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Regulating for Australia's Youngest Workers

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Child labour is a phrase associated with exploitation, poverty, insufficient education and various forms of physical abuse. These connotations do not match Australian perceptions about the employment of children and are not correlated with mainstream dialogue on teenagers in part time and casual employment. Child employment is an accepted part of Australian society, with older children making up a significant portion of the workforce. Minimum standards are increasingly regarded a critical safeguard for young Australians at work, evidenced by recent state level statutory amendment and enactment of dedicated legislation. This article makes two submissions; first, it suggests the regulation of young people's working conditions is inappropriately neglected at national level in Australia, and secondly, it proposes national standards should be set and equated with those in other developed economies, meeting international standards. The 1994 European Community Directive on the Protection of Young Workers is referred to as a suitable benchmark.

■ **Keywords:** child labour, international standards, International Labour Organisation, European Union, young workers, minimum age

Introduction

Child labour is a phrase that on the international scene is associated with economic exploitation, poverty, injury, insufficient education and various forms of physical abuse. It is the subject of campaigns that stretch continents and governments (ILO, 2012, Smolin, 2000). While statistics indicate child labour is decreasing on a global scale (ILO, 2011a), hundreds of millions of young people are implicated and their welfare continues to be a major concern for international bodies like the International Labour Organisation in their promotion of rights at work, and UNICEF, as they advocate specifically for the rights of children. While negative health, income and educational outcomes are broadly predicted for child labourers, they are not similarly predicted for Australian working children. Observations about children working part time or casually in jobs that might be assumed temporary or insubstantial are not typically correlated with any major loss of opportunity or abuse of other childhood privilege. In contrast, they are more closely aligned with developmental advantages including self discovery, independence and competence (NSW Commission for Children and Young People, 2009). The employment of children is an accepted and even applauded part of Australian society, with children making up a significant and visible portion of the workforce, especially older children (ABS, 2006; Commission for Children and Young People and Child Guardian, 2005). As a continuous segment of Australia's workforce, their employment is generally considered to be beneficial and formative, and likely to be engaged in without hazard to school performance (New South Wales Commission for Children and Young People, 2005). Statistics confirm the presumption that most Australian children work for spending money and not for their basic survival needs (ABS, 2006).

Still, the need for protection of young bodies and minds in an adult workplace can offset enthusiasm for children's participation in the workforce, even in Australia. A particular fear is endangerment to a child's educational development. In a broader context, the employment of children creates anxiety over long term economic and labour market impacts, with economic growth predictably reduced by a loss in potential human capital and labour productivity, the result of children working more and schooling less (Anker, 2000). At an individual level, the loss anticipated is in adult earnings over a working life (Emerson and Portela Souza, 2007). A broad consciousness about the desirability of maximising learning opportunities clearly exists in Australia, and is well supported by government policy presently illustrated in the Building the Education Revolution programme that prioritises facilities for schools and learning (DEEWR, 2011). With compulsory schooling a well established part of growing up in Australia, there is

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typically no choice to be made between work and school for children until they are teenagers. When opportunities to work present, Australian children are generally eager to participate, and often encouraged by parents and peers.

In Australia, first constraints on children being employed too young or dangerously are mostly social, with community interest in children that work being characteristically protective, even in relation to work for a family business. For example, publication of details about a 9-year-old boy operating heavy machinery in a family owned Queensland quarry attracted a significant amount of community comment (Sandy, 2010). Confirming protective intents are state and federal government policies that realise careful income and employment strategies, welfare measures and educational objectives. These are typical of paternal approaches to the issue of working children (Bequele & Boyden 1988). Local, state based, statutes that impose compulsory schooling and add proscriptions on work during school or night hours, often implementing permit systems, are examples. Similarly, state based welfare legislation promotes the best interests of children. At federal level, a different approach has been taken.

The Australian federal government, created and empowered by the Commonwealth of Australia Constitution, is restricted to regulating specific areas that do not expressly include the employment of children. Its ability to make legislation about children and work is not obvious. Correspondingly, it has not sought to regulate the employment of children in any comprehensive fashion. While the federal government has no exclusive power, there are certainly methods of regulating child employment it has not yet explored. It could, for example, exercise concurrent power that, as a matter of interpretation and, perhaps, in agreement with the states, would encompass Australian youth and their rights at work. This power could be categorised as an exercise of concurrent power about external affairs, making law pursuant to its international obligations as a member of the United Nations and signatory to the Convention on the Rights of the Child. Such an effort would be consistent with constitutional underpinnings of the current Commonwealth Commissioner for Children and Young People Bill 2010 (Cth) now in its second reading before parliament (Parliament of Australia, 2011). Alternatively, in relation to the employment of young people by corporations, the federal government could also regulate for children pursuant to its corporations power, and following the example of the *Fair Work Act 2009 (Cth) (FWA)* which now covers most Australian workers. Inclusive regulation of young workers, within general labour legislation, is not impossible. A consistent, clear, proportionate and enforceable system of rights and restrictions for children's engagement in work is a goal that Stewart has recently advanced to improve the working experience of our youngest workers (Stewart, 2008; Stewart & van der Waarden, 2011). At a national level, regulation about the performance of work by young people, until they become adults, could go some way to achieve this.

International and regional standards

International Labour Organisation conventions and recommendations that concern the employment of children are numerous and span nearly a century, setting minimum standards that seek to proscribe practices inhibiting the healthy development of children. The first conventions focused on minimum ages and particular industries and were obviously applicable to relatively advanced economies like those in Europe experiencing undesirable outcomes from the development of industry. For example, the Minimum Age (Industry) Convention 1919 provided for a minimum age of 14 to apply in the mines, manufacturing, construction and transport industries. Later, conventions around child labour looked at particular types of work, including the performance of night work. The Night Work of Children and Young Persons (Agriculture) Recommendation 1921 provided for a minimum period of rest. More recently, ILO child labour standards have focused on health and safety protections. For instance, the Conditions of Employment of Young Persons (Underground Work) 1965 requires employers to train young workers in relation to health and safety hazards underground and advise them of specific risks relating to their job. Probably most well known today are ILO efforts to eliminate the worst forms of child labour, including slavery, soldiering, prostitution, drug trafficking, and dangerous work, proscribed by the Worst Forms of Child Labour Convention 1999. This convention stresses the need for protection of children in a variety of workplaces and activities, and across industries. In contrast to the earlier conventions, it might be presumed the convention is also targeting less developed economies as well as those whose economies are advanced and still reliant on sources of informal labour. Such standards clearly play a leading role in combating child labour (Creighton, 1999; Cullen, 2007).

As with other ILO devices, child labour related conventions and recommendations do not directly reduce or eliminate child abuse and exploitation; they rely on country by country ratification and then adoption into unique legal environments. Some regional law may draw on ILO standards voluntarily and enhance the application of ILO standards. For instance, the 1994 European Community Directive on the Protection of Young People at Work (1994 Directive) contemplates the ILO minimum age for employment and ILO bans on dangerous work, extending them to consider broader health and safety issues for young Europeans. There are also trade agreements which include labour or social clauses, like the US-Jordan Free Trade Agreement and the EU-Chile Association Agreement, that refer to ILO standards in an effort to encourage trade adhering to minimum labour standards (Humbert, 2009).

Importantly, on a single country basis, there are critical social, cultural and economic factors that can interrupt an express application of the ILO standards. These would include inabilities to implement in the context of informal economies, where monitoring the use of child labour is

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compromised. Even developed economies can have difficulties implementing ILO child labour standards, for reasons no less important than constitutional limitations. The Australian federal government, for instance, has stated its inability to comply with the Minimum Age Convention 1973, because of existing inconsistent state-based regulation (ILO, 2011b).

At a regional level, there are a variety of effective sources of rights and protections afforded to working children. Regional law can require tailored working conditions suitable for an area and highlight particular issues. In this context, regional governments set unique standards, standards that may be prerequisite to membership. As an example of regional standard setting, the Council of Europe's Social Charter of 1961, revised in 1996, gives a detailed statement of rights for young workers that have long set a model of care for European children at work. Although general in its coverage of worker rights, the attention given to young people at work is notable, comprehensively calling for protection in terms of both health and safety and fair economic treatment. Specifically, the Charter proposes a minimum age for work, maximum hours of work, and an entitlement to fair wages, medical supervision, and a number of protections from dangers at work (art 7). The Charter has been embraced by all 47 members of the Council, and a majority have ratified its revision (Council of Europe, 2011).

The European Union (EU) also has an interest in setting standards for the employment of children. The earlier mentioned 1994 Directive is an exemplar of EU social policy which situates children as a vulnerable group in the workforce. In particular, the directive provides for two groups of children. Firstly, young persons under 15 years or still in compulsory schooling attract particular protections that limit the type and amount of work they undertake. In essence, work is prohibited for children who are still at school and not yet adolescent. Children over 15 and finished school also attract protections but they are offered in the context of encouraging work, as long as it is undertaken in apposite conditions.

By making distinctions based on age, the directive furthers objectives that intend children have working conditions that suit their level of development. Children's working hours are limited on both a daily and weekly basis. Provision is made for rest breaks, and night work is generally prohibited. Exceptions for light work are made, enabling children to work in a wide variety of workplaces as long as they only perform work which is in nature insubstantial and for a time unlikely to pose risks to the child's health or safety. The directive also imposes a finely tuned duty on employers to provide for the health and safety of their young employees. In particular, they must accommodate special rostering, division of work tasks, risk assessment and medical supervision requirements to meet their obligations.

Implicitly, the Charter and 1994 Directive require that conditions of employment for young workers are different from those of adult workers. Both regional instruments look to clarify the uniquely vulnerable position of children and young people in the workplace and the resulting heightened likelihood of injury and developmental interference. Again, as with ILO standards, member countries may not find the application of regional standards simple or appropriate (Bond, 1995), and, in the context of delicate monitoring mechanisms, members may not always make timely responses to improve compliance (Harris, 1964; Hepple, 1988; Churchill & Khaliq, 2004).

The Australian legislative environment

In Australia, due to state referral of power and constitutional empowerment, federal legislation, the *Fair Work Act 2009 (Cth),* currently regulates the terms and conditions of employment of most Australian employees. There is a national workplace relations system (Fair Work Australia, 2011b). In the context of historically prominent state regulatory systems for labour, and where state labour law still applies to many state public sectors, a state by state acceptance of the need for a consistent, efficient and encompassing regulatory system has resulted in all except Western Australia allowing the federal workplace relations system to operate. However, the federal government's confident use of constitutional power to regulate corporate employers has been the primary reason for the dominance of federal labour regulation in Australia.

Federal legislation delegates some areas of labour regulation to the states, for example, occupational health and safety, discrimination, superannuation, long service leave and workers compensation. Significantly, *FWA s 27(2)* includes child labour in the list of matters for the states. Consistent with ILO references (ILO, 2011a), and without definition, the term child labour might only be about the oppressive employment of young persons under 18, where work is harmful to physical and mental development. Alternatively, it could be, literally, that states are to legislate about anything to do with the work of young persons less than 18 (Riley, 2007). Either way, legislative protection for young Australian workers is intentionally detached from the general workplace law that covers adult Australians.

As a specific group of workers, comprehensive regulation of the minimum terms and conditions of employment of children has, to date, not been an objective of federal legislation. The *FWA* addresses rights for all ages of employee, granting universal rights to employees in most instances, and differential rights only in select situations. Historically, Australian states have dealt with the welfare of children in various social contexts including employment (e.g. Mourell & Allan, 2005; Bowden & Penrose, 2006). Across the states, and variably, welfare, education and employment legislation has embraced minimum ages for employment, maximum hours of work, prohibited hours like night times and school hours, and prohibited types of work, along with other protections that relate to occupational health and safety.

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Importantly, the *FWA* deals with young people's wages; *FWA ss 12 and 284(3)* provide for the payment of junior wage rates which apply until the age of 21 is attained. In setting special wage rates for juniors, heavily discounted wages are associated with younger ages. For example, a 16-year-old not covered by an award or agreement has a right to be paid 47.3% of the adult minimum wage (Fair Work Australia, 2011a). Additionally, for the benefit of young workers in training arrangements, the federal legislation facilitates the payment of minimum wage rates through federal industry and craft based awards. Otherwise there is little focus on rights for youth, apart from in relation to some additional restrictions on individual agreement making, employer deductions and employee debts. Payment of wage loadings in lieu of annual and personal leave is also facilitated for school aged apprentices and trainees. These provisions are noticeable recognitions that young workers may need protections and special entitlements.

Significantly, when the *FWA* describes its intended coverage of minimum terms and conditions of employment, in the National Employment Standards (NES), it is for all Australian employees, including those who are young. Additional minimum terms and conditions are only available in relation to parental status. Typically, a permanent employee has entitlements to minimum wages, maximum hours of work, leave, notice on termination and redundancy and a range of other rights. Casual employees attract altered rights based on the temporary nature of their work arrangements. Other than providing for differential wage rates, there is no statutorily required distinction between the minimum standards of young employees and others. Young employees do not enjoy any privilege. In supporting minimums on an industry and craft basis, modern awards create only a few. For example, in relation to span of hours of work, overtime and shift work, a young age can attract limits, but only in some industries including hospitality. *FWA s 55* makes an enterprise agreement an alternative source of possible entitlement; where special minimum terms and conditions of employment for children could be provided. But there is no statutory requirement for this.

Given the federal to state delegation in relation to child labour, and apparent lack of interest in special minimum employment terms and conditions for Australian youth, it might be assumed any state law imposing child specific minimum conditions would operate without interference. However, *FWA ss 27(1), (2)(e)* and *28(1)*, and the *Fair Work Regulations 2009 (Cth)* complicate this. Essentially, there is an exclusion of state law including state law on child labour that relates to terms and conditions otherwise provided for by the NES, modern awards, and enterprise agreements. In effect, the federal to state endowment in relation to child labour is narrowed so that NES type minimums are indistinguishable for children. There are only two specific federal endorsements for state regulation about child labour minimums. *R 1.14(a)* confers state legislation the ability to regulate on the times and periods during which children can be employed, allowing for night time and school term hours of work restrictions. This federal designation may not, for example, allow for state prescription of maximum hours of work, or for flexible working arrangements to facilitate education, or for a written contract of employment, or for lengthier rest breaks. Although other aspects of child employment still lie potentially within state legislative coverage, *FWA ss3 and 134* objectives for the NES and modern awards to cover all essential minimum terms and conditions of employment suggests the federal bequeath to the states is heavily restricted. In the federal context, child labour regulation then more likely means, consistent with ILO thinking, that state legislation about prohibitions on abusive forms is not constrained. Minimum age and special health and safety protections emerge as areas still open for state regulation.

Federal legislation could, given its stated ambit in relation to minimum terms and conditions of employment, include additional protective entitlements for children. These would easily fit within NES and modern award topical coverage, and extend specialised protections which already address particular needs of select employee groups, like pregnant women. National standards on maximum weekly hours of work and award standards on hours of work arrangements, including rest breaks and shift lengths, are particularly relevant to children and could provide suitable restraints on the total working hours and daily rostering of children.

All Australian states currently have legislation dealing with aspects of child employment, although some states only deal with it indirectly in education legislation, like Tasmania. Each has an individual approach to child employment, reflecting their own balance of child protection, education and employment growth priorities. Prohibitions and exceptions, and restrictions and rights, are divided into various acts and more recently, positioned in dedicated legislation. Queensland and Victoria are examples. Other states have minimalist regulation, only prohibiting particular times for work, like school hours, and illustrating a pro-education attitude that ignores any need for protection at work. A number of states take a facilitating approach, setting prohibitions and then allowing for exceptions, so protection is watered down to allow tolerable employment.

While some regulation is still co-located with child welfare legislation dealing with neglected children, a number of states are reforming their legislative coverage of child employment. For example, in 2010 Victoria passed amendments to the *Child Employment Act 2003 (Vic) (CEA)* and New South Wales amended their existing regulations. Significantly, South Australia is at present legislating for the first time with the Child Employment Bill (SA) 2010.

Identifying children

Whether or not young working Australians are covered by existing state regulation will depend on legislative definitions about work and children. In Australia, state legislation about children's work generally applies only to employment

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and not other forms of work, although there are notable exceptions including Victoria's effort to embrace non-employment performance of work with *CEA s 4* covering contracts for services. A wide definition of employment might include unpaid work and writing is not usually necessary. In some states there is no definition and this typically leaves forms of work performed under independent contracting and other informal arrangements unregulated. Children's work that is paid by the number of deliveries made or completion of a particular service form typical examples.

At the international and regional level, general and encompassing work concepts are used, allowing for wider coverage, but also for members to make their own local definitions and have control over the application of their regulation. For example, the Minimum Age Convention refers to both employment and work being prohibited for children (art 2.1). The 1994 Directive, for example, contemplates all work performed by children and young people. Application is restricted by deference to national legislative definitions of the employment contract and employment relationships, allowing exceptions for short term and occasional work involving domestic service and safe family business work. When EU members insert consistent provisions into their labour legislation, application is limited to the coverage of that legislation, and typically, to work that involves employment. Broader coverage is achieved when EU members insert directive standards into work safety legislation that does not limit application to particular forms of work. The Netherlands, Sweden and Denmark are examples (*Working Conditions Decree (Nl), Work Environment Act (Sw), Consolidated Working Environment Act 2005 (Dk)*).

Definitions identifying the children to be protected are critically important. Whether a child is defined as everyone not yet an adult, or a subset, is likely to be determinative of who has rights and who doesn't. The various Australian state legislative definitions all rely on age based criteria to distinguish children from other workers. However, perhaps because the legislation has developed sporadically, there are a range of ages used to identify child workers.

Because Australian state legislative coverage of child workers is sometimes mixed with education or welfare concerns, children are not always identified by a single age criterion. A number of statutes rely on under 18 criteria, but not all. Various state legislative definitions mean a child may not be considered a child for the purposes of child employment provisions once they turn 12, or once they complete compulsory schooling, or turn 15, or 16. Some states make a distinction between children and young persons who are not yet adult but are teenagers or adolescent. Young children of less than school age are also sometimes differentiated. Queensland's *Child Employment Act 2006* does this. The purpose of these distinctions is generally to give greater protection to those who are younger, and utilise more flexible principles with older children who are assumed to have increasing capabilities and who may want to participate in paid work for their own financial purposes.

Not uncommonly, the age for completion of compulsory schooling helps to identify the children to be protected by legislation. Unfortunately this can add obscurity because schooling related definitions are not always described by an age and term dates may become relevant. Just as school starting ages vary, with leaving ages there is also dissimilarity between states. Certainly, raised mandatory schooling ages have been more than one state's educational initiative in the last decade, and complicate the situation in this context. Queensland and South Australia have their school leaving ages set at 16, the Northern Territory at completion of Year 10 or 17, Western Australia at 17 or high school graduation, and Tasmania at the end of the school year the child turns 16. These variants have significance for determining restrictions on child employment. The difference in definitions across states provides a potential for confusion and misapplication, especially for employers operating nationally. As an attempt to assist its franchisees, McDonald's seeks to clarify the minimum age for employment in each Australia state (2011). A specific and nationally consistent definition would obviously assist in ensuring steady application of any legislated minimum ages.

For comparative purposes, and using the aforementioned regional example, the 1994 Directive makes one general definition, identifying young persons as all those under 18, and then divides them into two groups (art 3). Children are those under 15 or still completing compulsory schooling, and adolescents are those between 15 and 18 who have finished school. These two groups attract specific levels of protection, with more restrictions for younger children, and continuing employer responsibilities for older children. The simplicity of the two group approach is appealing.

Minimum age

The setting of a minimum age for admission to employment protects a fundamental human right, the right to a childhood unfettered by work (ILO, 2011c). Absence of a minimum age can be associated with a failure to prioritise education (e.g. Right to Education, 2010), although compulsory education minimums might be considered adequate alternatives to setting one. Significantly, the minimum age for admission to employment set by the ILO Minimum Age Convention relies on both the completion of compulsory schooling, and a minimum age of not less than 15. This twin criterion comprehends the value of a minimum period of schooling, but acknowledges that a required attendance at school may not solely determine whether or not long hours of work are performed. It also considers that compulsory schooling may end before a child turns 15, though this is not common in developed nations.

Relevantly, Australia, although a long time ILO member state, has not ratified the minimum age convention, and despite being urged to on more than one occasion (e.g.

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Committee on the Rights of the Child, 1997; Committee on the Rights of the Child, 2003). Having ratified the more recent United Nations Convention on the Rights of the Child, the federal government is actually obliged to set a minimum age or ages (art 32). Until recently it has not reported any efforts to satisfy this obligation (Committee on the Rights of the Child, 2005). It would be supposed the government continues to have reasons for not setting a national minimum age for employment, including historical coverage of child employment by the states and difficulty if seeking agreement across states. Its approach, however, is that there is sufficient state regulation to prevent exploitative practices of child employment in Australia, and, intriguingly, that a minimum age or ages are not needed when there are compulsory schooling standards that limit the incidence of children working full time (Department of Foreign Affairs and Trade, 2003). As previously suggested, exercise of a constitutional power like the external affairs power or the corporations power is an option the federal government could use to stipulate a national minimum age, and intergovernmental agreement with the states is another.

The EU, providing benchmark employment and social standards beyond their original economic ideals (De Vos & De Wolf, 2010), specifically adopts the ILO minimum age in the 1994 Directive already referred to. The EU Charter of Fundamental Rights inclusion of the minimum age confirms its suitability for well developed economies (art 32). The setting facilitates full time education until the age of 15, allowing only for exceptional part time work. A sample of four members, Belgium, the Netherlands, Sweden and Denmark, set minimum ages that are compliant. These minimums have application at the national level, but are subject to enhancement in sub-regional legislation and industry based collective agreements.

The ILO minimum is one apparently observed, at least coincidentally, by only a couple of Australian states, namely Western Australia and the Australian Capital Territory. Other states set a lower age. Most do not delineate a single age for admission to employment. Instead, legislation imposes prohibitions based on specific hours of work, like those performed during school hours by children of school age, or at night, or on other grounds, like endangerment. The absence of an explicit minimum age in child employment legislation might be seen as advantageous, allowing for the recruitment of young workers based on their ability to perform work rather than their chronological age, and perhaps also considering cultural acceptance of specific working activities for children. Some might see a minimum age as a barrier to the possibility of work experience, apprenticeship and traineeship, though these supervised instances of employment are usually only relevant once compulsory schooling has been completed and are regulated separately. Regardless, non-statement of a minimum age is prone to weaken any assertion of the right to a childhood. Certainly, even if compulsory education might restrict the performance of full time work by younger children, it does nothing to protect those children working in Australia's informal economy.

Types of work

Rates of injury for Australian young workers are significantly high, with those aged between 15 and 19 being identifiable as a high risk group (ABS, 2011). A lack of awareness, maturity, training and or experience can play a part in leaving children injured, sometimes permanently, and possibly disadvantaged for the rest of their working lives. Despite this obvious susceptibility, a number of states have not used child employment legislation to specifically restrict the types of work Australian children engage in. Historically, state acts that dealt with child welfare prohibited street trading, begging, performance in a public place, and a variety of other jobs. Now, safety in potentially dangerous work is largely the province of skills based regulation.

Minimum age prerequisites, usually set at 18, are still present for specific work activities, but skills recognised by proficiency testing are now the main criterion. Skills attainment must meet national and state set minimums. Limits on participation in high risk activities have traditionally been found in state based certification systems, but there is a progressive move toward national level activity and occupation based licensing. The National Standard for Licensing Persons Performing High Risk Work is an example. It covers high risk work in the construction industry, including scaffolding, rigging, dogging, and crane and forklift operation.

Importantly, beyond skills proficiency, occupational licensing is being introduced. The *Occupational Licensing National Law Act 2010 (Cth)* has recently been enacted. To date it includes the electrical, plumbing, gas fitting, and air conditioning and refrigeration occupations. *S 18* makes eligibility based on prescribed qualifications, skills, knowledge and experience, but not age. Although a minimum age is not a listed factor, it would presumably be indirectly effective where training has educational prerequisites.

With dangerous work dealt with by other regulatory mechanisms, it might be argued that states need not legislate on prohibited types of work. Only some state child employment legislation still addresses dangerous activities. New South Wales' *Children and Young Persons (Care and Protection) Act 1998* penalises persons who cause a child to participate in activities that put their well being at risk. An employer is generally prohibited from having a child perform work that is harmful in the Northern Territory pursuant to the *Care and Protection of Children Act.* Alternatively, there may be a particular risk that is addressed, as in Queensland and Western Australia where there are bans on work involving child nudity or other indecency. The possibility an authorised officer prohibits certain work for an individual child exists in these states. In Victoria, specific types of work are prohibited; door to door selling, work on fishing vessels, and work on building or construction sites. In the Australian Capital Territory's *Children and*

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Young People Act 2008 high risk employment will warrant permission.

Separate to child employment legislation, Queensland has devised work health and safety guidance in the Children and Young Workers Code of Practice. It details obligations of persons conducting a business or undertaking, and models management of the obligation and is the only state using health and safety regulation to deal with workplace dangers faced by Australian youth. With various and inconsistent measures in place to protect children from undertaking dangerous work, it might be thought national work health and safety regulation would be an obvious location for supplementary protection devoted to children. Notably, the harmonisation of state occupational health and safety laws has not yet produced any focus on protections for young workers (Safe Work Australia, 2011a). Within the *Model Work Health and Safety Act 2010* there is no particular responsibility on duty holders in relation to young workers; rather, the primary duty that is applicable to all workers is presumed sufficient. There are also, at the time of writing, no draft codes devoted to young workers, although the code on bullying might have some impact (Safe Work Australia, 2011b).

In contrast, the European standard for health and safety at work for children is specific. It extends beyond the employer duties that are held in respect of all workers and is based on vulnerability as a special risk group. Young persons are to be guaranteed suitable working conditions for their particular age. Risk assessment before the commencement of work is required for a worker less than 18, and follow up monitoring by regular health assessment is also (art 6). The assessment must include the physical, biological and chemical environment, the work equipment and its use, work processes, operations and work organisation. Training and instruction must also be assessed. An active duty of the employer is to implement health and safety measures the result of risk assessment. Where risk is appreciated, the employer is to take steps to inform the child and their adult representative, and if risk can't be reduced to a non-significant level, the work is prohibited (art 7). For an adolescent whose vocational training exposes them to risk, then risk minimisation procedures must be taken and their work must be competently supervised. In any event, the types of work a child is permitted to do, up until they reach 18, must not exceed their physical or mental capacity or expose them to toxic substances, radiation, extreme temperatures, noise or vibration. In short, the young worker's employer is responsible for recognising risks the young worker might not.

Denmark and The Netherlands are examples of EU countries implementing youth-specific health and safety standards with faithful deference to the 1994 Directive. They have included detailed regulation within their general work health and safety legislation, exemplifying the importance of treating young workers as a special class. Requirements for expert supervision and regular health assessment of young workers are typical national standards found in Denmark's *Consolidated Working Environment Act 2005* and The Netherlands *Working Conditions Decree.*

Light work

Victoria is nearly unique in legislating on suitable types of work for children. Light work is identified as a permissible kind of work for children in the *CEA2003*. In addition to defining what light work is, the Victorian parliament has also recently enacted clarification of what light work is not. *Section 5(2)* provides an inclusive list of work considered harmful, minimising some of the uncertainty that lies around the concept. Repetitive bending and twisting or lifting often undertaken when shelving products, is not light work. Lifting heavy items, working with high temperature producing equipment, sharp instruments or near moving vehicles is also not light work. Other activities that may be a typical part of fast food industry work or retail work or hospitality work are included in the list, like kitchen work with cleaning equipment. These task prohibitions present as challenging to common trends in retail and hospitality industry employment for students. By contrast, in Western Australia, the *Children and Community Services Act 2004* does not identify light work as a suitable type of work. Instead, delivery work, shop and retail work, and restaurant work is specifically permitted for children 13 and over. For those over 10 delivery work when accompanied by a parent is permitted. These broad areas of work are considered fitting for children, without consideration of the tasks actually involved. The difference in state approaches highlights a need for refined definition of suitable work for children.

Certainly, the 1994 Directive makes an effort to closely identify suitable types of work. Light work, as a category of acceptable activity, legitimises work for children of a younger age. The exception originates from the ILO Minimum Age Convention, and applying only to children aged between 13 and 15. It is constituted by work that is not likely to be harmful to a child's health or development, or prejudice attendance at school or participation in approved vocational training, or interfere with a child's capacity to benefit from the instruction received. The directive relies on the exception and tailors it, by permitting the performance of light work by 14-year-olds, and for 13-year-olds as long as it is performed in the context described by national legislation. For instance, a 14-year-old can perform light work in general, but a 13-year-old might only be able to do the same if it is for a limited number of hours per week in prescribed work. Work must be inherently unlikely to harm the child, in relation to both the tasks involved and the particular conditions under which they are performed (art 3). Reference to the physical and mental capacity of each individual child is implicitly necessary. Correlations between light work suitable for an impaired or injured employee are perhaps conceptually relevant, but distinguishable for the educational priority basing the exception. The directive definition requires light work to be non-intrusive on a child's ability to go to school and learn, and this could only

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be determined once school hour and homework demands on the child are known. Around 10 hours of work a week is suggested to be the maximum suitable amount of light work before there is an educational detriment to the working child (Ranjan & Lancaster 2005). This is a quantification the Australian Capital Territory has appreciated in its child work limitations.

Hours and breaks

The amount of time devoted to work and the suitability of time worked are concerns central to the regulation of child employment. Firstly, there is a historic and moral predilection against night work by children related to perceptions of danger implicit in the types of activities undertaken after dark. Secondly, long hours of work are a particular issue in relation to increasing the risk of injury for young workers (Guarcello, 2004; Humphries, 2010). For young workers, a lack of predictable working hours also emerges as an issue. A young workers' involvement in casual and temporary work is associated with a loss of control over other priorities, like education, and with young workers feeling subjugated to employer demands for flexibility (Harslof, 2007).

Some Australian state legislation about child employment has clear hours of work restrictions that curb night hours of work, early morning hours, and school term hours. Queensland's *Child Employment Regulation 2006* has quite specific maximum daily and weekly working hours for school aged children. In some states, hours worked during school hours might be the only restriction, as in Tasmania. In a number of states suitable working hours are listed as between 6am and before 9 or 10pm. In addition, or alternatively, a limit on the total number of hours worked on a weekly basis may be set, with higher numbers of hours allowed for school holiday work. These prescriptions are interesting in view of federal minimum standards legislation, as previously discussed and expressly claiming exclusive coverage of maximum weekly hours of work and award matters like arrangements for when work is performed. Of course, extension of the federal system would be consistent with topical coverage; for example, creating a standard for maximum weekly hours for employees under 18. In relation to modern awards, a maximum shift length would be appropriate for children, prioritising education during school terms at least. Some awards already include minimum shift lengths for school students. The fast food and retail industry awards are examples.

Hours of work restrictions complement contemporary health and education research suggesting children and particularly adolescents need more sleep, play and family time to allow development mentally, emotionally and physically (e.g. Carskadon, 2004; Steinberg, 2009). This basis for restricting children's working hours matches human rights and welfare considerations that are the foundation for the EU hours prescription found in the 1994 Directive. It restricts hours of work conspicuously, at a level that has not easily been adopted by all members (Hartlapp, 2007). The directive is prefaced by a belief that employers must limit the duration of work for young workers. Restrictions are about maximum hours per day and week, with overtime and night work strictly banned. Hours are tailored to suit the type of work, and the age of the child performing it. For example, and within minimum age exceptions, a child of 13 or 14 will not work more than two hours a day and 12 a week if they are still attending school., and seven hours a day and 35 a week if they are on holiday. These limits are extended for children of at least 15, with the daily and weekly limit at eight and 40 respectively (art 8). Whether these maximum hours are overly protective has not been the concern of most EU governments, though select members have had to substantially amend their legislation to comply (European Union, 2004).

As a part of rostering, and beyond maximum hours, rest breaks are also a protective measure for young employees. Burns, cuts, strains, bruises, fractures and electrocution are the most common results of extended and continuous hours of work where loss of concentration, lack of awareness and risk taking behaviours feature (Windau, Sygnatur & Toscano, 1999). Half hour breaks in shifts of five hours or more are a current entitlement in many modern awards in Australia, but they are an entitlement for all employees and not just young employees. Ten minute breaks are typically an entitlement only once four hours has been worked. If young workers are recognised as workers who have a particular need for adequate rest breaks, modern awards could address the issue with shorter periods of continuing work or longer breaks.

Rest breaks based on shift length are a feature of EU standards for the young. The 1994 Directive gives a half hour break once four and a half hours are worked (art 12). Not only are breaks within shifts provided for, breaks between shifts and prescribed weekend breaks are also a part of the protections granted to young workers. As examples, Belgium's *Labour Act 1971* and Denmark's *Consolidated Working Conditions Act* have included in their general labour legislation a variety of minimum rest breaks for both young children and adolescents. These countries have stipulated very specific breaks for various ages of children on the basis their employment is generally restricted and only allowed in certain circumstances. Depending on their age, children will be limited by working maximum shift lengths, start and finish times and minimum consecutive hours between shifts. Where exceptional circumstances arise and the stipulated breaks are unavailable, additional compensatory rest requirements apply.

There are other minimum conditions suitable for work by children. The 2007 New South Wales Child Employment Principles Case lists additional minimums, including rights to payment for training shifts, to notice on changes to rosters, and to notification of the type of employment, permanent or casual. These conditions would protect novice

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workers against exploitation of their ignorance about suitable work arrangements.

Conclusion

Despite Australia's status as a nation without a child labour problem, a necessary regulation of child employment at the national level is critical to safeguard young Australians at work. For various reasons, including federal legislative design, current regulation of child employment at the state level is incapable of providing the consistent and encompassing types of protections Australian children require. Since federal legislation has limited the ability of states to regulate the minimum conditions of employment for children covered by the national workplace relations system, it is even more imperative the federal system include special protections for young workers.

Model legislative standards like those in the 1994 Directive could be adapted for use. In the meantime, such standards allow an evaluation of Australian child employment law. With not all states addressing child employment issues fully, further reform promises young Australians a protected entrance to the workforce. Federally legislated youth focused minimum conditions and modern awards present as obvious mechanisms for the provision of consistent and complete protection.

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