

INQUIRY INTO IMPACT OF COMMONWEALTH WORKCHOICES LEGISLATION

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Theme:

Summary

**SUBMISSION BY THE
NSW COMMISSION FOR CHILDREN
AND YOUNG PEOPLE
TO THE NSW PARLIAMENTARY INQUIRY
CONDUCTED BY THE STANDING COMMITTEE ON
SOCIAL ISSUES ON THE IMPACT OF THE
COMMONWEALTH *WORKCHOICES* LEGISLATION**

June 2006

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1. The Commission for Children and Young People

1.1 The Commission for Children and Young People ('the Commission') was established by the *Commission for Children and Young People Act 1998*. The Act lays down three statutory principles which govern the work of the Commission:

- (a) the safety, welfare and wellbeing of children are the paramount consideration
- (b) the views of children are to be given serious consideration and taken into account
- (c) a co-operative relationship between children and their families and community is important for the safety, welfare and well-being of children: *s10*.

1.2. The principal functions of the Commission include the making of recommendations to government and non-government agencies on legislation, policies and practices and services affecting children: *s11 (d)*.

2. Setting the scene

The Commission's Children at Work research

2.1 Until recently, little was known about the work experiences of children aged 16 years and younger in NSW. To address this, the Commission undertook research in 2004 – 2005 on children and their working experiences.

2.2 The study employed a questionnaire of 11,000 children from Year 7 to Year 10 aged 12 to 16 years in 22 NSW schools. It looked at how many children worked, the type of work they did, the conditions they worked under and how satisfied they were with them, the level and nature of work-related injury, experiences of discrimination and harassment, and how work fitted in with other aspects of their lives.

2.3 As a result of the research the Commission released its *Children at Work* report in June 2005.¹ The report found that children enjoyed

¹ NSW Commission for Children and Young People, *Children at Work*, June 2005.

working, that they wanted to work, that work was important to them, and that it contributed to their development. They were most satisfied with the recognition and support they received and least satisfied with their income, degree of control and autonomy. There were problems in accessing employment, particularly for children from disadvantaged areas, and an alarming incidence of injury and harassment at work.

- 2.4 The overwhelming majority of children listed both positive and negative features of work. They liked getting paid, gaining experience, feeling a sense of responsibility, and the social aspects of working. They disliked the tiring nature of work, unfair treatment by employers, and interference with other parts of their lives. Many felt exploited and treated unfairly because of their age, felt they were often bossed around and yelled at, and not paid sufficiently for their work.
- 2.5 The large number of children who work and the very young age at which many are working makes it important that there is proper legislative protection for them.
- 2.6 For example, the report found that just over 56 per cent of children had worked in the previous 12 months. Of those, 61 per cent worked for a formal employer.² Applied to the general population, these percentages equated to 240,000 children from 12 to 16 years who worked, of whom 146,400 worked for a formal employer. While the greatest proportion who worked were in Year 10, a significant proportion of 12 year-olds undertook some form of work and by the age of 13 the majority of children were working in either the informal or formal labour market. There is a shift from the informal labour market to the formal labour market as children get older. Jobs like babysitting, garden labouring, delivery work, farm hand work and vehicle cleaning made up the greater proportion of work of 12, 13 and 14-year-olds (53.6 per cent, 54.2 per cent, and 45.7 per cent respectively) than 15 and 16-year-olds (30.5 per cent and 25.2 per cent respectively).
- 2.7 Some salient findings from the study demonstrate the vulnerability of children at work even in a pre-*WorkChoices* industrial environment:
- 2.7.1 While children were, on average, paid around award rates at similar levels to young adults, the enormous spread of rates suggests many are paid at extremely low rates. Around 22 per cent earned between \$6 and \$8 per hour, but 29 per cent earned \$4 or less per hour, while one in ten (likely to be younger children) earned \$2.00 or less per hour. The percentage of children who received no payment, or received a non-monetary reward, was greatest for 12-year-olds (12.3 per cent and 17.8 per cent respectively). This may reflect the fact that younger children work in less formal environments such as the

² Formal employment in the research referred to work for an employer on the formal labour market. Informal work includes work undertaken for family (immediate or extended), friends or neighbours, community organisations or schools.

immediate family where they neither expect nor receive compensation.

- 2.7.2 Over 60 per cent undertook work that was one-off or casual, involving irregular work hours and non-standard shifts.³
- 2.7.3 Children in regular work in the formal labour market were least satisfied with the control they had over their working conditions. These regular jobs involved longer working hours and more structured work with relatively inflexible shifts. Children had to organise their lives around the needs of the workplace. This also indicates that in formal workplaces children are junior employees are therefore less able to influence workplace conditions.
- 2.7.4 Around 40 per cent sustained a work-related injury, and 7.4 per cent had a serious injury requiring hospitalisation, medical treatment, or time off school for three days or more. Nearly 48 per cent experienced verbal harassment at work and about one-fifth experienced physical harassment at work.

Other studies support the Commission's findings

- 2.8 The Commission's research is supported by other studies by ACIRRT, SA Unions and JobWatch Victoria, revealing young people have a limited knowledge of their employment rights and little capacity to defend their interests.⁴
- 2.9 The surveys found high levels of workplace injuries and occupational health and safety problems among young workers, serious harassment, job insecurity, poor pay and conditions, and a lack of knowledge of workplace rights.
- 2.10 All were conducted pre-*WorkChoices*, suggesting that even with the no-disadvantage test that was in place prior to the new legislation, there were considerable problems for young people at work.

3. WorkChoices

- 3.1 The Commission welcomes the opportunity to make a submission to the Social Issues Committee Inquiry on the impact of the *WorkChoices* legislation.

³ This finding complements data on the highly casualised and precarious nature of employment for young people in Australia in general: in 2003, two-fifths (40 per cent) of casual employees were young people aged 15–24 years. (Australian Bureau of Statistics, *Australian Social Trends 2005*, cat. no. 4102.0, ABS, Canberra, 2005).

⁴ See ACIRRT, *Young People at Work Survey*, July 2005, University of Sydney; SA Unions, *Dirt Cheap and Disposable*, 2005; Smiljanic, V, *Fast food industry: a research study of the experiences and problems of young workers*, JobWatch Inc., Victoria, May 2004.

3.2 In particular, the Commission is concerned with two of the terms of reference of the Inquiry, so far as they relate to children:

- (a) the ability of workers to genuinely bargain, focusing on groups such as women, youth and casual employees and the impact upon wages, conditions and security of employment; and
- (e) the impact on injured workers'.

4. **Term of Reference (a): 'the ability of workers to genuinely bargain, focusing on groups such as women, youth and casual employees and the impact upon wages, conditions and security of employment'**

Developmental imperatives make children vulnerable at work

4.1 It is the nature of the relationship between adults and children that children are raised to do what adults tell them. Children are already in a non bargaining position relative to adults by virtue of their status as children. Further to this, children approach adults from a position of trust and assume that adults are there to help them and look after their interests. However, this is not necessarily the case in work settings. A deregulated work environment may result in children feeling unable to protest and stand up to adults, which in turn undermines their capacity to bargain.

4.2 Consequently, children are vulnerable in the context of *WorkChoices*. The new legislation establishes an environment where children are even more likely to lose existing pay and conditions because they cannot effectively bargain with adults, and have relied historically on the protections afforded by the award system which adults have put in place.

4.3 There were already instances of exploitation of children under Australian Workplace Agreements (AWAs) before *WorkChoices* was enacted. The South Australian Industrial Relations Court recently ordered an employer to pay \$1438 to an employee, who was a Year 10 student when engaged in 2003. The judge commented:

'But the plain fact is that under this AWA the respondent worker was paid grossly less than she was entitled to as a minimum under the State Award..... The AWA sought to cut her minimum entitlement by approximately 25 percent.'⁵

Does parental involvement compensate for children's vulnerability?

4.4 The requirement for parental or guardian approval of an AWA for an employee under 18, while providing some protection, will not assist if they are unable to assess the implications of an AWA. Parents may

⁵ *Yurong Holdings Pty Ltd v Renella* [2005] SAIRC 60, McCusker J, Paragraph 15.

have difficulty with the language or details of the AWA or be unfamiliar with the nature of the work their child performs.

- 4.5 There are likely to be flow on effects for children working in the informal sector. Anecdotal evidence suggests that these children are often paid a portion of the rate paid, for example, to a junior shop assistant or clerical worker. In a deregulated industrial environment where award rates cease to be relevant, payments to these children will also fall.

Children's lack of bargaining power

- 4.6 *WorkChoices* does nothing to prevent all workers, both adult and children, being engaged on pay rates lower than the parent award or agreement. Holiday loadings, allowances, penalty rates and overtime payments can all be removed from new agreements and absorbed into an all-up hourly rate of pay which is paid regardless of when the work is performed. There is no guarantee for adults or children of annual increases to minimum wages. There is no longer a no-disadvantage test to assist workers of any age. However, children's lack of bargaining power makes them even more vulnerable than adult workers, and less able to negotiate effective outcomes or defend what they already have.
- 4.7 The new system removes skill-based career paths for young people. The Australian Industrial Relations Commission can no longer conduct test cases like its Junior Rates Inquiry in 1999 which examined whether junior rates could be replaced by non-discriminatory alternatives. And since junior rates are exempt from federal, state and territory anti-discrimination legislation, there is nowhere to go for children claiming their low rates of pay are discriminatory.
- 4.8 There will be no protection from unfair dismissal if a child is employed by a corporation with 100 or fewer employees, (constituting the great majority of Australian companies). Only 147 unlawful termination claims have been referred to the Federal Court since 1996. Over the same period the Australian Industrial Relations Commission processed more than 50,000 unfair dismissal applications.⁶ While there will still be protection from unlawful termination on a number of grounds, including age, the number of children taking unlawful termination claims on the basis of age discrimination will be minuscule. The overwhelming majority, dismissed because of alleged poor performance or misconduct, will have no redress.

5. Term of Reference (e): 'the impact on injured workers'.

Increased risk of injury to children under WorkChoices

⁶ Australian Industrial Relations Commission, Annual Report 2003/04, AIRC, Canberra, 2004.

- 5.1 Children at Work found an unacceptably high level of injury and harassment of children at work which the more deregulated *WorkChoices* environment may exacerbate. Their vulnerability and susceptibility to injury in the workplace is heightened by their developmental stage⁷. Research demonstrates that children and young people are still undergoing rapid physical and social development (this includes brain development). When this is combined with children's lack of experience in workplace tasks and culture, there are added risks in the workplace for children.
- 5.2 The lack of a requirement under *WorkChoices* for meal breaks and rest pauses in new AWAs could increase fatigue and therefore increase the risk of injury to many children at work. Work conditions such as meal and rest breaks are important to all workers. However, children and young people are less likely to be able to identify hazards or the need to rest due to fatigue. Their capacity to become fatigued is compounded by the fact that they are combining work and school.
- 5.3 *Children at Work* found a general consensus in research evidence that moderate hours worked (10 hours or less per week) in jobs with reasonable conditions could be positive for children. The study found that most children worked less than six hours per week. However, around nine per cent worked more than 15 hours per week, which could compromise their school performance and their capacity to participate in social activities. If children are spending extensive hours of work on top of school hours, they may in some cases have formal commitments exceeding those of adults. The study also found that children can manage early starts and late finishes if the overall hours of work per week are reasonable. The removal of minimum standards restricting the length of shifts and rostering of hours could result in children working very long hours, with a deleterious effect on their wellbeing.

6. Recommendation

- 6.1 Children are generally satisfied with their experiences of work and find that work contributes positively to their lives. It is important that the impact of the changing work environment on children's satisfaction with work is monitored. A key way of doing this is for the NSW Commission for Children and Young People to be funded to repeat the *Children at Work* research every three years to monitor how the working lives of children change over time.

⁷ Glendon I, 'Brain development during adolescence: some implications for risk-taking and injury liability', *Journal of Occupational Health and Safety Australia and New Zealand*, 2006, vol. 22, no. 2, 137-150.

7. Conclusion

- 7.1 The *Children at Work* study found that children enjoy working, that work is important to them, beneficial, and contributes to their development. In spite of *WorkChoices*, children will still value the sense of responsibility, recognition and experience that work can bring. However, for many children the new legislation may have a dire impact on their pay and conditions at work, as well as their safety, because it does not recognise the almost complete lack of bargaining power of young people at work. It does not provide the level of protection afforded under the award system and so fails to protect a vulnerable and inexperienced group of people who are learning about working life.

REFERENCES

1. NSW Commission for Children and Young People, *Children at Work*, June 2005.
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3. SA Unions, *Dirt Cheap and Disposable*, 2005.
4. Australian Bureau of Statistics, *Australian Social Trends 2005*, cat. no. 4102.0, ABS, Canberra, 2005.
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6. *Yurong Holdings Pty Ltd v Renella* (2005) SAIRC 60, McCusker J, Paragraph 15.
7. Jobson, D, 'Youth - an occupational hazard', articles in the *Sydney Morning Herald*, 24-26 April 2006.
8. Australian Industrial Relations Commission, Annual Report 2003/04, AIRC, Canberra, 2004.
9. Glendon I, 'Brain development during adolescence: some implications for risk-taking and injury liability', *Journal of Occupational Health and Safety Australia and New Zealand*, 2006, vol. 22, no.2, pp. 137-150.

From: "kids kids" <kids@kids.nsw.gov.au>
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Date: Monday, 5 June 2006 4:49
Subject: Submission to the NSW Parliamentary Inquiry conducted by the Standing Committee on Social Issues on the impact of the Commonwealth WorkChoices legislation

Director
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Dear Sir/Madam

I am pleased to enclose the NSW Commission for Children and Young People's submission to the NSW Parliamentary Inquiry conducted by the Standing Committee on Social Issues on the impact of the Commonwealth WorkChoices legislation.

With the approval of the Committee, I would like to place a copy of the submission on the Commission's website. Making work such as this publicly available is one mechanism I use to be accountable to the children and young people and Parliament of New South Wales. I would appreciate your consideration of this request at an appropriate time.

If you require any further information, please contact the Commission's Manager, Policy, Ms Anne Marie Dwyer, on 9286 7205 or at annemarie.dwyer@kids.nsw.gov.au.

Yours sincerely

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Commissioner
5 June 2006

Encl.

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