



# Submission to the Independent Review of the State Industrial Relations System

## 1. Introduction

Thank you for providing the opportunity to make a submission to the Review of the State Industrial Relations System.

I was appointed as Western Australia's (WA) inaugural Commissioner for Children and Young People in December 2007 pursuant to the *Commissioner for Children and Young People Act 2006* (the Act).<sup>1</sup> Under this Act, I have responsibility for advocating for the half a million Western Australian citizens under the age of 18 and for promoting strategies and outcomes that enhance the wellbeing of children and young people.

Under section 19(g) of the Act, I have responsibility to monitor and review written laws, draft laws, policies, practices and services affecting children and young people.<sup>2</sup> Section 20 provides that in carrying out all of my functions I must have particular regard to Aboriginal and Torres Strait Islander children and young people, and to those who are vulnerable or disadvantaged for any reason.<sup>3</sup> The Act provides that I must observe four guiding principles:

- Children and young people are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation.
- The contributions made by children and young people to the community should be recognised for their value and merit.
- The views of children and young people on all matters affecting them should be given serious consideration and taken into account.
- Parents, families and communities have the primary role in safeguarding and promoting the wellbeing of their children and young people and should be supported in carrying out their role.

I am also required to have regard to the *United Nations Convention on the Rights of the Child* (UNCRC), and the best interests of children and young people must be my paramount consideration.<sup>4</sup>

It is with these responsibilities in mind that I submit comment on the Review of the State Industrial Relations System to ensure the needs and views of children and young people are considered. The comments I have made aim to highlight issues for young workers, and to encourage the WA Government to consider the needs and views of children and young people as it steers public policy into the future.

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<sup>1</sup> *Commissioner for Children and Young People Act 2006*, WA. Available: [http://www.austlii.edu.au/au/legis/wa/consol\\_act/cfcaypa2006418/](http://www.austlii.edu.au/au/legis/wa/consol_act/cfcaypa2006418/)

<sup>2</sup> Ibid, p10.

<sup>3</sup> Ibid, p11.

<sup>4</sup> United Nations Convention on the Rights of the Child. Available: <http://www.unhcr.ch/html/menu3/b/k2crc.htm>



I would also emphasise the importance of consultation in this process, particularly with children and young people. As mentioned, one of my primary roles as Commissioner is to encourage the participation of children and young people in the making of decisions that affect their lives and to encourage government and non-government agencies to seek the participation of children and young people appropriate to their maturity.

Since the establishment of my office there have been some excellent examples of State government agencies consulting effectively with children and young people, for example the Health Department and the Western Australian Museum.

### **Recommendation 1:**

The WA Government consult with children and young people as part of the State's Industrial Relations Review and consider the views of young workers in all decision making.

This submission focuses on the issues to consider as part of the Review, and in particular, on the terms of reference (1 and 2) that focus on identifying the aspects of the *Fair Work Act 2009* that need to be taken into account, and areas for further legislative reform.

## **2. Issues for Consideration**

### **2.1 Rights of young workers**

The *United Nations Convention on the Right of the Child* (Article 32 and 36) states that all children have the right to be protected from economic exploitation, from work that harms them and that is bad for their health and education, and to be safe and paid fairly.<sup>5</sup>

This convention was ratified by Australia in 1990 and its key provisions are that:

- All rights apply to all children up to the age of 18 without exception or discrimination of any kind.
- The best interests of the child must be a primary consideration in all actions concerning children.
- States and Territories have an obligation to ensure, as much as possible, every child's survival and development.
- Children's views must be taken into account in all matters affecting them.

My role is designed to safeguard and promote the rights, safety and wellbeing of children and young in people in WA. This Review should consider its obligations in ensuring these rights are upheld.

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<sup>5</sup> Article 32 and 36, *United Nations Convention on the Rights of the Child*. Available: <http://www.unhchr.ch/html/menu3/b/k2crc.htm>



## 2.2 Vulnerable and disadvantaged workers

Australian Bureau of Statistics (ABS) data shows that young people in formal employment are generally and predominantly engaged by small business in the retail and hospitality sectors.<sup>6</sup> The data also indicates that young people principally occupy lower skilled occupations as part-time and casual workers. This is increasingly common amongst school-aged children and tertiary students, who endeavour to balance work and study. Current ABS data shows that the percentage of young people working part-time and combining study has significantly increased between 1986 and 2009.

Young people are widely acknowledged as a vulnerable group of workers since they lack experience of the workplace and subsequently have less awareness of their rights and responsibilities. This places them at a disadvantage, impacting on their capacity to bargain with employers, leaving them susceptible to exploitation and often lacking security of employment.

In a submission to the Australian Fair Pay Commission, the Youth Affairs Council of Western Australia (YACWA) stated that:

*“Young people in general, and marginalised and at-risk groups in particular, already face tough workplace situations; minimal bargaining power and protections, lower pay, fewer conditions; aged-based discrimination within awards, high job insecurity, harassment, exploitation and much more”.*

*“It is everyone’s interests that a young person’s entry into the workplace is a positive one as it is formative of their personal and social development with long term implications as to how they will perceive and relate to co-workers and society at large later in life”.*<sup>7</sup>

Western Australian research has found that young people, because of their vulnerability, are often open to mistreatment and manipulation in the workplace. In 2008, the then WA Fair Employment Advocate (FEA) released a discussion paper *Vulnerable Workers: Young People*.<sup>8</sup> This paper explored further the reasons why young people are a vulnerable group of workers as well as providing examples of their exploitation.

*Vulnerable Workers: Young People* was part of a program looking into the conditions and obstacles faced by vulnerable workers - in this instance the special problems faced by those in the 15 to 19 year old age bracket, a group with an increasing presence in the workforce.

In summary, the study found young people are vulnerable because:

- They often had less experience of the workplace and consequently a lower awareness of their employment rights and obligations.
- Their level of knowledge about pay and conditions puts them at a distinct disadvantage when entering employment.
- They are predominately casual or part-time employees with less job security, lower training opportunities and lower expectations about their treatment in the labour market.

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<sup>6</sup> Australian Bureau of Statistics, *Labour Force*, June 2009.

<sup>7</sup> Youth Affairs Council of Western Australia, *Submission to the Australian Fair Pay Commission*, p10.

<sup>8</sup> Fair Employment Advocate WA, *Vulnerable Workers: Young People*, 2008. Summary available: [http://www.commerce.wa.gov.au/Corporate/Media/statements/2008/May/Vulnerable\\_Workers.html](http://www.commerce.wa.gov.au/Corporate/Media/statements/2008/May/Vulnerable_Workers.html)



### 2.3 Benefits of young people working

The NSW Commission for Children and Young People in 2005 released a report *Children at Work* which showed that children enjoyed working, it is important to them and it enhances their development in many ways.<sup>9</sup> It found that the experience of work contributes positively to their wellbeing and that children and young people add value to a workplace.

It goes on to say that young workers value the opportunity to develop new skills, exercise more responsibility and self-reliance, earn money and make a contribution.

An article, *Young People and Work*, examined the advantages of young people participating in part-time work.<sup>10</sup> The article states that working part-time can help young people develop self-confidence and a feeling of independence. It can broaden the range of people a young person is in contact with and expand social networks. It also discussed the role work can play in contributing to a child's independence, self-confidence, maturity, social skills and future employment prospects.

*Understanding how important work is for a young person.*

*It is a chance to gain valuable life experience and skills for future employment. It is a way for young people to broaden their horizons and experiences, meet new people and to rise to new challenges. Work is also an important source of funds for the family budget, for travel, a new car, moving out of home, or supporting study and training.<sup>11</sup>*

If these benefits are to be preserved, and given that more children and young people are working part-time, it is essential that legislative reform is enacted that offers legal employment protections to safeguard and ensure a positive experience in the workplace.

### 2.4 Youth unemployment

The youth unemployment rate measures the proportion of 15-19 year olds in the labour force looking for full-time work in any given month. Western Australia continues to record relatively low youth unemployment of 18.2 per cent in June 2009, but the rate also continues to record a month on month increase.

*Youth unemployment rate - State comparison<sup>12</sup>*

State	Vic	NSW	SA	Tax	Qld	WA	Australia
June 2009 ( per cent)	35.0	31.7	23.8	20.7	19.6	<b>18.2</b>	<b>26.3</b>
May 2009 ( per cent)	34.6	30.7	24.9	23.4	21.5	<b>16.3</b>	<b>26.2</b>
April 2009 ( per cent)	24.2	25.2	17.2	24.9	24.0	<b>16.0</b>	<b>22.8</b>

Source: ABS

<sup>9</sup> NSW Commission for Children & Young People, *Ask the Children: Children at Work*, 2005.

<sup>10</sup> Braun, Kirsten., *Young People and Work*, Women's Health Queensland, 2005.

<sup>11</sup> *Forward with Fairness for Australia's Young Workers*, Election 07 Policy Document, Australian Labor Party, 2007.

<sup>12</sup> Department of Commerce, Labour Relations, *Labour Market Statistics*.



In April 2009, the Organisation for Economic Cooperation and Development (OECD) published a report *Jobs for Youth* identifying young people as disadvantaged young workers.<sup>13</sup> What's more, the report states that improving the performance of youth in the labour market is a crucial challenge in OECD countries facing persistent youth unemployment; that the labour market is becoming more selective; and the lack of relevant skills brings a higher risk of unemployment.

Longitudinal studies appear to show that young people's experience in their first year out of school has a significant impact upon their later labour market prospects. Those securing full-time employment in that first year are more likely to be in full-time employment in later years, while those with early experience of unemployment or labour market withdrawal are more likely than others to have subsequent or continued periods without paid work.

Finally, it is probable that young people will be one of the groups most adversely affected in the labour market as a result of the current economic downturn. In the past year there is evidence of a significant decline in employment, accompanied by an increase in unemployment. Part-time employment has also increased, especially among young men.

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*Jobs for Youth* maintains that whatever the level of diploma, first experiences in the labour market has a profound influence on later working life. Getting off to a good start facilitates integration, while a failure can be difficult to make up.

There are further economic arguments and advantages in providing workplace support and protections for young people, other than the OECD and the Australian Fair Pay Commission examples provided.

<sup>14</sup> There is a notion that children and young people are living at home and being supported by their parents.

However, research has shown that some young people are experiencing significant hardship resulting from the economic downturn, an increased cost of living and relatively low rates of pay. The *Australian Democrats Youth Poll 2008* showed that work was the main source of income for 32 per cent of the respondents.<sup>15</sup> In 2003, Mission Australia told a Senate

Inquiry that there are more than 145,000 young Australians living in poverty.<sup>16</sup>

More recently, the Australian Social Inclusion Board released a 2009 compendium of social inclusion indicators, a compilation of comparative data undertaken to inform its advisory work. It found that in 2005–06, 13 per cent of children aged 0 to 18 years in Australia lived in a jobless household. Most (66 per cent) of these children lived in one parent households and the proportion of children living in jobless households is higher in Australia than in all but four of the 27 member states of the European Union and higher than the average of 9.7 per cent.<sup>17</sup>

<sup>13</sup> Organisation for Economic Cooperation and Development, *Jobs for Youth: Australia*, 2009.

<sup>14</sup> Australian Fair Pay Commission, Research Report No 11/09.

<sup>15</sup> Australian Youth Democrats Poll 2008, p4.

<sup>16</sup> Mission Australia, Submission to Senate Inquiry on Poverty Enriching Lives, 2003.

<sup>17</sup> Australian Social Inclusion Board, *A compendium of social indicators*, 2009.



The OECD launched the series *Jobs for Youth* in 16 countries, including Australia. Each report contains a survey of the main barriers to employment for young people and an assessment of the adequacy and effectiveness of existing measures to improve the transition from school to work. The Report<sup>18</sup> goes on to draw comparisons between *WorkChoices* and the new *Fair Work Act* and makes a number of observations and recommendations including:

Relatively lax employment protection legislation and the possibility of employing young people on a part-time basis or on casual contracts encourage risk-averse employers to recruit inexperienced and individuals with limited education. The new *Fair Work* policy will include an enlarged safety net and a phase-out of Australian Work Agreements. Changes designed to protect vulnerable workers, including youth, who were found in some cases to be disadvantaged under *WorkChoices* bargaining arrangements, are welcome. However, care should be taken to avoid discouraging bargaining at the workplace level and pricing low-skilled youth out of entry-level jobs. The process of streamlining and modernising *awards* started under *WorkChoices* should also be continued.

**OECD Recommendation: Monitor the effect of post-WorkChoices industrial relations changes on the youth labour market.** The implementation of a new industrial relations policy will be completed by early 2010. This represents an opportunity to assess whether a policy aimed at improving work and pay conditions at the lower end of the labour market distribution leads to i) significantly higher entry wages for low-skilled youth; and/or ii) less demand for these workers. Policymakers should be prepared to take steps to amend the new rules if sizeable negative effects are detected.

*Jobs for Youth*, OECD 2009

### Recommendation 2:

The WA Government consider the OECD report *Jobs for Youth: Australia*, and specifically incorporate its recommendations on monitoring the effects of the current and previous industrial relations system on young workers in its review of the State Industrial Relations System.

## 2.5 Young people's views and experiences on these issues

### 2.5.1 New South Wales

In 2005, the NSW Children's Commissioner surveyed 11,000 high school students in Years 7 to 10 from 22 different schools in NSW. The young people answered questions about their work, conditions, satisfaction and quality of life, injuries, harassment at work, and what they liked and disliked about working.

The findings of the survey *Ask the Children: Children at Work* were published in June 2005 and found that more than half of the children (56.1 per cent) surveyed had done some form of work during the 12-month period prior to the research.<sup>19</sup>

<sup>18</sup> Organisation for Economic Cooperation and Development, *Jobs for Youth: Australia*, 2009, p8.

<sup>19</sup> NSW Commission for Children & Young People, *Ask the Children: Children at Work*, 2005.





In addition:

- Forty per cent had sustained some type of injury at work.
- Forty-eight per cent had experienced verbal harassment at work and 23 per cent some form of physical harassment.
- Children and young people are more likely to work as they get older. Seventy-six per cent of 16-year-olds work compared with 43 per cent of 12-year-olds.
- Children and young people living in the least disadvantaged areas are more likely to work than those living in the most disadvantaged areas (64 per cent compared with 42 per cent).
- Of the 11,000 surveyed - 70 per cent came from the metropolitan area. Seventy per cent of the students attended government schools; and 3 per cent were Aboriginal and Torres Strait Islander children and young people.
- There were two dominant employer types - formal (60 per cent) and immediate family (24 per cent). Children who work for their immediate family are least likely to be paid.

The *Children at Work* recommendations, released in 2006, were designed to improve children's experience of work.<sup>20</sup> In December 2008, the NSW Commission released a follow-up report *Making the working world work better for kids* produced by Professor Andrew Stewart.<sup>21</sup> This discussion paper explored the potential for the introduction of a national regulatory framework for the employment of children and young people, a development that the Australian Children's Commissioners and Guardians support.

The report advocates an approach to the regulation of child employment that has four main premises:

- A national focus, to be achieved either by the passage of a Federal law on child employment, or through harmonisation of State and Territory laws.
- The adoption of clear and simple rules and processes.
- A need for those rules and processes to be consistent with general labour laws – in particular by dealing only with those matters that cannot, or should not be left to those general laws.
- The adoption of strategies to inform children and young people of their entitlements and obligations.

The report identified that at the very least, child employment laws should:

- Set a minimum age for the performance of certain types of work.
- Protect the integrity of the education system, by minimising conflicts between working arrangements and schooling obligations.
- Set other limits on working hours in order to protect a child's welfare and development.
- Impose special duties on those for whom work is performed, in relation to matters such as supervision.

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<sup>20</sup> NSW Commission for Children & Young People, *Children at Work Recommendations*, 2006.

<sup>21</sup> Stewart, Professor Andrew., *Making the working world work better for kids*, NSW Commission for Children & Young People, 2008.



### 2.5.2 Queensland

The Queensland Commission for Children and Young People and Child Guardian also undertook a *Review of Child Labour in Queensland*.<sup>22</sup> The outcome of this review was a new *Child Employment Act 2006* (Qld) that provides specific protection for children and young people in workplaces for the first time. The Act provides safeguards to ensure work will not interfere with young workers' schooling, and prevent them from performing work which may harm their health, safety or physical, mental, moral or social development.

The summary of findings from the review was published in 2005, and highlighted the issues faced by young workers as well as detailing alternative models for protections.<sup>23</sup> The consultation and research findings supported a coordinated child employment protection model, similar to NSW, made up of the following four strategies:

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

### 2.5.3 Western Australia

The *Vulnerable Workers: Young People* discussion paper, released by the Fair Employment Advocate (FEA) in 2008, was drawn from national and international sources, and was a direct response to complaints lodged with the FEA's complaints line and queries to the State's telephone advice service 'Wageline'.<sup>24</sup>

The views, issues, experiences and findings it reports remain relevant. The paper highlights a number of significant concerns and examples of individual experiences faced by young workers that requires legislative reform to provide a safety net and improve conditions for children and young people. The most significant issues being:

- Rates of pay
- Trainees and apprentices
- Unpaid wages /overtime
- Independent contractors
- Trial work
- Safety and health
- Bullying and harassment
- Working alone
- Underage workers
- Hours of work

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<sup>22</sup> *Queensland Review of Child Labour discussion paper 2004*, Queensland Commission for Children & Young People and Child Guardian.

<sup>23</sup> *Queensland Review of Child Labour summary of findings 2005*, Queensland Commission for Children & Young People and Child Guardian.

<sup>24</sup> Fair Employment Advocate WA, *Vulnerable Workers: Young People*, 2008.





#### 2.5.4 Australian Youth Forum

The Australian Youth Forum (AYF) is run by the Australian Government as a communication channel between the Government, young people (aged 15 – 24) and organisations that work with, for and on behalf of young people. AYF engages young people and the youth sector in on-going public debate, getting their input on important issues and practical solutions that affect young people's lives now and in the future.

Young people have raised *youth at work* as the latest discussion topic for the AYF.<sup>25</sup> The Forum is currently consulting with young people on this issue, and is keen to learn about their experiences with a particular emphasis on using the findings to develop a Young Workers Toolkit outlining young workers rights and responsibilities.

The comments received so far from young people and relevant to your Review include:

- *"I think the "toolkit" is a fantastic idea! Some things to include:*
  - *Pay scales (I have had many friends who were underpaid in their first job)*
  - *An explanation of superannuation and tax terms in employment contracts (things like tax free thresholds etc, when I started my first job I had no idea what they are.... and still don't really)*
  - *A go-to guide if you have problems. I had an instance where I was working full time for the four months over Christmas, and my employer said that I was not entitled to break pay, my parents said I should be being paid but I wasn't sure who I go to ask*
  - *An example / scenario of a successful way of an employee being assertive to their boss about when they can work. I and many of friends have felt somewhat pressured into working when they don't want to, and we don't really know how to be assertive to employers."*
- *"I can remember several jobs when I was a teenager where they asked me to come in for a "trial day". I never got paid, or got a call to come back. One place even paid me in tacos!!! They totally took advantage of me as I did not have the skills at the time to be assertive with them and demand payment even if I didn't get the job."*
- *"I was treated unfairly for ages in my first and current job. Us as workers did not know what to do. We did not know what union we were under, if any. The family business was a franchise, and is now independent. How do you stand up against them in that case? Without jeopardising your job? Eventually we made anonymous complaints to the government about no pay slips etc, standard rights. I went over a whole year without knowing what I was being paid. We still often get sorts of 'threats' about asking for days off during holidays for family commitments, once again, jeopardising our jobs."*

#### **Recommendation 3:**

The WA Government consider the findings of the existing research and consultation, summarised in this submission, and incorporates the young people's views and experiences on these issues in its review of the State Industrial Relations System.

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<sup>25</sup> Australian Youth Forum, *Youth at Work*. Available: <http://www.youth.gov.au/ayf/Ideas/DiscussionForum.aspx?TopicID=16>



## 2.6 Combining learning and work

Managing the demands of study and part-time or casual employment is part of everyday life for many school students. There is little research available on the impact of competing demands, and there is little provision of information or guidance to schools or employers on the effect this has on the lives of young people.

Last year, the House Standing Committee on Education and Training announced an inquiry *into combining school and work: supporting successful youth transitions*.<sup>26</sup>

I provided a submission to this inquiry, along with other Children's Commissioners, calling for improvements to child specific employment rights and advocating for a national approach with national regulations.

The Committee is due to report at the end of the year and evidence collated so far is pertinent to the WA Industrial Relations Review and includes:

- *"The inquiry has heard that some students feel too intimidated to approach their employer about the late hours they are asked to work during the school week".<sup>27</sup>*
- *"It has been comforting to note that for the vast majority of students, they believe that their employers understand the needs of students and provide flexibility to help them balance schooling commitments. Nonetheless the committee has received feedback from students—particularly those employed by smaller businesses—where their employer is unable to offer the same degree of flexibility. Students working longer hours during the school week are finding that they are too tired and unmotivated to study".<sup>28</sup>*
- *"It is clear from the evidence the committee has been receiving during its school visits that there is an inherent value in young people undertaking work during their school years. Paid employment can help students to gain confidence, self-esteem and independence and also provides a range of skills and knowledge. However, the other side of the evidence is telling the committee that at some point, work starts to become a hindrance and students start to sacrifice their learning and school performance because of their work demands. This is the sort of dynamic we are trying to work through and the challenge for the committee is to determine the point at which work turns from a benefit into a negative".<sup>29</sup>*

### Recommendation 4:

The WA Government consider as part of the State's Industrial Relations Review the evidence collected so far, and the findings from the Parliamentary Inquiry *'into combining school and work: supporting successful youth transitions.'*

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<sup>26</sup> House Standing Committee on Education and Training, *inquiry into combining school and work*, 2008. Available: <http://www.aph.gov.au/house/committee/edt/schoolandwork/index.htm>

<sup>27</sup> Ibid. Available: <http://www.aph.gov.au/house/committee/edt/schoolandwork/media/media05.pdf>

<sup>28</sup> Ibid. Available: <http://www.aph.gov.au/house/committee/edt/schoolandwork/media/media04.pdf>

<sup>29</sup> Ibid. Available: <http://www.aph.gov.au/house/committee/edt/schoolandwork/media/media07.pdf>



### 3. Options for Reform

#### 3.1 Areas for harmonisation between State and Federal Laws

The Federal Government states that its *Fair Work Act 2009* (FWA) will protect all workers through a new legislative framework for workplace relations.<sup>30</sup> It also states that minimum employment conditions will be implemented from 1 January 2010. These conditions will comprise two parts – national employment standards and modern awards. Any harmonisation must ensure that State laws are no less favourable to Federal employment protections and that where there are inconsistencies this Review addresses.

There were also a number of special measures for young workers proposed in Labor's election policy *Forward with Fairness for Australia's Young Workers*.<sup>31</sup> The special measures include:

- a Young Worker Liaison Officer in each State
- a Young workers Toolkit – the AYF is currently consulting with young people on relevant topics for inclusion in the toolkit as discussed in item 2.5.4 of this submission
- a National Voluntary Code of Practice for Young Workers to be developed by the Federal Government in conjunction with the States and Territories.

As indicated throughout this submission, children and young people are at a clear disadvantage when entering employment and the vulnerability of young workers needs special consideration.

As the Review's terms of reference states, between 15-30 per cent of employees in WA will remain in the State's system and it is estimated that most of these will be employed by small business.

It is important that the WA Industrial Relations System provides young people with maximum protections and clarity under Federal or State laws. The use of either system should not affect young workers rights or the processes for safeguarding their wellbeing, pursuing entitlements or resolving disputes.

#### 3.2 Areas for legislative reform

I believe the State Government could strengthen employment protections for young people who are the least experienced and most vulnerable group in the workforce and introduce a set of employment standards. Child employment laws could provide a safety net for young workers.

A number of proposed legislative protections for children in Western Australia have already been before Parliament. In 2007, both the Western Australian Legislative Assembly and Council considered and approved a number of proposals to amend the [\*Industrial and Related Legislation Amendment Bill 2007\*](#).<sup>32</sup>

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<sup>30</sup> *Fair Work Act 2009*.

<sup>31</sup> *Forward with Fairness for Australia's Young Workers*, Election 07 Policy Document, Australian Labor Party, 2007.

<sup>32</sup> Western Australian Bills, *Industrial and Related Legislation Amendment Bill 2007*.



The primary objective of this Bill was to strengthen protections for vulnerable workers, and as such, the Bill addressed the following issues:

- child labour protections
- occupational safety and health protections
- protections for injured workers
- access to the common law
- amendments to the Industrial Relations Act.

Part four of the Bill was to amend the *Children and Community Services Act 2004* (CCS Act) to strengthen employment protections and measures for workers less than 18 years of age to:

- a. require constitutional corporations who employ children under Federal workplace agreements to provide employment conditions “no less favourable” than prescribed State award conditions (such as minimum pay rates, overtime, allowances and meal breaks)
- b. require persons who engage children as independent contractors to also provide employment conditions “no less favourable” than prescribed State award conditions
- c. enable the WAIRC to hear and determine claims that a person has failed to comply with paragraph (a) or (b) above. Among other things, the WAIRC will be able to award compensation to a child
- d. reinstate the ability for children employed by constitutional corporations to claim unfair dismissal and denied contractual benefits in the WAIRC
- e. limit unpaid trial work involving children to one day per calendar year, subject to certain exceptions (for example, schoolwork experience programs will be exempted).

Under the legislation, industrial inspectors would be able to investigate and enforce the CCS Act’s new protections for children. The Bill would also amend the *Occupational Safety and Health Act 1984* (OSH Act) and would provide redress to workers who are discriminated against for raising safety concerns. They would also enable the Occupational Safety and Health Tribunal to deal with claims of workplace bullying. These amendments could be particularly beneficial to children, who may not otherwise feel confident enough to raise sensitive workplace issues.

Despite the support of both Houses of Parliament, the Bill did not become legislation because Parliament was prorogued in 2008. I call for this Review to adopt similar provisions as those proposed in this Bill, ensuring consistency with Federal Laws that assist in addressing the disadvantages of young workers.

#### **Recommendation 5:**

The WA Government adopt similar provisions to the *Industrial and Related Legislation Amendment Bill 2007* and that is no less favourable than Federal laws in affording employment protections for children and young people.



#### 4. Conclusion

The Independent Review of the State Industrial System is a unique opportunity to reform legislation in a way that will result in improved employment protections for Western Australian children and young people.

It is my view that children and young people should be a priority group in any new State Industrial Relations System, with employment standards and awards being clearly designed with young workers in mind.

Reform of the current system is essential for children and young people's welfare in the workplace that minimises the conflict between work and school arrangements, and safeguards young people in their career development.

The fundamental issue is that children and young people, because of their vulnerability, are at a distinct disadvantage in the workplace and any system needs to be cognisant of this fact.

*"Children need regulatory support to compensate for their inexperience and other disadvantage in employment and they need support to make their transition from family (and school) into the world of work and employment. Inexperience also means children need relevant, accessible information and advisory services about all things to do with work".<sup>33</sup>*

These regulatory supports need to provide young workers with the same rigorous standards and protections wherever they reside and a national employment system would ensure consistency and certainty for both employees and employers.

The Australian Children's Commissioners and Guardians agree the need for national regulations to protect children at work and have indicated their support for young workers' issues being placed on the agenda for discussion at the Workplace Relations Ministers' Council.

The WA Industrial Relations Review should also take into account the impact of the global economic downturn on children and young people, and the effects this may have on their rights and opportunities given the tightening labour market. I am concerned that the current economic climate will impose further restrictions for children and young people that will continue to exploit and take advantage of this vulnerable group of workers.

I strongly advocate close monitoring of this impact to ensure that children and young people continue to be offered appropriate employment opportunities, but are protected from exploitation.

I look forward to receiving the findings of the Review and the continued opportunity to help shape legislation for children and young people now and into the future.

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<sup>33</sup> NSW Commission for Children & Young People, *Ask the Children: I want to work*, 2009.



### Summary of Recommendations:

1. The WA Government consult with children and young people as part of the State's Industrial Relations Review and consider the views of young workers in all decision making.
2. The WA Government consider the OECD report *Jobs for Youth: Australia*, and specifically incorporate its recommendations on monitoring the effects of the current and previous industrial relations system on young workers in its review of the State Industrial Relations System.
3. The WA Government consider the findings of the existing research and consultation, summarised in this submission, and incorporates the young people's views and experiences on these issues in its review of the State Industrial Relations System.
4. The WA Government consider as part of the State's Industrial Relations Review the evidence collected so far, and the findings from the Parliamentary Inquiry *'into combining school and work: supporting successful youth transitions.'*
5. The WA Government adopt similar provisions to the *Industrial and Related Legislation Amendment Bill 2007* and that is no less favourable than Federal laws in affording employment protections for children and young people.