

## **EMPLOYMENT OF CHILDREN**

by

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## **Background**

The Government ratified the Convention on the Rights of the Child in 1993 and entered a Reservation to Article 32.2 in regard to a minimum age for work. In 1997 and 2003 the Committee on the Rights of the Child has asked for the Reservation to be removed. At July 2010 the Reservation remains in place and there is no indication the Government intends to change its position. The text of Article 32 is at appendix 1

The Government issued its 3<sup>rd</sup> & 4<sup>th</sup> Periodic Report in November 2008 and addressed the Reservation and access to employment at paragraphs 1.12-1.19

The NGO report *Children and Youth in Aotearoa 2010* addressed the issues at paragraphs 1.5-1.7 in respect of the Reservation and 8.29-8.34 in respect of child employment. In addition child prostitution is addressed at paragraph 8.27-28. The texts are provided in Appendix 2

This paper expands upon those issues. Please note that the term “children” in this paper refers to persons under the age of 18 years in accordance with Article 1 of the Convention.

## **Introduction**

There is a general acceptance in New Zealand society that, subject to their age and maturity, children should be able to undertake light work providing it does not interfere with schooling, and that it is generally beneficial. Against this context, the role of the child advocate is accordingly to identify where practices lead to exploitation or discrimination or are harmful to the health, development or wellbeing of children.

Further to this, it is notable, that the Children's Commissioner considers there is room to better protect child employees and ensure their safe participation the work-force without unduly inhibiting their access to employment. He supports the extension of minimum wage protections to those under 16. He would also like to see more clarity around the age at which children can do certain types of work.

## **No Plan for the Protection of Employed Children**

The Government Report, at paragraph 1.17, indicates that a comprehensive Children's Employment Work Programme was put into place. The reality is that, as the Government Report was being prepared, work on the Programme went into abeyance. Ostensibly, this was because of Ministry of Youth Development was co-ordinating work on the Government

Report to the Committee on the Rights of the Child (as stated in the ILO 182 report quoted later). We find this doubtful as the Ministry, in discussions with ACYA, made it clear they had no monitoring role in consolidating the report to the UN Committee on the Rights of the Child.

To our knowledge, there is no government plan in respect of child employment and no evidence that a plan is being developed by the Department of Labour. This is a matter of concern, given the findings of the 2010 report by Damien O' Neill for the Department of Labour referred to below. We note that employment issues for children do not get a mention in the Department's Statement of Intent 2010/2014.

Hon Kate Wilkinson, Minister of Labour, replied to a letter from ACYA on 8 March 2010 covering a wide range of topics raised on this issue. She provided a copy of a briefing paper from the Department of Labour dated 3 April 2009 (ref 09/93800). The briefing paper provided information on the Department's Key Objectives, short and medium long term activities and long term activity. The Minister did not indicate her own priorities.

### **School Children in Paid Employment: A Summary of Research Findings**

Damien O'Neill produced this report for the Department of Labour in May 2010. ACYA was invited to make a submission on the draft report and did so. The 62 page report notes the following issues:

- The estimated number of secondary students in part time work is assessed at well over 100,000. ACYA concurs with that estimate but believes that if children of intermediate and primary school age were included as well, the total number of school children could be significantly higher.
- 46% of those aged 13 are in some form of paid work and evidence exists of 6 year olds working
- 50% of children do not have written employment agreements as required by law
- 7% of children under 16 years of age work between 10pm and 6am. This is currently illegal in the absence of an approved Code of Practice.
- No evidence is given of any prosecutions brought against employers in respect of under-18 workers.
- The report contains no information about reports provided by the Government under Article 22 of ILO 182 ( the worst forms of child labour)
- Some evidence of very low rates of wages paid to child workers.
- Apart from a footnote 38 no detailed observations on young children working as contractors and the specific exposures to exploitation that might encompass.
- No detailed ACC statistics as to accidents and injuries suffered by child workers
- No mention of child prostitution

O'Neil identified gaps in data availability, research, and priority research activities. To date, the government has not responded to ACYA's comments on the draft report. No report has been provided by the Department of Labour on their response to the O'Neil report.

### **No Minimum Age for Employment of Children**

In 1997 and 2003 the Committee on the Rights of the Child requested the Government to withdraw the Reservation to Article 32.2 that requires a minimum age for work. The latest Government report to the UN Committee in November 2008 maintained there was no reason to change its stance. As noted above, there is evidence of paid workers as young as 6 years and, by age 13, a substantial number of children are in paid work.

The New Zealand Government is yet to sign ILO Convention 138, Minimum Age Convention 1973 which establishes minimum age criteria for admission into employment. We note 155 countries have ratified ILO 138. We set out below some of the relevant clauses of ILO 138:

*Article 2 clause 3.*

*The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.*

#### Article 3

*1. The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.*

*2. The types of employment or work to which paragraph 1 of this Article applies shall be determined by national laws or regulations or by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist.*

*3. Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.*

#### Article 7

*1. National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is--*

*(a) not likely to be harmful to their health or development; and*

*(b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.*

#### **No Minimum Wage for under 16s**

There is no minimum wage for children under 16 years of age. The O'Neill report confirms that there is evidence of wages around \$2 an hour. The Government is opposed to establishing a minimum wage for persons aged under 16 and, accordingly, its response has been to indicate that setting a minimum wage would be prejudicial to schooling. However, we consider this response to be wholly inadequate. ACYA notes that employment during school hours for school-age children is already prohibited by section 30 of the Education Act 1989. In addition, 15 year olds can apply to the Ministry of Education for exemptions from school if they are having problems at school and yet are not protected by minimum wage legislation.

The New Zealand Council of Trade Unions supports a minimum wage for workers under 16 years of age.

Section 30 of the Human Rights Act 1993 does not prohibit discrimination on the basis of age against persons aged under 16 years in matters of employment.

#### **Department of Labour – My First Job website**

The Department of Labour took the initiative to improve children's understanding of their employment rights by creating a specific website under this title in June 2010. The website is easy to read, well presented and should prove beneficial.

ACYA raised the following issues with the Department in relation to the content of the website:

1. Children under 16 years may not work after 10pm and before 6am, unless there is an "approved code of practice". At the moment there are no such codes. The website does not state that or make provision for listing them if approved.

2. Some children work under contract (for example paper deliveries) and ,while they are protected by Health and Safety regulations, there is no guidance to such children or their parents on the implications of such arrangements. We believe the website should provide information on this issue.

3. More information on the use of ATV and driving tractors is required, specifically regarding what is permitted, what training needs to be done and some guide notes provided to employers and parents.

### **ILO 182**

The Government completed an Article 22 report for the period 1 July 2007 to 31 May 2009. The ILO Committee of Experts is yet to make known its observations.

The Government Report made reference to the following matters:

- Increased penalties under the Education (National Standards) Amendment Act for non enrolment of compulsory school age children
- National Plan of Action to Prevent Trafficking in Persons
- Electronic monitoring database ENROL to identify those not in school
- Prostitution Law Reform Act with two examples of police raids
- Noted that Child Employment Work Plan was in abeyance on the grounds of its preparation of its report to Committee on the Rights of the Child
- Noted the “Youth Guarantee” free training opportunities
- Gave examples of criminal charges under the Film, video Publication Classification Act for 2003/8
- In respect of Health and Safety issues gave three court cases of prosecution for harming young workers
- Listed prosecutions for offences under the Prostitution Reform Act for those involved in under age 18 offences
- Noted previous requests from committee of Experts for hazardous work protection for those between 16-18 years
- Noted the National Plan of Action against sexual exploitation of children

The Report also included two other documents:

- a) The Government’s response to the NZ Council of Trade Union submission concerning:
  - i) 17 year olds in the armed forces
  - ii) Article 7 of ILO 182 in respect of the protection of children at risk of prostitution
- b) The Government’s response to Business New Zealand’s submission which argued that youth unemployment is aggravated by the “new entrants rates” established by the Minimum Wage (New Entrants) Amendment Act 2007.

### **ITUC Report 2009 - Internationally Recognised Core Labour Standards in New Zealand**

The International Trade Union Confederation (ITUC) issued the above-named report on New Zealand for the WTO General Council review of the trade policies of New Zealand, held in Geneva on 10 and 12 June 2009. The ITUC report omitted the absence of a minimum wage for those under 16 years, but was otherwise comprehensive. The conclusion of the report’s section on child labour notes:

*“There is little data about the extent of child labour in New Zealand. There is concern about possible exploitation of children employed on contracts of service through low wages and on health and safety issues”*

Recommendation 5 of the report states:

*The Government should monitor compliance with new health and Safety in employment Regulations which cover children and other young people as contractors as well as employees, with a view too stronger enforcement of their provisions. The Government should also collect more detailed information about young workers, including the numbers, age and hours worked by young workers in particular sectors.*

## **Health and Safety in Employment Issues**

### *Age application of HSE limited to under 16 year olds*

The protections for young workers under the Health and Safety in Employment Regulations 1995 only apply to those under 16 years. It is therefore not consistent with the coverage of the special protection measures of the UN Convention on the Rights of the Child. There has been an indication the Department of Labour is considering raising the age limit to include 16 year olds.

### *Working Periods*

Recent changes in legislation have provided for meal breaks. There is no legislative protection for children regarding the number of hours worked in any one day, or any week either during school periods or otherwise.

### *Tractors*

The use of tractors is not permitted for those under 16 years. The exception is that, under clause 61 of the Regulations, 12 year-old “contractors” are permitted to use tractors, , provided there is proper training. ACYA asked the Department of Labour what constitutes “training” for this purpose. The Department replied *“The research suggests that families would take an active role in providing training to ensure the safety of family members”*.

We consider that this is an unsatisfactory answer, as it does not indicate any minimum standard of training and makes the unrealistic assumption that all families understand the risks, observe sound practices and adequately train their children. The other key concern is that any child working as a “contractor” would presumably be outside family supervision. This raises another legal issue in that the Summary Offences Act requires that children aged under the age of 14 are not to be left unsupervised. ACYA accordingly has inquired of the Department as to the reason the age was set at 12 years, and why in the role of contractors and not employees, but no satisfactory answer has been provided.

### *ATVs & quad bikes*

Although not necessarily directly related to paid employment, the use of All Terrain Vehicles (ATVs) or quad bikes by those under 16 years has lead to fatalities and is considered by many as an unsafe activity. A University of Otago research project (Lovelock and Cryer) has noted the operation of quad-bikes in New Zealand by children aged between 5 and 15 years and use by children aged under 5 as passengers. Safekids New Zealand, the national child injury prevention service, in noted their strong opposition to under 16 year olds riding quad bikes in their submission of February 2010 to a Department of Labour inquiry into the issue.

## **Prostitution and Pornography**

This topic is dealt with under a the ACYA Working Paper “Preventing Sexual Exploitation of Children”.

## **Child Soldiers**

The Government has refused to lift the entry age in to the Armed Forces to 17 years.

## **Conclusions**

The Government has failed to meet the recommendation of the UN Committee on the Rights of the Child to remove its Reservation to Article 32.2 of the United Nations Convention on the Rights of the Child or ratify ILO 138. Furthermore, the Government does not provide adequate measures to prevent the exploitation of young workers, both through its failure to provide a minimum wage for workers aged under 16, and its failure to actively monitor the adequacy of protective measures for children in employment.

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## **REFERENCES**

The Government 3<sup>rd</sup> and 4<sup>th</sup> Periodic Report to the Committee on the Rights of the child is accessed at: <http://www.myd.govt.nz/working-with-young-people/uncroc/uncroc-in-nz-3rd-and-4th-periodic-report-full.pdf> accessed 20 July 2010

Ministry of Youth Development UNCROC Work Programme in relation to child labour: items 6 & 14  
<http://www.myd.govt.nz/working-with-young-people/uncroc/>

Department of Labour My first Job website  
<http://dol.govt.nz/infozone/myfirstjob/> accessed 20 July 2010

Safekids- Starship Hospital  
Safety on ATVs & Quad bikes  
<http://www.safekids.org.nz/index.php/page/ATV> accessed 20 July 2010

February 2010 submission on ATVs for Department of Labour  
[http://www.safekids.org.nz/Downloads/Submissions/Safekids%20ATV%20Consultation%20letter%20Feb%202010%20 Final.pdf](http://www.safekids.org.nz/Downloads/Submissions/Safekids%20ATV%20Consultation%20letter%20Feb%202010%20Final.pdf) accessed 20 July 2010

Lovelock K & Cryer C. Effective Occupational health Interventions in Agriculture February 2009  
<http://www.otago.ac.nz/ipru/ReportsPDFs/OR72.pdf> accessed 20 July 2010

ILO 138  
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138> accessed 20 July 2010

#### **PAPERS PROVIDED TO ACYA**

Cabinet Policy committee POL (08) 130 dated 13 June 2008  
Office of Minister of Labour to Cabinet Policy Committee ILO 138, undated 3 pages  
Department of Labour 08/75465 dated 7 April 2008 Children's Employment work programme  
Department of Labour 07/73168 dated 18 December 2007 Ratification of ILO 138  
Cabinet Social Development committee SDC (04) 101  
Cabinet Social Development committee SDC (04) 101 Children's Employment Issues  
Cabinet Social Development Committee SDC Min (03) 21/5  
Cabinet Social Development Committee SDC (03) 131

### **APPENDIX 1**

#### **Article 32**

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

## APPENDIX 2

Extract from ACYA submission to Committee on the Rights of the Child  
*Children and Youth in Aotearoa 2010.*

### Article 32.2 – Minimum Age for Children in Employment

- 1.5 New Zealand's Reservation on Article 32.2 of the Convention has not been withdrawn.
- 1.6 No substantive progress has been made towards removing this Reservation since the UN Committee issued its 2003 report on New Zealand. The Government has stated that it has examined the issue and has assessed its position regarding ratification of ILO Convention 138, but there is no evidence to suggest that there is any likelihood of either ratification of ILO 138 or any legislative initiative that would lead to removal of the Reservation on Article 32.2.
- 1.7. Please also see Paragraphs 8.29 - 8.34 about child employment.

### **Article 32 – Child Employment**

8.29 There has been some progress in providing a limited degree of minimum wage equality for 16 and 17 year old workers, specifically those who have, since turning 16, been in employment for 200 hours or more, or who train other workers,<sup>i</sup> and extending workplace health and safety protections for child contractors. However, there is still no minimum wage protection for employees aged under 16 and it is unlikely that this will change in the foreseeable future.

8.30 In 2009 the Employment Relations Act was amended to allow employers to terminate without notice new employees subject to a 90 day trial period, without the employee having any recourse to remedial action where the termination was unjustified.<sup>ii</sup> Despite concerns that this would allow for the exploitation of vulnerable, low-wage workers,<sup>iii</sup> the amendment was promoted by the Government as providing employers with a greater incentive to hire young workers.<sup>iv</sup> However there is little evidence that this is the case as youth unemployment figures for 15 to 24 year olds rose steadily during 2009 peaking at 18 percent for the December 2009 quarter and then falling to 17 percent for the March 2010 quarter. The unemployment rate for 15 to 19 year olds was 25 percent in the March 2010 quarter, a significant increase from 19 percent in the March 2009 quarter.<sup>v</sup>

8.31 Some progress has been made on issues affecting the working conditions for children, and publication of appropriate information. However there is no evidence of any systematic, substantive Department of Labour monitoring of compliance with Health and Safety Regulations in respect of children in the workforce. ACYA is supportive of the Department of Labour initiative to collate information to assist young workers know about their rights in the new website, "My First Job".<sup>vi</sup>

8.32 Section 30 of the Education Act 1989 prohibits work that interferes with school. Health and Safety Regulations provide minimum standards for young workers in some circumstances, including restrictions on workers aged under 15 to work with machinery, tractors and mobile mechanical equipment and perform potentially injurious tasks.<sup>vii</sup> The Regulations also prohibit night employment (defined as between the hours of 10pm and 6am) for workers aged under 16.<sup>viii</sup> Accordingly, these protections are not accorded to all workers aged under 18. They have however, been extended to protect children and young people who are contractors as well as employees. Please refer to Paragraphs 1.5 – 1.7.

8.33 However, other than the restrictions on night employment, the Health and Safety in Employment Regulations do not provide any limitations on the amount of hours that a child or young person may be required to work in an employment agreement or a contract for services. An Approved Code of Practice for children in the entertainment industry is yet to be agreed.

8.34 The Government has issued its report on compliance with the ILO 182 Worst Forms of Child Labour Convention for the period July 2007 to May 2009.

### Reservations

1. The Government take action to withdraw its general reservation to the Convention and its reservations to Articles 32.2 and 37(c), including:
  - (a) Cabinet commitment to withdraw the reservations; and
  - (b) Formulation of a timetable to achieve withdrawal of the reservations without delay

#### Child employment

##### 39 The Government:

- (a) Act to ensure that child employees and contractors are protected by a codified child employment policy which includes minimum wage protections and workplace conditions; and
- (b) Ratify ILO Minimum Age Convention No.138.

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<sup>i</sup> Minimum Wage (New Entrants) Amendment Act 2007.

<sup>ii</sup> Employment Relations Act 2000, ss67A, 67B

<sup>iii</sup> [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10547238](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10547238) Accessed 25 June 2010.

<sup>iv</sup> <http://www.beehive.govt.nz/release/90-day+trial+period+provide+job+opportunities> Accessed 25 June 2010.

<sup>v</sup> <http://www.dol.govt.nz/lmr/lmr-HLFS.asp> Accessed 25 June 2010.

<sup>vi</sup> <http://www.dol.govt.nz/infozone/myfirstjob/> Accessed 26 June 2010.

<sup>vii</sup> Health and Safety in Employment Regulations, 2008 cl 54-57.

<sup>viii</sup> Ibid cl 58.