



Roderick Best

Child Labour and Child Exploitation

The employment of children in Australia - regulation for its own sake or for the sake of the child.

A paper delivered at the 2001 World Congress on Family Law and the rights of Children and Youth

19-22 September 2001

by

***Roderick Best
Director, Legal Services
NSW Department of Community Services
Australia***

Is child employment in Australia an issue ?

In Australia there is little evidence that children below the age of 15 years engage extensively in paid work. Schooling is compulsory up until this age and there appears to be a general acceptance that education takes priority over other activities. Where children are engaged in work then largely anecdotal evidence is that the work is in a family business or a service industry.

If there is massive full-time child employment then the truancy rates from schools would be higher than they currently are. Even if child employment is largely hidden, the anecdotal evidence as to the extent of it would be higher or the number of care and protection cases brought before the Children's Court for children at risk of harm should be higher, or a greater proportion attributable to employment issues, than is currently the case. Out of over 70,000 reports of children or young persons being at risk of harm in my State of NSW a statistically insignificant number are attributable to child employment.

The evidence for these broad conclusions while not overwhelming appears to support them. Indeed the very lack of evidence may arise from there being no evidence to collect. Data on the work situations of children under the age of 15 years is slight. The Australian Bureau of Statistics does not publish data on full-time employees younger than 15. Its first category comprises 15 to 19 year olds. In 1996 there were 181,931 children employed in this age group within NSW. The largest child employer is the retailer Coles Myer. It estimates that about 20,000 of its total workforce of 155,000 employees (or about 13%) Australia wide are under the age of 21 years. Another major employer is McDonalds. Of its 1999 workforce, just on 11% were aged 15 years or younger. In that year it employed 4,866 people under the age of 21 years within NSW.

On the basis of this anecdotal evidence and the broad data that does exist, the importance of the Australian child in the workplace is almost insignificant. In terms of both local and world wide trends, the exploitation or abuse of children in the Australian workplace becomes, as a result, an invisible issue.

In these circumstances the need for any regulation should be questioned. If localized difficulties can be identified then the solution would be education campaigns or working with individual employers. Both Coles Myers and McDonalds, being the two employers I have named, are aware of their special obligations to child employees and act accordingly.

However this generic data may not show the picture of child employment in all its complexity and subtlety. There is some data which hints that there may be issues needing exploration. For example a tractor death occurs on an Australian farm once every 11 days. One in every four people killed on Australian farms are children below 16 years of age. A child will die on Australian farms once every 13 days. Over 100,000 children (aged from 14 to 18 years) in my State of New South Wales take part in work placements in any one year for periods of 1 to 16 weeks and for these people in the workplace, unlike anyone else who is working in a place of business, there is no statutory workers compensation scheme in my State. Finally, Article 32 of the UN Convention on the Rights of the Child says that governments should provide for a minimum age for admission to employment. Reports on Australia's compliance have noted Australia's failure to comply because of a continuing failure to legislate a minimum age.

The broad overview of child employment can therefore lead to an incorrect assumption that there is no issue for concern anywhere - that there is a uniformity of both response and responsibility for the working conditions of children in the Australian society.

The definition of work

One reason for the need to shift the way in which we consider child employment arises from the simple issue of how terms are defined. If we do not classify a particular activity as work, often because it is done by a child, then any consequential damage to that child is automatically excluded from any child employment discussion.

For an adult, work can be distinguished from a hobby or pastime because the adult receives income directly from the person for whom the task was performed. The income is linked to the nature and complexity or specialized nature of the task. Tax is paid on the income. Other payments are linked to it including employer obligations, superannuation, workplace insurance or limitations on working hours.

As well as income there is also a control test. Who controls what is done, how it is done and with whose equipment is it done. Are there rules of a game or can someone give direction about the precise way in which the task is completed.

There is also a qualitative difference which is made between a choice to undertake a task largely (although hopefully not solely) for the associated income, as distinct from a choice to do an activity for less mercenary motivations.

For a child, these same indicia do not always hold. Payment is not always directly made to the child. If the child is working in a family business the child is unlikely to draw a separate wage or allowance. There are even some legal restrictions or taxation consequences that result in payments being made into trust funds rather than to the child. Protective legislation relating to the contractual obligations of children (in my State set out in the *Minors (Property and Contracts) Act 1970*) may work against children being within mainstream employment. Employer obligations, superannuation and workplace insurance are often not present.

The control of a child, especially by a parent, is invariably an existing fact and the very evidence of control for a child is evidence of a personal relationship rather than a contractual one.

The question of choice for a child who is the carer of a parent or siblings or who is engaged in a family business can be hard to distinguish.

If these definitional concerns do not assist, to shift to a different tack and merely define work solely in terms of what is arduous or what is the opposite of pleasurable, is likewise incorrect in failing to recognize the positive or beneficial aspects of work.

Is there a covert, if not overt, notion that work is bad for children and so requiring prohibition?

Any such notion that work should be prohibited for children is at odds with other clear policy directions within Australian society. The clearest of these is its mandatory inclusion within the school curriculum.

Work can contribute positively to a child's development, assist them make informed choices about the future direction of their lives, to develop an awareness about themselves and their own skills and abilities and about the diversity of the world in which they live. It brings them into contact with a range of diverse people who, in particular, will have a broader age range than would otherwise be encountered.

Income is an important aspect of work. For the child, if they directly receive the income which they earn then they increase in material wealth, increase their consumer spending capabilities or increase independence from other family members. Otherwise they are contributing to a savings pool, supplementing a family's business or contributing to the survival or growth of a family business.

Involvement within a broader market place will generally increase social skills and may have a beneficial effect on public health through increasing activity levels and thereby be one of the multitude of factors associated with fighting the epidemic in our society of childhood obesity.

These benefits are real but should not be inflated.

Jobs that are menial, temporary, are not associated with prospects for advancement or are devoid of recognition of the effort involved are unlikely to increase self esteem, develop useful new skills, or grow social skills. Pettit (*Children and work in the UK: reassessing the issues*, London 1998) has commented that “after having a succession of unskilled, boring and poorly paid jobs young workers become disillusioned. Instead of gaining an appetite for work, some young persons become cynical and were unable to regard work as an enjoyable experience.”

Are there demonstrable dangers for children working?

A 1998 ILO report on Child Labour says:

“Children are susceptible to all of the dangers that are faced by adult workers when placed in the same situation, but they are more seriously affected because they differ from adults in their anatomical, physiological and psychological characteristics. The health effects can be devastating, causing irreversible damage to their physical and psychological development; permanent disabilities may result, blighting their lives forever. Carrying heavy loads or being forced to adopt unnatural positions at work can permanently distort or disable growing bodies. Children suffer more readily from chemical hazards or radiation than do adults and have less resistance to disease. They are much more vulnerable to psychological and physical abuse than are adults and suffer much deeper psychological damage when they are denigrated or oppressed. In other words, all the developmental aspects of childhood are put at risk.”

Workplace injury data in my State shows that the most commonly cited classification of injury in 1996/97 was manual handling. This accounted for some 20% of injuries for workers under 18 years of age. For boys this immediately raises the spectre of back problems. The second most commonly cited classification, at 13%, was ‘hitting moving object’. Within the NSW building industry a study found that non-building construction workers had the highest proportional incidence of injuries within the construction industry. Studies such as that confirm the obvious that physical and psychological capability, experience, knowledge and wisdom (or what my mother would call ‘common sense’) are relevant factors in minimizing workplace injury.

Apart from physical injury many States within Australia regulate the employment of children in door to door selling (in Victoria the regulation is of street trading) because of the potential risk situations of the children being abused while unsupervised. Other regulations prohibit children from working

in the gambling or industries associated with alcohol so as to prevent exposure to particular activities. However notwithstanding children being prohibited from buying tobacco there is no similar prohibition on children being employed to sell tobacco. Some of the rationale for regulating children working within the entertainment industry relates to the possible use of children for indecent purposes.

Until the recent repeal of section 54, *Factories Shops and Industries Act* there was a prohibition on a child under the age of 16 years working in a factory at night (from 6.00 pm to 6.00 am). Such prohibitions still exist elsewhere within Australia, for example in Western Australia.

The reason usually advanced as to why there are restrictions on work hours is to accommodate competing time needs. Time is also needed for schooling, adequate leisure time and for the development of appropriate peer group relationships. Some of the studies in this area have found a correlation between the hours worked as a child and alcohol consumption, and the number of hours worked (once the hours reach at least 10 hours a week) and poor grades and attendance records. A longitudinal survey conducted in Australia found that year 11 students (ie those aged 16 and 17 years) who spent more than 10 hours per week working were less likely to finish schooling than non-workers. However employment up to 10 hours per week had no measurable adverse effect on scholastic performance.

If there is a threshold (which appears to be about 10 hours per week) after which there is a link between hours worked and poor school performance it does not necessarily follow that work has caused the poor performance. It may be that those who are less committed to school are already starting to spend more time in the workplace. It is the lack of commitment to schooling that is therefore the causal factor rather than working per se.

Children in the work environment

The figures quoted at the beginning of this paper on the death and injury to children on Australian farms does not necessarily mean that the child in each case was working at the time the injury occurred. In most cases the data would be the same whether, for example, the child was driving the tractor or was playing near the tractor. In terms of protecting children it may not therefore make much practical sense to differentiate between the harm to children who are working as distinct from the harm to children in the work environment.

This is an issue more clearly examined by a number of Australian studies into outworking. This is a practice where there is contract for someone to undertake work other than on the premises of the person wanting the work done. The work is often done in the home. The contractor is paid according to their output. For example, a woman (and a large proportion are women) might be contracted to sew X number of dressing gowns per week and they are paid in proportion to the number that they produce. The woman will be supplied the material and she will sew the dressing gowns in her own home.

A 1998 study showed that a significant number of these outworkers had small children at home. These children were exposed to the hazards of the particular job associated with their parent(s). This could include exposure to everything from different dusts to the types of machinery used. 7% of the respondents to this study indicated that they occasionally had another family member undertake work and 16% indicated that they had done this. Other than assuming the role of a sewer beside their parent what is not measured are matters such as casual associated work or assuming other roles within the family that will free their parent(s) to work.

Conditions of children in the workplace

I have earlier briefly discussed the additional hazards faced by children in the workplace.

At the beginning I have also alluded to the fact that children in work placements as part of their education are volunteers and the relevant legislation imposes an obligation on the employer to maintain a safe work place but does not establish any statutory insurance scheme for the child if the child is injured.

For some years the public educational bodies have voluntarily provided generous financial assistance schemes for any of their students who are injured. Outside of the public sector private providers have been arranging insurance cover for their students but are increasingly find the cost effectiveness and the number of companies willing to provide this cover to be diminishing. It is not however mandatory to provide this cover and some schools may not currently provide it and certainly may not do so in the future. Insurance cover gaps will also be present.

A recent NSW Supreme Court decision has confirmed that schools have a non-delegable duty in relation to their students while the students are at school. If the student is attending mandatory work placement then it may well be argued that the non-delegable duty of the school extends to certain tasks to ensure that there was a safe work environment for the child, including safe premises and appropriate instruction.

Other Australian States have adopted various models to accommodate this issue. These include broadening the definition of worker within its workers compensation insurance to include volunteers doing work placements or requiring the employer to effect insurance but capping the claims that a work placement student might bring.

Conclusion

Hampered by a lack of definition, and of data, the issues of child employment can be dismissed as statistically insignificant. Where they are placed outside of the industrial infrastructure, in order that this statistical insignificance does not lead to their total relegation, they face the difficulty of being marginalized.

The consequence of marginalisation is that an increasingly specialized cluster of issues will be responded to, for the benefit of a diminishing proportion of children. For the rest of our children, they will have to survive without systemic modification of an employment environment designed for others.