that child, is a restricted public entertainment. This provision does not apply where the net proceeds of the entertainment are for the benefit of a school or charitable purpose, or where it takes place on premises used for conducting religious services. The Minister may declare any public entertainment or class of entertainment to be restricted public entertainment in respect of children under 14 years of age, although at the time of writing there was no record of the Minister having made such a declaration as yet. However, the Secretary of the DHHS may give written permission for a child to take part in the public entertainment.

Under section 94 of the *Children, Young Persons and Their Families Act 1997*, children aged under 11 years may not perform work where it involves offering anything for sale in a public place. Between the ages of 11 and 14 years, children are prohibited from offering anything for sale in a public place (either in that place or elsewhere) between 9pm of any day and 5am of the following day. These restrictions do not apply where the net proceeds are devoted to the benefit of a school or a charitable purpose.

Section 8 of the *Collections for Charities Act 2001* provides that an organisation may permit a person under the age of 16 years to solicit for a charitable purpose where the person is under the supervision of an adult and, where the person is under 12 years of age, is under the immediate control of an adult.

Other restrictions on children's employment in Tasmania are:

- A person must be 18 years of age or over to hold a security agents licence.⁵
- A person must be over 18 years of age to apply for a Tobacco Sellers licence, which is required to be able to sell tobacco or tobacco products. However, there is no minimum age for people who can sell tobacco products in Tasmania in a business which holds a Tobacco Sellers licence.⁶
- There is no age restriction in Tasmania on a person selling alcohol, but they must have completed the Responsible Serving of Alcohol course.
- There is a prohibition on the use, procuring or permitting of a child for prostitution or in the production of child exploitation material, including a prohibition on a child being on the premises used by a sex-worker.⁷
- A person must not allow a minor (under 18) employed by them to have access to restricted publications or to sell a restricted publication.⁸

⁵ *Security and Investigations Agents Act 2002* and the *security and Investigations Agents Regulations 2005*

⁶ *Public Health Act 1997* s74A to 74L

⁷ *Criminal Code Act 1924* and the *Sex Industry Offences Act 2005*

⁸ *Classification (Publications, Films, and Computer Games) Enforcement Act 1995*

2. Issues

The following represents a list of issues arising from the circumstances and needs particular to children in an employment situation.

2.1 Balancing School and Work

In recognition of the fact that Australian secondary students, in particular, are facing increasing pressure as they strive to combine success in studies with sporting, recreational and social activities, and part-time work as well, the House of Representatives Standing Committee on Education and Training conducted an inquiry into the impact of combined study and work on young people lives. The Report of the Inquiry⁹, tabled in November 2009, recognized that the fundamental purpose of schools is to provide an education for its students, but that finding the right balance between school and work can be as individual as the students themselves, and can be problematic for some younger workers.

There seems to be general agreement that there can be positive benefits for students who also work part-time. 'Those who find the right balance are not only rewarded with a range of social and economic benefits, but their chances of a successful transition into further education, training or work are significantly enhanced.'¹⁰ Students themselves value the opportunity to work. The majority of respondents to a survey conducted recently by the Uniting Church in Australia, Synod of Victoria and Tasmania for Tasmanian children under 16 years who are working while at school¹¹ commented positively about their experience of work, even though many of them also commented on particular problems they experienced at work. However, nearly half of the respondents to the survey also admitted that work had an impact on their schooling.

Tasmanian situation

Education legislation ensures that school is compulsory until 16 years of age, although exemptions are allowed where of benefit to the child's education, or for particular training purposes. A student must then participate in a prescribed training or education program for one year after they turn 16, or until they reach of age of 17 years, or achieve a certificate III vocational qualification, or are exempted by being in approved employment for not less than 25 hours a week. Non-attendance at school is investigated. Furthermore, a person must not employ or permit to be employed a school-aged child during the hours when the child is required to attend a school. However, the legislation does not address employment outside school hours, and it also does address the impact that work outside school hours may have on a child's learning during school hours.

⁹ 'Adolescent overload? Report of the inquiry into combining school and work: supporting successful youth transitions', House of Representatives Standing Committee on Education and Training, October 2009 (available online at www.aph.gov.au)

¹⁰ Ibid p vii

¹¹ Uniting Church in Australia, Synod of Victoria and Tasmania, 'Report of survey undertaken in August 2011 of the experience of those under 16 years of age who study and undertake paid employment'

2.2 Compliance with the law and limiting exploitation

Part-time work for a student is often their first experience in the workforce. In many cases their lack of knowledge about appropriate workforce conditions, together with limited life experience and self-confidence can make them vulnerable to exploitative practices.

Research in NSW and Victoria has identified exploitative practices in areas such as:

- Unpaid training
- Non-payment of loadings or penalty rates
- No advance notice of rosters or roster changes
- Underpayment
- No provision for meal breaks
- Wages not paid in money¹².

The recent Uniting Church survey of children under 16 working in Tasmania¹³ received comment that a number of these practices are also occurring in Tasmania. The deregulation of shop trading hours can also lead to young employees working very early or late, any day of the week.

There is also a high need for external support for young workers and other interested parties in this situation. Young people have expressed difficulties understanding the terms of their employment contracts and, in some cases, have been misinformed about the form of their contract eg being required to work as an independent contractor when the work arrangement is actually an employer/employee relationship. Parents, schools and employers themselves are often unsure about young people's work rights and obligations as well.

Tasmanian situation

There is a general responsibility under the Children, Young Persons and their Families Act for an adult to prevent abuse or neglect (s13). It is also an offence under this Act to fail to protect a child from harm (s91). However, while these provisions would apply in an employment situation, they are not primarily focused on that situation.

The Workplace Health and Safety Act provides for the appointment of inspectors for the purposes of the Act (s34), which is to provide for the health and safety of persons employed in, engaged in or affected by industry. The system of labour inspection in industrial workplaces is administered by the Workplace Standards Tasmania Division (WST) of the Department of Justice. Labour inspections by WST are strategically targeted or in response to inquiries from aggrieved parties, but have not targeted young employees to date.

It should be noted that private sector employees, regardless of age, are also covered by the provisions of the Commonwealth *Fair Work Act 2009*. Compliance activities are carried out by the Fair Work Ombudsman, and between March and July 2011 Tasmanian Fair Work inspectors conducted an audit programme to assess whether employers had provided a Fair

¹² Reported in the 'Submission to the Tasmanian Agenda for Children and Young People', Uniting Church in Australia, Synod of Victoria and Tasmania

¹³ Uniting Church in Australia, Synod of Victoria and Tasmania, 'Report of survey undertaken in August 2011 of the experience of those under 16 years of age who study and undertake paid employment'

Work information statement to each new employee¹⁴. The provision of this statement, which is a requirement under the Act, would be particularly important to young inexperienced workers who are unfamiliar with workplace arrangements and may be uncertain about what information they need, or lack confidence to seek information themselves, and is an important tool in identifying and overcoming exploitative practices. In this audit programme, the Fair Work inspectors selected 42 businesses and found that 57% were compliant and 43% were in contravention. Furthermore, where a business had not employed staff since 1 January 2010 the inspectors inspected the time records and payslips to ensure compliance with record-keeping obligations, and found that 2 businesses were in contravention regarding information on the payslips. The audit confirmed that many employers are not familiar with their obligation to provide a statement to new employees, and a number of employers had not even heard of the Fair Work Ombudsman prior to the visit by inspectors. Consequently, it was recommended that future audit programs include an assessment re the provision of the information statement, as well as the other particular compliance obligation being targeted in that audit.

The Fair Work Ombudsman (FWO) is also currently undertaking a Young Hospitality and Visa Worker campaign. In the campaign summary the FWO recognises that both young and visa workers are vulnerable. Between November 2011 and June 2012 Tasmanian Fair Work Inspectors will be undertaking compliance audits of around 20 hospitality establishments which employ both young and visa workers, to assess compliance with record keeping and hourly rates of pay obligations. As this campaign is still underway, results are not yet available.

2.3 Protection of children in employment

Just as children and young people should not be subjected to exploitative or inappropriate working conditions, they should also be safe. Safety from hazards in the workplace is an obvious area. A young person's limited experience can make it difficult for them to assess risk, and they may be more prone to take risks, and so it is important that their exposure to risk is removed, limited or well managed. Work conditions need to be appropriate to a child's age and experience. The casual and part-time nature of work for young people can mean that there is little provision of or opportunity for training in or information on health and safety matters. There has been anecdotal evidence that young workers are sometimes left alone in potentially dangerous situations, indicating a lack of proper supervision.

The need for safety from hazards in the workplace can also be seen to extend to the need to be safe in the care of the person employing them or supervising them. Furthermore, safety from exposure to moral harm is of greater relevance where the employee is young. The International Labour Convention No. 182: Worst Forms of Child Labour, which Australia has ratified, includes work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children in its definition of worst forms of child labour (Article 3(d)).

¹⁴ Tasmanian Fair Work Information Statement Audit Program 2011: Final Report, available at www.fairwork.gov.au/campaignresults

Tasmanian situation

The Workplace Health and Safety Act requires an employer to ensure that an employee is competent to do the work, and to provide a safe workplace for an employee. In particular, an employer must provide any information, instruction, training and supervision reasonably necessary to ensure that each employee is safe from injury and risks to health (s9(1)(c)). There is no age restriction on this requirement. Assessment of competency would need to take into account age as well as skill and knowledge. In addition, under the WHS Regulations high risk work requires a licence, and one of the eligibility criteria for the licence is that the person is at least 18 years of age. Statistics collected by Workplace Standards and WorkCover regarding injuries to children in the workplace are included in Appendix A for information. However, this Act does not address exposure to moral harm.

The new Model Work Health and Safety Act and accompanying Regulations and Codes, currently being finalised nationally, will not detract from this regime but will in fact strengthen responsibility for safety. The Model Work Health and Safety laws will commence on 1 January 2013 in Tasmania.

There are also specific restrictions on selling tobacco, prostitution, pornography, and selling restricted publications provided through other Tasmanian legislation (see pages 9 and 10).

In relation to ensuring safety for young people while in the care of the person employing them or supervising them, Tasmania does not have a mandatory screening system for people working with children, or any legal requirement to undertake a police check, although some organisations that require employees and/or volunteers to work with children have their own policy in place and require a police check. Tasmania Police provides consent based Police Record Check for no fee. A National Police Record Check, which identifies records held in other jurisdictions, is also offered by Tasmania Police. This Check currently costs \$45.00 and is the type of check Tasmania Police encourages employers to use for employment purposes. However, police checks identify and release relevant criminal history information covering convictions, findings of guilt or pending court proceedings (although there may be limitations on the release of some information due to spent convictions or privacy legislation); it does not assess the level of risk an individual poses to children's safety. The Department of Health and Human Services released a discussion paper on a checking system in Tasmania for people working with children and vulnerable people. A model was proposed, but the Steering Committee suggested that more detail needed to be put around the model before going out for further consultation, which is being done at the time of this report. More information will be required to determine whether the revised Tasmanian model will be aimed exclusively at people who work with children and vulnerable people ie child-related employment, rather than those businesses that employ children or vulnerable people; it could be argued that anyone who has contact with a child in an employment situation would fall within the screening requirements.

2.4 Education and awareness

Any existing regulatory scheme should be supported by appropriate information and advisory services. In relation to children in employment, the House of Representatives report regarding combining school and work suggested it may be better (or of more end

value) to invest time and effort into information and advisory services that are widely available to students, their parents and employers¹⁵.

Recent compliance activities carried out by the Fair Work Ombudsman last year regarding the provision of the Fair Work Statement¹⁶ also found that many employers are not familiar with their basic obligations to provide a statement to new employees, and a number of employers had not even heard of the Fair Work Ombudsman prior to the visit by inspectors. Awareness was particularly low in the regional areas.

Tasmanian situation

There are no specific legislative provisions covering this area.

Within Workplace Standards the WST Helpline call centre provides information to employers, employees and others on occupational health and safety, workers rehabilitation and compensation, dangerous goods, and some other areas of industry operation, although not on industrial relations matters. The WST web site and the new WorkSafe website provide up to date information on the above matters, although it is recognised that there are no pages dedicated to children in employment or information on workplace relations. A number of information materials are available, such as the information sheet 'Safety tips for new and young workers and their employers', the booklet 'Welcome to the workplace: A health and safety guide for new workers', and the booklet 'Getting started: Information for employers inducting, training and supervising new workers'.

The easiest place to capture young workers and students for training is at school and some workplace related education is provided. For example, the Pathway Planning course for year 8 to 10 students, and the Personal Pathway Planning course for year 11 and 12 students, are mandatory for most students. However, these courses focus on personal development and career planning rather than information on basic workplace rights and freedom of association.

There are also some excellent web resources available nationally for public use. Examples include the online Young Workers Toolkit at www.youngworkertoolkit.youth.gov.au, the NSW Teacher's Federation website www.studentsatwork.org.au, and the Australian Government web site www.myfuture.edu.au/ which provides an interactive, online career exploration service aimed at all Australians wishing to explore their career options, with a particular emphasis on 16 to 24 year olds. Sites such as Myfuture also have a specific section of resources and information for career advisors, teachers and parents.

2.5 Coverage

A number of other Australian jurisdictions have addressed what they have identified as concerns particular to child employment either by extending the coverage of existing

¹⁵ 'Adolescent overload? Report of the inquiry into combining school and work: supporting successful youth transitions', op cit, p91

¹⁶ Tasmanian Fair Work Information Statement Audit Program 2011: Final Report, available at www.fairwork.gov.au/campaignresults

legislation or enacting standalone child employment legislation.¹⁷ Some have used broad provisions such as including in legislation a general requirement that work must not impact on a student's attendance at school and ability to learn, or a general responsibility that work must not be harmful to their health and safety, or compromise their mental, moral or social welfare. Other provisions have been more specific and have addressed coverage in a number of ways:

- Defining child employment and specifying child employment activities. For example, extending coverage to include situations where the child is not paid or rewarded, or there is no contract or specific arrangement; or including part time and casual work. In some cases certain work has also been specifically excluded from coverage, such as domestic chores, collections work, door to door sales, participating in religious services or programmes, school projects, sporting activities. Areas not uniformly covered include family businesses, training arrangements that include a work component, and independent contracting arrangements.
- Setting age restrictions on employment and areas of employment, and setting age based requirements regarding employment. For example, setting a minimum age of employment based on the type of work, and setting preconditions on certain employment such as written parental permission.
- Establishing restrictions on specific areas of work, or adding conditions to employing a child in that area. For example, specific bans on children performing in an obscene or indecent manner, working on a building site prior to 'lock-up' stage, carrying out any heavy manual lifting, working with sharp instruments, or working near moving vehicles or at heights.
- Specifying working hours. For example, specifying the maximum number of hours a child can work in a school week and a non-school week; limiting the hours when a child can work based on age eg children between 13 and 15 years can only work between 6am and 10pm; specifying minimum break periods according to age.
- Specifying additional employer obligations where employing a child. For example, requiring working with children checks; requiring permits or registration to work with children; employers to seek and retain written parental permission; particular levels of supervision to be provided.
- Additional requirements to address specific industries of concern. Victoria and Queensland have brought in specific regulations to cover children working in the entertainment industry. NSW covers door-to-door sales in detail.

More detailed information on coverage of child employment legislation in other jurisdictions may be found in Appendix B.

Tasmanian situation

The Workplace Health and Safety Act applies to all workplaces in Tasmania, other than those for which the Commonwealth is the employer. A workplace is defined as any

¹⁷ Western Australia: *Children and Community Services Act 2004* and the *School Education Act 1999*; Queensland: *Child Employment Act 2006* and the *Child Employment Regulations 2006*, and the *Education (General Provisions) Act 2006*; Victoria: *Child Employment Act 2003* and the *Education and Training Reform Act 2006*; New South Wales: ¹⁷ *Children and Young Persons (Care and Protection) Act 1998* and the *Children and Young Persons (Care and Protection) (Child Employment) Regulation 2010*

premises or place where an employee, contractor or self-employed person is or was employed or engaged in industry. It includes any mine, aircraft, vessel or vehicle. The Act covers visitors to the workplace as well. Consequently, it would also cover a child working in a family business, while they are in the area that would be considered as the workplace. There may be some blurring of responsibility where the business is located in the residential premise.

Generally speaking, school- aged children are not permitted to work during school hours. However, the Education Act, enables the Secretary of the Education Department to, upon application by the parent, grant an exemption from the requirement to be enrolled at a school if satisfied that it is in the best interests of the child's, or children's, education. Consequently, some children may be permitted to work during school hours if it is authorised by the Secretary of the Education Department and usually accompanied by an exemption under the Act. The Tasmanian Polytechnic operates vocational education for Tasmanian students, and students who have completed year 10 but are not yet 16 have an exemption from the Secretary from attending school (the Polytechnic is not a school under the Act) provided they attend the Polytechnic or Academy full time. Many high schools also have arrangements with the Polytechnic for their students to complete Certificate I and II subjects whilst at school in preparation for the Polytechnic Certificate III courses after compulsory schooling. The coverage of the Education Act does not extend to employment outside these situations.

Specific coverage in other Tasmanian legislation regarding children in employment is limited. Areas covered are:

- High risk work – a person must be at least 18 years of age to obtain the required high risk work licence
- Children in public entertainment or selling items in a public place – some limited restrictions under the *Children, Young Persons and their Families Act 1997*
- Varying restrictions on children being employed to sell tobacco products, restricted publications, or holding a security agents licence
- Restriction of criminal activities involving child prostitution and the production of child exploitation material.

Tasmania does not have any requirements for employers of young people to be registered or obtain a permit.

3. Options

Even without specific child employment legislation there are still safeguards covering employees of any age. Some safeguards take age related factors into account, such as the Workplace Health and Safety Act which requires employers to take into account differences in ability and judgement (which may be age related). Some requirements cover school aged children but do not move fully into the employment arena, such as the Education Act and the Children, Young Persons and their Families Act. General employment conditions under the Commonwealth Fair Work Act apply to young people as well, but do not provide for varying requirements that children may have such as the need for more frequent rest periods, or the impact that employment may have on schooling. Furthermore, the activities of the Tasmanian Fair Work Inspectors have shown that wide-spread awareness of existing requirements is lacking in Tasmania, particularly in regional areas.

Consequently, while the current law and practice regime in Tasmania would protect children in general employment conditions, there are still opportunities to increase or target the protections towards young people and children in employment.

There are a number of options for action, which are discussed below.

I. Strengthen existing legislation

There are a number of pieces of legislation that have featured prominently when considering the protection of Tasmanian children in employment. They are the:

- *Education Act 1994* (and related *Youth Participation in Education and Training (Guaranteeing Futures) Act 2005*)
- *Workplace Health and Safety Act 1995* (WHSa) and accompanying Regulations
- *Children, Young Persons and their Families Act 1997*.

There are a number of additions that could be made to these Acts which would strengthen protection for children in employment.

Education Act – South Australia includes a provision in their Education Act¹⁸ to the effect that work must not impact on a student's attendance at school or ability to learn. A general provision in this manner would not limit protection to a particular set of legislated conditions. It would also allow for the different maturity and coping abilities of individual students. Action in this area would be the responsibility of the Minister for Education.

The Workplace Health and Safety Act - The WHSA requires an employer to ensure that each employee while at work is safe from injury and risks to health. New model Work Health and Safety legislation, which will commence in Tasmania on 1 January 2013, has as part of its object to provide for a balanced and nationally consistent framework to secure

¹⁸ *Education Act 1972* s78(1)(b)

the health and safety of workers and workplaces by [among other things] protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work [or from specified types of substances or plant].¹⁹ It does not include moral harm, such as in the Queensland child employment legislation covering the entertainment industry which includes provisions to protect school-aged children from performing work that may be harmful to their health and safety, or that compromises their mental, moral or social welfare. The Tasmanian Model Work Health and Safety Act has been approved by Parliament and will commence on 1 January 2013 so there would not be opportunity to include additions at this stage. But there may be opportunity to consider this in the future.

CYPF Act – There are a number of industries which particularly attract substantial numbers of children and young workers for various reasons. In Victoria, for example, around 90% of the permits issued to employ a child are for the entertainment industry. Victoria developed the Mandatory Code of Practice for the Employment of Children in Entertainment, which contains provisions addressing the activities and requirements peculiar to the entertainment industry such as dressing room facilities, employing babies, performances at night time, etc. Queensland also added provisions covering the entertainment industry in 2007. The Tasmanian Children, Young Persons and Their Families Act contains some restrictions in relation to public entertainment by children, and perhaps these could be expanded to better address the activities of children in public entertainment, particularly with the growth of television shows involving children such as Junior Master Chef. Any changes to the CYPFA would be the responsibility of the Minister for Children.

Industrial Awards - South Australia also addresses common areas of youth employment through means such as the *Café and Restaurants Award*. The retail sector is another area where large numbers of young people are represented and perhaps this could also be recognised through relevant award provisions. However, any private sector awards in Tasmania are now the responsibility of the Commonwealth Government.

2. Enact new stand-alone legislation

Information on the extent and nature of child employment in Tasmania is limited. However, based on research conducted in other jurisdictions and existing child employment legislation around Australia, such legislation could include:

- A specific definition of child employment to establish coverage. Areas of difficulty concern whether or not to include family businesses or independent contracting, and making sure it doesn't encroach on regular household activities such as domestic chores.
- Provisions regarding minimum hours of work and minimum ages of work for children within various age groups.
- Age appropriate conditions of work and restrictions on various types of work.
- Employer obligations, including permit/registration requirements, obtaining parental consent, requirement for a working with children check.

¹⁹ For more information on the new legislation visit www.worksafe.tas.gov.au

- A system for monitoring compliance and handling breaches.

Stand alone legislation can send a statement that the welfare of children at work is important and is the responsibility of the employer. However it can be confusing when there is national legislation which would apply to some aspects of a child's employment and specific state provisions. The development and implementation of new legislation would be very costly in this economic climate. Private employers would bear the brunt of the increased implementation costs, which they would not be likely to recover as the legislation is not likely to generate any productivity or efficiency gains. Any registration or permit system would also increase the burden of red tape on businesses, and may lead to child employment becoming uneconomical to certain businesses. There would be a need for extensive education and initial compliance activities to accompany the commencement of new legislation.

3. Increase education and compliance

The model Work Health and Safety legislation commencing in January 2013, has as part of its object to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by [among other things]:

- encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment; and
- promoting the provision of advice, information, education and training in relation to work health and safety; ...²⁰

Unions and employers can play an important role in education and awareness. But they also need to first become more aware of their responsibilities to young people. One means could be through a voluntary accreditation system for youth friendly employers. A suggestion made to the 2009 House of Representatives inquiry into school and work by the Australian National Schools Network (ANSN) was for employer and union peak bodies to work together to create a 'recognisable badge for youth-friendly employers, and for unions that give high priority to protecting young people's right'²¹. This would be a voluntary scheme, perhaps similar to the Tasmanian Automobile Chamber of Commerce (TACC) accreditation scheme for automobile repairers, or the Royal Automobile Club of Tasmania (RACT) Approved Repairers. The same report also considered the possibility of a national scheme to recognise employers of choice for young people, perhaps similar to the Equal Opportunity for Women in the Workplace Agency's *Employer of Choice for Women* citation²². Employers would need to educate themselves about appropriate practices in employing young people in order to comply with the requirements for accreditation, which would encourage voluntary compliance and raise public awareness.

²⁰ For more information on the new legislation visit www.worksafe.tas.gov.au

²¹ 'Adolescent overload? Report of the inquiry into combining school and work: supporting successful youth transitions', op cit, p82

²² Ibid, pp88, 89

The Commonwealth Fair Work Inspectors are active in promoting the requirement of the Fair Work Act such as the Educational Campaign conducted in August 2011 with the aim of educating employers on best practice guidelines when hiring new employees. Their compliance activities also carry out an educative function. There may be opportunity for the State government to help promote those messages, although caution is needed to ensure that there is no confusion as to who is responsible for industrial relations in the private sector.

Increasing education opportunities by using a range of organisations to deliver a message is effective. The easiest place to capture young workers and students for training is at school. While it is recognised that the school curricular is becoming very full, this is one area that has a potential lifelong application. There would be value in the Education Department including education specifically on employment issues and freedom of association in secondary school curricular, particularly in VET sectors – whether building on existing activities or developing new ones. The Pathway Planning course for year 8 to 10 students, and the Personal Pathway Planning course for year 11 and 12 students, is an obvious area where this information could be included. While these courses focus on personal development and career planning, the provision of factual information on basic workplace rights and freedom of association, together with appropriate resource materials for future reference, would provide invaluable assistance to young workers and potential workers. This education would need to start in year 8, given the fact that children as young as 13 (or even less) are currently in employment.

To facilitate awareness and access to information the development and promotion of a single point of contact would be valuable. Fair Work is the organisation that people need to go to for private sector industrial relations advice, so it may be confusing to add another contact point, particularly if using an existing service such as the WST Helpline call centre which no longer handles industrial relations matters. However a central point such as a child employment web page which can point to existing services and information, including reference guides for employers, would make it easier to promote awareness of issues specific to employing children and to access resources.

Some education and awareness initiatives would be able to commence almost immediately, and may not require extensive additional resources. An additional benefit of this option is that it would provide an opportunity to more clearly identify employers of children and gain a better insight into the child employment situation in Tasmania.

Appendix A

I. Information/data on children's illness or injury arising from work

The *Workers' Rehabilitation and Compensation Act 1988* establishes a rehabilitation and compensation scheme for injured workers, which is administered by the WorkCover Board, also established under the Act. All employers specified in the Act must have insurance cover for workers compensation claims, and the Board receives statistical information from the insurers on claims made. The following information on injuries to people aged 17 years or less is taken from statistics gathered over the last 5 years.

Injuries to People 17 years of age or less

Injuries by Year

Age	Year					
	2005	2006	2007	2008	2009	2010
10				2		
11				1		
12			1	3		
13	1	1		1		2
14	4	1	4	1	4	7
15	19	7	8	17	19	19
16	61	72	65	66	50	44
17	153	127	160	148	103	115
Total	238	208	238	239	176	187

Injuries by Injury Type

Injury Type	2005	2006	2007	2008	2009	2010
Wounds, lacerations, amputations and internal organ damage	105	83	89	87	72	73
Residual soft tissue disorders due to trauma or unknown mechanisms	63	48	53	47	40	38
Other injuries	15	12	17	22	14	18
Burn	11	16	18	20	18	16
Trauma to muscles and tendons	5	25	28	17	9	14
Fractures	11	7	14	18	13	10
Trauma to joints and ligaments	3	6	7	11	3	4
Skin and subcutaneous tissue diseases	6	6	5	3	1	4
Intracranial injuries	2	1	1	5	1	3
Injury to nerves and spinal cord	1					3
Diseases of muscle, tendon and related tissue	2				1	1
Other musculoskeletal and connective tissue diseases, nec						1
Mental diseases	2		1	2	1	1
Infectious and parasitic diseases						1
Spinal vertebrae and intervertebral dis diseases	2	1	3	2		
Digestive system diseases	3				1	
Nervous system and sense organ diseases	7	2	2	4	1	
Other diseases				1	1	
Other claims		1				

Injuries by Gender

Year	F	M
2005	53	185
2006	65	143
2007	64	174
2008	74	165
2009	59	117
2010	52	135

Injuries by Industry

Industry	2005	2006	2007	2008	2009	2010
Retail Trade	85	81	68	84	80	57
Construction	26	35	33	34	23	44
Manufacturing	45	35	43	53	30	25
Property and Business Services	29	14	19	15	12	18
Agriculture, Forestry and Fishing	10	13	16	15	5	15
Accommodation, Cafes and Restaurants	11	8	15	12	13	11
Health and Community Services	2	4	6		2	8
Wholesale Trade	7	6	11	7	1	4
Electricity, Gas and Water Supply						2
Cultural and Recreational Services	3	2	3	2	1	1
Education	9	7	7	4	5	1
Mining	1			2		1
Finance and Insurance				2		
Government Administration and Defence	2		1	3		
Personal and Other Services	2	2	11	4	4	
Transport and Storage	6	1	5	2		

Injuries by Occupation

Occupation	2005	2006	2007	2008	2009	2010
Other Labourers and Related Workers	34	35	40	46	28	40
Elementary Sales Workers	58	66	54	61	61	39
Construction Tradespersons	27	23	29	24	17	33
Factory Labourers	31	29	35	26	14	20
Mechanical and Fabrication Engineering Tradespersons	34	18	19	32	18	16
Food Tradespersons	5	5	5	5	7	9
Automotive Tradespersons	11	12	12	4	8	7
Other Intermediate Production and Transport Workers	7	2	9	11	3	5
Electrical and Electronics Tradespersons	3	3	5	5	3	4
Other Tradespersons and Related Workers	6	4	9	4	4	4
Intermediate Service Workers	4	5	5	2	4	3
Managing Supervisors (Sales and Service)	4	2	9	6	5	3
Cleaners	1		1	2		1
Education Professionals						1
Intermediate Clerical Workers	2		1	4		1
Intermediate Sales and Related Workers						1
Elementary Clerks	1					
Elementary Service Workers				1	2	
Farmers and Farm Managers					1	
Generalist Managers	1	1				
Intermediate Machine Operators	1		1	2		
Intermediate Plant Operators	4	1		1	1	
Other Advanced Clerical and Service Workers	1	1				
Other Associate Professionals	1	1				
Road and Rail Transport Drivers			1	1		
Science, Engineering and Related Associate Professionals	1			1		
Skilled Agricultural and Horticultural Workers	1		3	1		

2. Labour inspection records relating to child labour

The *Workplace Health and Safety Act 1995* requires an employer to keep records of injuries in their workplaces. However, only serious bodily injuries or illnesses suffered by employees are required to be reported to Workplace Standards Tasmania (WST), the relevant government authority. Since March 2008 only three incidents involving children have been reported and investigated by the WST inspectorate, none of which involved a child in an employment or workplace situation.

Appendix B

Other regulatory regimes in Australia

All Australian States and Territories rely on their compulsory education requirements in varying degrees to establish minimum age requirements for children in employment. For example, children are required to be in full-time school or home education from the age of 5 years to the age of 16 or 17 years, and children must not be employed during school hours.

However, compulsory education requirements do not deal with the times outside school hours, and a number of States have also enacted specific child employment legislation or provisions ie Western Australia²³, Queensland²⁴, Victoria²⁵ and New South Wales.²⁶ At the time of writing, South Australia's *Child Employment Bill 2011*, which was under debate in the South Australian Parliament during 2011, had lapsed

Following is a list of the main areas covered by the various legislative provisions dealing with child employment.

a) What is considered child employment?

In Western Australia, a child is considered to be employed if engaged to carry out work in a business, trade or occupation conducted for profit. It is still considered work even where the child is not paid or rewarded, or if there is no contract of services or specific arrangement. It includes full time work, part time work, casual work, holiday jobs, contract work and piece work.

In Queensland work, in relation to a child, is defined as:

- work under a contract or contract of service, or a contract to perform work;
- work that includes the supervision of others;
- participating or assisting in any business carried on for profit, regardless of whether the child is paid or rewarded;
- unpaid or voluntary work.

Specifically excluded are:

- domestic chores;
- collections work;
- work that is part of work experience, and apprenticeship, a traineeship or vocational placement (except in relation to restrictions on work);

²³ *Children and Community Services Act 2004* and the *School Education Act 1999*

²⁴ *Child Employment Act 2006* and the *Child Employment Regulations 2006*, and the *Education (General Provisions) Act 2006*

²⁵ *Child Employment Act 2003* and the *Education and Training Reform Act 2006*

²⁶ *Children and Young Persons (Care and Protection) Act 1998* and the *Children and Young Persons (Care and Protection) (Child Employment) Regulation 2010*

- work under contract where the child is paid for a particular result, has to supply what is needed to perform the work, and would be liable to fix a fault with the work;
- work under contract where a personal business determination is in effect under the Commonwealth *Income Tax Assessment Act 1997*.

A child is considered engaged in employment in Victoria if performing work:

- under a contract of service or for services (whether written or not); or
- in a business, trade or occupation carried on for profit under any other arrangement, whether or not the child receives payment or reward for the work.

Specifically excluded is:

- Participating in a church or religious service or programme, or a project or entertainment where the proceeds are for the benefit of a church or religious body;
- Participating in a school project or entertainment;
- Participating in an apprenticeship, traineeship or practical training under the Education and Training Reform Act;
- occasional or casual domestic or tutoring activities at residential premises;
- appearing in or being recorded in a news or current affairs item where the child is the subject, or where the child is in a public place and provides a spontaneous reply or opinion to a question;
- door-to-door fundraising where the child is directly engaged by the non-profit organisation;
- work in relation to a sporting activity.

Employment is defined simply in the NSW Act as paid employment or employment under which some other material benefit is provided. The Regulations add that a person is taken to employ a child if they make a payment (or other material benefit) to the child or to another person in respect of the services provided by the child, including preparatory actions to those services (eg wardrobe fittings, rehearsals where employed in the entertainment industry).

b) Age Restrictions and Requirements

Generally children need to be at least 15 years of age to be employed in Western Australia, with some exemptions as follows:

Children of any age may work:

- as part of a school programme;
- in a family business, trade or occupation carried out by a parent or relative of the child;
- in a not for profit organisation or situation; or
- in a dramatic or musical performance or other form of entertainment or in the making of an advertisement.

Children between the ages of 10 and 13 years may be employed to deliver newspapers, pamphlets and advertising material under the following conditions:

- it is between 6am and 7pm, but outside school hours.
- the child is accompanied by a parent or an adult approved (in writing) by the parent to accompany the child.

Children between 13 and 15 years may be employed outside school hours but limited to between 6am and 10pm, in specified work. Written permission from the parent is required and must be kept by the employer. The specified work is:

- delivering newspapers, pamphlets and advertising materials;
- working in a shop retail outlet or restaurant;
- collecting shopping trolleys from a shop or retail outlet, including adjacent areas.

In Queensland, an employer must not require or permit a child to do work prescribed under a regulation unless the child is at least the age prescribed under the regulation to do the work. Under the Child Employment Regulations an employer must not require or permit a school-aged or young child to work unless the child is at least 13 years old, or it is:

- delivery work and the child is at least 11 years;
- voluntary work;
- work in the entertainment industry (there are separate requirements in this area).

However, this does not apply to work done in a business or corporation totally owned by a close adult relative of the child.

Victoria sets the minimum age for employment as 11 years for:

- delivering newspapers, pamphlets or other advertising material;
- making deliveries for a registered pharmacist.

In all other employment the minimum age is 13 years. However, there is no minimum age for employment in a family business or entertainment.

However, children under the age of 15 years may be engaged only in 'light work', subject to the employment being authorised through the prescribed child employment permit system.

Light work is work or any activity that:

- is not likely to be harmful to a child's health or safety, moral or material welfare or development; and
- is not such as to prejudice the child's attendance at school or the child's capacity to benefit from instruction.

However, there is no minimum age for work in the entertainment industry. A child under 15 years may be employed in entertainment in accordance with a permit and employers of children must comply with the *Mandatory Code for the Employment of Children in Entertainment* (the Code). The Code sets out quite specific conditions of employment, including the amount of time and times of day children of various ages may work.

New South Wales sets a minimum age for children to be employed in door-to-door sales at a minimum of 14 years and 9 months.

c) Restrictions on work

Western Australia has a number of specific restrictions:

- Delivery work is strictly limited to delivering newspapers, pamphlets and advertising material.
- A child under 18 years must not be employed or permitted to perform in an indecent, obscene or pornographic manner while participating in an entertainment or exhibition, or making an advertisement.
- Work must not be harmful to a child's wellbeing, including health and safety.

Queensland also has specific restrictions to safeguard children, such as:

- a prohibition on nudity and wearing sexually provocative clothing, except in certain specified work in the entertainment industry.
- a prohibition on work as a social escort;
- a requirement for a child to be appropriately supervised.

A 2007 amendment covering the entertainment industry made provisions to:

- protect school-aged children from performing work that may be harmful to their health and safety, or that compromises their mental, moral or social welfare;
- limit the hours of work for school-aged children to ensure that their studies aren't adversely affected by employment.

Victoria specifically prohibits:

- door-to-door selling;
- employment on a fishing boat unless on inland waters;
- employment on any building site before the buildings are at lock-up stage;
- any kind of employment declared to be prohibited by the Governor in Council.

The Child Employment Act also lists the types of work or activity that is considered likely to be harmful to a child's health or safety (for the purposes of undertaking light work) - except where the risk of harm is managed so as to be minimised. These include:

- repetitive bending, twisting or lifting;
- heavy manual lifting;
- working with or near cooking or equipment that may produce high temperatures;
- working with sharp instruments, power operated tools or dangerous equipment,
- working near moving vehicles, or at heights;
- working with uncontrolled animals, or in extreme weather conditions.

In New South Wales there is a regulatory regime for specified areas of employment, covering artistic performances and door-to-door sales. A child must be a minimum age to carry out door-to-door selling, appropriately supervised, and must not be permitted to sell to a person in a motor vehicle or to enter a private dwelling during the sale of items. Employment in artistic performances is not circumscribed by age in NSW, but there are specific conditions set out relevant to the age of the child, such as not exposing a baby to direct lighting, or having a registered nurse or midwife present at all times a child under 3 years is employed.

d) Working hours

Working hours in Western Australia are restricted to outside school hours, with some limited exceptions in relation to undertaking vocational training or employment which has the approval of the Minister for Education.

Outside school hours, children between 10 and 13 years can only be employed in delivery work between 6am and 7pm, and the employment of children between 13 and 15 years is limited to between the hours of 6am and 10pm.

The Queensland Regulations stipulate that a school –aged child can only work:

- up to 12 hours in a school week;
- up to 38 hours in a non-school week;
- up to 4 hours in a school day;
- up to 8 hours in a non-school day.

In addition, a child:

- must be given a 1 hour minimum break after 4 consecutive hours work
- cannot work for the same employer within 12 hours;
- cannot do more than 1 shift a day

... unless it is work in the entertainment industry or a family business. Some restrictions still apply for young children.

The hours of work are restricted to between 6am and 10pm. A child between 11 and 13 years may not perform delivery work between 6pm and 6am.

Working hours in Victoria are also restricted to outside school hours, with some limited exceptions requiring an exemption from the Minister for Education. In addition, the nature and extent of any employment must not prejudice the child's attendance at school or capacity to benefit from instruction.

In all cases a child may be employed:

- up to 3 hours per day and 12 hours per week during school term;
- up to 6 hours per day and 30 hours per week outside school term.

The above figures include rest breaks. A child must be given a rest break of 30 minutes minimum after every 3 hours of work, and must be given a break of at least 12 hours between finishing one shift of work and commencing the next.

In addition, a child must not:

- be employed in street trading unless it is between the hours of 6am (or sunrise if later) and 6pm or sunset (if earlier);
- in any other case, be employed earlier than 6am or later than 9pm.

The provisions regarding rest breaks and hours of work immediately above do not apply to the employment of a child in entertainment.

The Code of Practice under the NSW Regulations sets out general limitations on the hours of work. An employer must not employ a child:

- more than one shift on any one day;
- for more than 5 consecutive days;
- for more than 4 hours on a school day;
- less than 12 hours after the child has previously finished work;
- to work no later than 9.00pm on any day prior to a school day;
- to work no later than 8.00pm on 3 consecutive days where each following day is a school day;
- to work for a total period of time that, when added to time spent in schooling, exceeds 50 hours.

The Code also specifies a 10 minute rest break every hour, and a 1 hour rest break every 4 hours. There are particular limitations on hours of work specified for employment in entertainment or exhibitions, in live performances, and in door-to-door sales.

e) **Employer obligations**

A Western Australian employer must retain the written parental permission for a child between 13 and 15 years to be employed in their business.

The Queensland Regulations specify the way an employer must supervise a child who does work involving the exchange of money or delivery work.

The Regulations also place a number of duties on the employer in relation to:

- ability to contact a parent;
- safeguarding children while at work;
- maintaining specific records.

The Victorian legislation requires any person who proposes to employ a child to apply for a permit for the child to be employed, which may be granted subject to any conditions specified.

Other duties are placed on the employer, such as:

- maintaining specified records, including the written consent of the parent/guardian to the employment;
- providing direct and adequate supervision of the child at all times;
- undergoing or ensuring the person directly supervising the child undergoes a 'working with children' check.

In New South Wales certain employers are required to be authorised by the Minister in order to employ children. An 'employer's authority' is required to employ a child:

- to take part in entertainment, an exhibition, or a recorded performance;
- carryout door-to-door selling;
- anything prescribed by the regulations.

Specific exemptions to this are where the child:

- is employed for the purpose of a fundraising appeal;
- is employed for occasional entertainment or an exhibition where the net proceeds go to charity;
- is more than 10 years and the employment is outside school hours for no more than 10 hours per week;
- is a foreign national employed for an artistic performance etc under the auspices of the relevant foreign government.

Other responsibilities are to:

- maintain specified records;
- provide the Children's Guardian with at least 7 days notice of the employer's intention to employ a child at a particular location for a particular period. The notice

is to also provide details of any risks and any strategies to comply with the Code, or modifications to the Code sought by the employer;

- provide a copy of the Code of Practice or authorised explanation to child's parent;
- ensure the child is covered by personal accident insurance;
- ensure the child is taken home in a timely manner in specified circumstances;
- ensure the child is provided with appropriate food and drink and there are proper toilet facilities;
- ensure the child is adequately clothed and protected from the elements.