

Protecting Children at Work



A response to the Government Discussion Paper “Proposed Child Employment Legislation for South Australia”

Overview

In 2007 South Australian unions launched proceedings in the State Industrial Commission to establish a comprehensive industrial code to protect children who work.

Unions had seen an increase in the number of working school children and the way in which industries like retail and fast food have become dependent on a youth workforce. In the highly competitive sectors of the economy where children are employed, the pressure is to open for longer hours and to cut costs.

As more young people enter the workforce much of the award regulation that protected them from exploitation has been curtailed. Under the previous federal governments Workchoices legislation many young people lost employment entitlements and the protection of unfair dismissal laws.

The State government should legislate to provide protections for young people who are the least experienced and most vulnerable group in the workforce.

Unions also share the concerns of many parents and teachers that the pressure to work is robbing children of their childhood and disrupting their schooling. Children need time to develop and socialize and they need time for study and training.

As a community we support compulsory education to the age of 17 years. This reflects our belief in the importance of education to the individual and the priority of this State to develop a highly trained, highly skilled workforce.

The government needs to guard against short term pressures that produce low cost, disposable child labour.

The Government has moved in the right direction to reform the child protection system and penalties have been strengthened for child abuse. Police checks are now mandatory for a wide range of employees who work with or supervise children but no system exists to monitor or protect children against employers. With the power to reward or dismiss, unscrupulous employers take advantage of the naivety and desire to please that young people often exhibit.

Exposing young people to unsafe work, bullying, humiliating or degrading them, ripping them off are all forms of abuse. Stronger penalties are needed to protect children.
Employers with a history of abusing young workers should be restricted or prohibited from employing them in future.

Parents, children and employers should not be left guessing what a child labour law means. **Rights and obligations must be clear and the law must be enforceable.**

Between 1833 and 1847 child labour laws were enacted in England setting a minimum working age and regulated the maximum hours children of different ages could work. Children under 9 could no longer work (previously the minimum was 3 years) While that may not seem particularly enlightened 150 years later, South Australia still does not have a minimum working age.

Its time we set some minimum standards - 14 years should be the minimum age at which children work (with some traditional exemptions related to family businesses or for work approved by Industrial Commission).

The Award Application

SA Unions has put its Award application to the Industrial Commission on hold pending discussions about proposed State Government legislation on child labour.

The following submission, which is constant with the Award Application, responds to a Government discussion paper "Proposed Child Employment Legislation for South Australia May 2008".

SA Unions reserves the right to proceed with the award application if any proposed legislation does not address the protections we are seeking.

The Workchoices Inquiry

In October 2007 SA the SA Industrial Relations Commission handed down its Report – Inquiry Into the Impact of Work choices Legislation. The Commission describes the situation in which many young workers find themselves.

*"The evidence of young workers generally indicated an **absence of consultation and negotiation** with respect to terms and conditions of employment, and examples of **capricious and arbitrary dismissal**."*

*The AYCW submission referred to ABS data that shows young people aged 15–24 are generally engaged in formal employment, predominantly in the retail and hospitality sectors and engaged by small business. This data also indicates that **young people predominantly occupy lower skilled occupations as part time and casual workers**. Based on the experiences reported to AYCW, it was the view that Work Choices had undermined access to meaningful and secure work for young workers. Young workers experience **difficulty negotiating with employers and often lack security of employment**. The **ability for award conditions to be undermined exacerbates the power imbalance**. AYCW submitted that there was a need for education for young people about work rights and responsibilities.³⁷⁹*

*The OEO submission noted that the majority of queries relating to young people at work came from concerned parents. This was said to be reflective of the lack of knowledge of young people of rights and responsibilities and/or where to access relevant information. The extent of the **age difference between these workers and their employers and***

inexperience in the workforce were said to be further factors impacting on the power imbalance in individual dealings with their employer.

*The YWLS submission noted a decrease in inquiries relating to unfair dismissal and a decrease in matters proceeding to tribunals. It was the experience of YWLS that more employees were excluded from the jurisdiction than could access it. Based on the calls and inquiries received by the service, **young workers were experiencing loss of procedural fairness, increased job insecurity and a hardening of employer attitudes.***

Specific legislation is required to address the needs of young workers because of their particular vulnerability in the workforce.

Potential Objects and Scope of SA Child Labour Legislation

A clear objective of any legislation must be to ensure that child workers have access to particular protections and that employers of children have a clear understanding of those arrangements.

Legislation must apply to all workers under the age of 18 and this is possible by virtue of s.16 of the Workplace Relations Act. Particular provisions for school-aged children must also be available.

We agree with the statement in the Government Discussion paper that says.

Child labour legislation should aim to protect children from being required to perform work that may be harmful to their health and safety, or that compromises their physical, mental, moral or social welfare. The laws should also be designed to ensure that work does not interfere with a child's education, particularly for the period when the child is required to be at school.

The legislation will also need to operate having regard to the provisions of the Occupational Health, Safety and Welfare Act 1986 and its capacity to support special arrangements for children in employment.

Legislation should establish the basic scope, definitions and framework and facilitate the establishment of an enforceable code of practice.

Minimum Age

SA Unions considers that there should be a minimum age of employment set at 14 years of age and that conditional exemptions should apply for employment traditionally undertaken by children working in the family business or on a family farm.

There may be a range of other arrangements where it would be reasonable for a child under 14 years to be employed. For example, newspaper delivery, umpiring junior sports, modelling children's clothing, seasonal work (e.g. harvest or Christmas holiday employment).

In such cases, an application should be lodged with the SA Industrial Relations Commission and the matter determined either as a test case for a class of employment or on a one off basis for an individual employer.

Prohibited Employment and Activities

Prohibition of employment in certain categories of work, industry or sectors of industry

A child should not be employed to undertake tasks which pose a health and safety risk due to the child's age and physical development or be employed in jobs appropriate only for adults or requiring adult judgment

For example children should not be employed to;

- carry heavy loads.
- perform in an indecent, obscene or pornographic way while participating in any entertainment, exhibition or the making of any advertisement.
- undertake duties (including promotional work) wearing indecent clothing or uniforms or being required to work nude or partially nude, or in transparent clothing.
- in a restricted gambling area of a club, hotel, and casino.
- sell, supply, or to serve alcohol.
- perform non-agricultural hazardous work. Non-agricultural hazardous work is defined in Schedule 1. If there is any potential that the assigned duties for a child could be deemed hazardous, the employer should be required to contact SafeWork SA for clarification and to obtain certification that the work is not of a hazardous nature.
- A child should not be employed working on a building construction site in a defined 'high-risk construction work' as defined in Schedule 3.

Age restrictions on certain types of employment

A child under 16 years of age should not be employed to undertake the delivery or sale or promotion of goods or services to a private residence unless in the company of an adult supervisor. This does not include letterbox delivery of printed material.

A child under age 16 must not be required perform agricultural hazardous work. Agricultural hazardous work is defined in Schedule 2.

If there is any potential that the assigned duties for a child could be deemed hazardous, the employer must be required to contact SafeWork SA for clarification and to obtain certification that the work is not of a hazardous nature.

Maximum hours of work, with more specific conditions for school-aged children

Maximum allowable hours of work for children enrolled in formal education or training should be limited as follows:

On a school day	On a non school day	During a school week Monday To Friday	During a non school week
4	8	12	38

Children enrolled in formal education or training should not be able to work between 10pm and 6am Monday through to Thursday during term periods.

A child enrolled in formal education or training must have the right to refuse work after 8pm during term if they consider there will be an adverse impact on their studies. If required by an employer, a supporting statement from a teacher or the educational institution could be provided in evidence.

A child must not, except in an emergency, be required to work at times which would prevent their attendance in formal education or training.

An employer should ensure that a child in formal education or training receives, in any period of 7 days during a non school week, a minimum break from attendance at work of 2 days which shall as far as is practicable be consecutive.

An employer of a child attending school, TAFE or another vocational training provider shall provide time off from work when the child is required to attend an examination required for their schooling and/or training with no loss of entitlements.

Prohibited Hours and Overtime Issues

Children under 15 years of age should not be able to work between 6pm and 6am.

The maximum period of a shift or usual hours of work in a day should be 8 hours for a child who is not enrolled in formal education or training.

A child must not be required to work overtime unless the parent/guardian of the child has been advised in each instance and has acknowledged the arrangements.

A child must not, be required to work overtime at times which would prevent their attendance in formal education or training.

An employer should ensure that a child receives a minimum break of 14 consecutive hours in each period of 24 hours after a period of overtime.

Appropriate Meal and Rest Breaks

Special rest periods

An employer should provide a special rest period for a child of 30 minutes after 4 hours of work and must not require a child to work for any period exceeding 4 hours without a rest break of at least 30 consecutive minutes.

Shift arrangements

A child must not be required to work shift work unless the parent/guardian of the child has been advised in each instance and has acknowledged agreement to the arrangements.

A child must not be required to work shift work at times which would prevent their attendance in formal education or training.

Breaks between shifts

An employer should ensure that between shifts, a child receives a minimum break of 14 consecutive hours from the finishing time of a shift until the commencing time of the next shift.

Prohibition on split shifts

A child must not work a split shift. A split shift is where an employee is rostered for two periods of work, separated by a non-work period greater than one hour, on the same day.

Appropriate Supervision

While a child is working the child must be supervised by a person who is at least 18 years of age. The person supervising the child must not supervise more than 3 other children at the same time.

This should not be taken to over ride any arrangements which provide:

- greater levels of supervision made by the Training and Skills Commission in respect of supervision arrangements for apprentices and trainees engaged under an approved contract of training
- greater levels of supervision specified in any award or agreement in respect of supervision arrangements

Special provisions for trainees and apprentices under the age of 18 years

Any new legislation should apply to trainees and apprentices in addition to the provisions of the Training and Skills Development Act 2008 and Training and Skills Commission guidelines. In the event of inconsistency the child labour legislative provisions should apply.

Parental contact and consent arrangements

Potential employers of compulsory school aged children (up to 17 years) need to be satisfied that the proposed employment would not be detrimental to their education. Contact with parents/guardians would be appropriate before employment arrangements are established or varied to ensure that parents, child and employer are aware of the child's need to balance their school and employment commitments.

Record keeping requirements and arrangements

Availability of records

An employer shall make available for inspection by an authorised person employment records and any records associated with compliance with the terms of this award.

Any employer who employs a child shall comply with the following procedures.

Before employing a child, an employer shall require the production of a copy of the birth certificate or other satisfactory evidence of the age of the child.

Before employing a child, an employer shall obtain the written acknowledgement of the parent or guardian of the child. Refer to the model letter of appointment at Schedule 4.

An employer shall provide an occupational health and safety induction on commencement.

An employer shall undertake a health and safety risk assessment to ascertain whether the tasks required for the work may pose a health and safety risk due to the child's age and physical development.

An employer shall maintain a register, or other satisfactory record, containing, in relation to every child employed by him or her, the following particulars in addition to usual workplace records:

- (a) any matters pertinent to carrying heavy loads;
- (b) the duties involved in the position;
- (c) the time the child takes for special breaks;
- (d) details of usual transport arrangements;
- (e) emergency contact details;
- (f) whether the child is enrolled in a formal course of education or training.

An employer shall keep, at the place where a child is employed, such records as are necessary to show whether the provisions of this award are being complied with in

relation to his or her employees and such records shall be retained by the employer for at least 6 years.

In any case where:

- (a) there is a dispute between an employer and a child, or;
- (b) there is a prosecution for an offence, and the records required to be kept by an employer are not available, the onus of proving that the provisions of this have been complied with shall lie on the employer.

Letter of appointment

Every child shall be advised in writing at the time of engagement whether they are full-time, part-time or casual, their rate of pay, classification, job description, duties, working hours, and roster arrangements.

In the case of casual employees such notification need only be supplied at the initial engagement and when that employee's employment status changes (i.e. full-time weekly, part-time weekly or casual). Such written advice may be provided as per the model letter in Schedule 4.

Every child shall also be advised of details of the awards/industrial instruments applicable in the workplace and the name and contact details of the parties to those awards/industrial instruments.

Enforcement and Powers of Inspectors

Invitation to attend premises

Where requested and nominated by a child, or the child's parent or guardian, an employer must invite a representative from SafeWork SA to attend the workplace and meet with the child and/or the employer during working hours.

Where such a request is made the employer must issue the invitation within 24 hours and facilitate the attendance at the earliest opportunity.

Information and support regarding employment matters

An employer must ensure that children are provided with written information and contact information regarding advisory bodies as set out in Appendix 1 of Schedule 4.

The employer should allow a noticeboard to be used to post information on young workers' issues from SafeWork SA or a registered association.

Right of entry

A parent/guardian, representative of a registered association or representative from SafeWork SA may enter an employer's premises at which one or more children are employed and inspect compliance with this award and address children during working time on matters associated with the terms and conditions of their employment.

Other Issues

Trial Work and Probation

A child who undertakes any work on a trial basis with a view to obtaining employment with the person from whom the work is performed is entitled to be paid for that work in accordance with the terms of the award or industrial instrument covering that employment.

In the first three months of employment, a child shall be provided with sufficient support and on job training to satisfactorily meet any probationary requirements. Clear standards of conduct and work performance must be provided by the employer, and be discussed with and understood by the employee. Regular feedback must be provided by the employer to enable the employee to respond to any issues raised or to meet conduct/work performance requirements.

Access to transport

When a child's usual means of transport or public transport is not available after ceasing work, the employer will cover the cost of arranging independent transport to the child's usual place of residence. Usual means of transport shall mean and include the employee's own vehicle or arrangements for private transport as agreed between the employer and employee.

Where a child normally uses public transport and commences and/or concludes overtime or shift work between 8.30 p.m. and 6.00 a.m. at a time when public transport is not available, the employer will pay the cost of arranging independent transport to the child's home or usual place of residence or pay them their current wage for the time reasonably occupied in traveling to and/or from their home or usual place of residence.

Rosters

An employer must post a roster in the workplace, or provide individual written advice to a child, which identifies in advance the expected pattern and hours of attendance for children employed in the workplace over the subsequent week, or a longer period depending on the roster cycle applicable in the workplace.

An employer must provide a period of notice of at least 24 hours for a change to the usual scheduled work arrangements in a roster.

An employer shall not alter the rostered arrangements unless there is a genuine operational requirement.

An employer shall not threaten to or vary the roster arrangements as a means of dealing with a disciplinary, work performance or other conduct related matter.

Employer to be fit and proper person

The legislation should allow the Minister to prohibit or restrict the employment of children by employers with a proven record of bad employment practices (eg regular underpayment of wages, high instance of injuries at work, refusal to comply with relevant industrial and compensation law).

Persons who are not of fit character should also be prohibited or restricted from employing children – In particular people who have convictions for violence or have contravened various state laws governing the protection and welfare of children.

Others matters to be considered

The definition of employment to be used in the legislation

The employment of children encompasses working for remuneration on a full time, part time, casual, fixed term, contract, outworker, labour hire or ongoing basis.

Interaction between other State and Federal laws and instruments such as Modern Awards and National Employment Standards

It is clear that state governments have a statutory ability to legislate on matters related to the employment of children, and in fact a number of state governments have done so

SA Unions considers that there are no developments concerned with award modernisation or the proposed national employment standards that would inhibit the introduction of child labour legislation in South Australia.

The nature and level of penalties for any enforceable elements

The nature and level of penalties should be in the same order as those that are available under the Fair Work Act and Training and Skills Development Act depending on the nature of the offence. However, in the case of a serious breach of the legislation, for instance, employing a child in prohibited employment the penalties should be at the upper end of the scale (\$20,000).

Schedules

Schedule 1

Hazardous Work Restrictions for employees under 18 years of age

Non-agricultural hazardous work includes but is not limited to:

- asbestos removal;
- being exposed to blood borne pathogens;
- being exposed to radioactive substances/ionizing radiations;
- coal mining;
- dispensing LP gas;
- entry to any confined space as defined by OHS standards;
- excavation operations and work in quarries;
- exposure to high noise levels above 85 dbA;
- logging/tree felling/saw milling;
- manufacturing/storing/working around explosives and explosive components including ammunition, black powder, blasting caps, fireworks, high explosives, primers and smokeless powder;
- operating a crane;
- roofing operations;
- underground mining and tunnelling;
- using power-driven circular saws, band saws and guillotine shears;
- meat/poultry/fish slaughtering, boning and processing;
- wrecking, demolition and ship breaking operations;
- working in operations or locations where the following hazardous materials are present: chemicals that are suspect or known carcinogens, physical or chemical hazard in concentrations above any OHS action level, compressed highly toxic gases;
- working with open unprotected electrical circuits
- working in a location that requires personal fall arrest protection;
- working in a location where respiratory protection is required;

If there is any potential that the assigned duties for a child could be deemed hazardous, the employer is required to contact SafeWork SA for clarification and to obtain certification that the work is not of a hazardous nature.

Schedule 2

Hazardous Work Restrictions for employees under 16 years of age

In addition to the work restrictions outlined in Schedule 1, children under age 16 cannot perform agricultural hazardous work. Agricultural hazardous work includes but is not limited to:

- driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper;
- handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers) agricultural chemicals identified by the word "poison" on the label;
- loading, or unloading timber with butt diameter of more than 15 cm;
- operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor;
- operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines: trencher or earthmoving equipment, fork lift, or power-driven circular, band, or chain saw;
- operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines: corn picker, grain combine, hay mower, forage harvester, hay baler, potato digger, mobile pea viner, feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a non-gravity-type self-unloading wagon or trailer, power post-hole digger, power post driver, or non-walking type rotary tiller;
- transporting, transferring, or applying anhydrous ammonia.
- working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over 2 metres;
- working inside a fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere; an upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position; a manure pit; or a horizontal silo while operating a tractor for packing purposes;
- working on a farm in a yard, pen, or stall occupied by a bull, boar, or stud horse maintained for breeding purposes; or sow with suckling pigs, or cow with newborn calf (with umbilical cord present);

If there is any potential that the assigned duties for a child could be deemed hazardous, the employer is required to contact SafeWork SA for clarification and to obtain certification that the work is not of a hazardous nature.

Schedule 3

High Risk construction work

A child under 18 years of age shall not be employed working on a building construction site in defined 'high-risk construction work' (refers to NOHSC:1016 2005) as follows:

- (a) construction work where there is a risk of a person falling two metres or more;
- (b) construction work on telecommunications towers;
- (c) construction work involving demolition;
- (d) construction work involving the disturbance or removal of asbestos;
- (e) construction work involving structural alterations that require temporary support to prevent collapse;
- (f) construction work involving a confined space;
- (g) construction work involving excavation to a depth greater than 1.5 metres;
- (h) the construction of tunnels;
- (i) construction work involving the use of explosives;
- (j) construction work on or near pressurised gas distribution mains and consumer piping;
- (k) construction work on or near chemical, fuel or refrigerant lines;
- (l) construction work on or near energised electrical installations and services;
- (m) construction work in an area that may have a contaminated or flammable atmosphere;
- (n) tilt-up and precast concrete construction work;
- (o) construction work on or adjacent to roadways or railways used by road or rail traffic;
- (p) work on construction sites where there is any movement of powered mobile plant;
- (q) construction work in an area where there are artificial extremes of temperature;
- (r) construction work in, over or adjacent to water or other liquids where there is a risk of drowning; and
- (s) construction work involving diving.

Schedule 4

Letter of Appointment

Schedule 4 is a model letter of appointment which must be provided to all child employees, upon engagement. The employer must complete the details required, provide any other employer-specific requirement and sign the letter along with the employee. The letter should be provided on the employer's letterhead. In the case of casual employees such notification need only be supplied at the initial engagement and when that employee's employment status changes.

Employer Details	
Full business name and address	
Trading name	
ABN	
ACN	

Employee Details	
Name and address	
Date of Birth	
Contact Phone/s	
Emergency Contact Person and details	

NATURE OF EMPLOYMENT

Full-time, part-time or casual? (please circle)	Full-time Part-time Casual
Fixed term? (please circle)	Yes/No
If yes, state period	From _____ To _____
What job is the employee to perform?	

What duties will the employee perform?	
--	--

At what classification level is the employee engaged?	
What is the name of the Award(s) and/or other industrial instrument that operates in this workplace?	
What is the union with coverage under the Award or Industrial Instrument that operates in this workplace?	

CONDITIONS OF EMPLOYMENT

What are the days on which the employee will usually work?	
What are the hours to be worked?	
What days of the week will be worked?	
What are commencing and finishing times?	
When are rosters most commonly set?	

You have been engaged in accordance with the terms and conditions of the _____ Award/Agreement

Signed (Employer): _____

Signed (Employee): _____

Signed by parent/guardian: _____

Date: _____

Appendixes

Appendix 1

Information on employment, industrial rights and health and safety matters

Business SA

Website at <http://www.business-sa.com/Default.aspx?p=67>

Telephone 08 8303 0000

136 Greenhill Road, Unley South, 5061

Employee Ombudsman

Website at <http://www.oeo.sa.gov.au/>

Telephone 08 8207 1970

Level 6, 63 Pirie St Adelaide, 5000

SafeWork SA

For advice on occupational health and safety and industrial advice

Website at http://www.safework.sa.gov.au/show_page.jsp?id=2263

Adelaide

Telephone 1300 365 255 or 08 8303 0400

Level 3 1 Richmond Road Keswick 5035

Berri

Telephone 8595 2199

Level 1, 30 Kay Street, Berri 5343

Port Lincoln

Telephone 8688 3057

73-75 Tasman Terrace Port Lincoln 5606

Whyalla

Telephone 8648 8714

15-17 Horwood Street, Whyalla 5600

Mount Gambier

Telephone 8735 1199

Level 1, 11 Helen Street, Mount Gambier 5290

Port Pirie

Telephone 8638 4777

Level 1, 104 Florence Street, Port Pirie 5540

SA Unions

Website at <http://www.saunions.org.au/>

Telephone 08 8279 2222

46 Greenhill Road, Wayville, 5034

Traineeship and Apprenticeship Services DFEEST

Website at <http://www.employment.sa.gov.au/employ/>

Telephone 1800 673 097

Adelaide - City Location

Level 12, 100 Waymouth Street

Adelaide SA 5000

Whyalla

141 Nicolson Avenue

Whyalla Norrie SA 5608

Telephone 08 8648 8838

Mount Gambier

290 Commercial Street West

Mount Gambier SA 5290

Telephone 08 8735 1160

Working Women's Centre

Website at <http://www.wwc.org.au/>

Telephone 08 8410 6499

1st Floor, Station Arcade, 52 Hindley Street, Adelaide, 5000

Youth Affairs Council

Website at <http://www.yacsa.com.au/cgi-bin/wf.pl>

Telephone 08 8226 3080

Level 1, Torrens Building, 220 Victoria Square, Adelaide, 5000

Young Workers' Legal Service

Website at <http://www.saunions.org.au/ywls/index.htm>

Telephone 08 8279 2234

46 Greenhill Road, Wayville, 5034