



U.S. DEPARTMENT OF LABOR
BUREAU OF INTERNATIONAL LABOR AFFAIRS

**LAWS GOVERNING EXPLOITATIVE CHILD
LABOR REPORT**

AUSTRALIA

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TABLE OF CONTENTS

INTRODUCTION..... 3

EXPLOITATIVE CHILD LABOR..... 3

CHILD LABOR LAWS AND ENFORCEMENT 4

Introduction

This report on the laws of Australia governing exploitative child labor has been prepared pursuant to section 2102(c)(9) of the Trade Act of 2002 (“Trade Act”) (Pub. L. No. 107-210). Section 2102(c)(9) provides that the President shall:

with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor.

The President, by Executive Order 13277 (67 Fed. Reg. 70305), assigned his responsibilities under section 2102(c)(9) of the Trade Act to the Secretary of Labor, and provided that they be carried out in consultation with the Secretary of State and the United States Trade Representative. The Secretary of Labor subsequently provided that such responsibilities would be carried out by the Secretary of State, the United States Trade Representative and the Secretary of Labor. (67 Fed. Reg. 77812). For information on the incidence and nature of child labor in Australia and government efforts to eliminate the worst forms of child labor, please see the U.S. Department of Labor's "Australia: Labor Rights Report."

Exploitative Child Labor

There is no universally accepted definition of the term "exploitative child labor." Under article 2(3) of the International Labor Organization (ILO) Convention 138, Minimum Age for Admission to Employment, the minimum age of admission into employment or work in any occupation “shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15.” Countries whose economy and educational facilities are insufficiently developed may initially specify a minimum legal working age of 14 when ratifying the convention. Additionally, under 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.” Countries that have specified a minimum legal working age of 14 may permit the employment or work of persons 12 to 14 years of age on light work as defined in article 7(1). Examples of such light work may include work in a family business, on a family farm, after school, or in legitimate apprenticeship opportunities that is not hazardous and that does not affect a child's attendance at school.

While there is no universal definition for exploitative child labor, the ILO has defined the “worst forms” of child labor in ILO Convention 182, Worst Forms of Child Labor. Under article 3 of ILO Convention 182, “the term the worst forms of child labour comprises”

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

According to Convention 182, the types of work referred to under article 3(d) “shall be determined by national laws or regulations or by the competent authority....” Article 2 of the convention states that “the term *child* shall apply to all persons under the age of 18.”¹

This report relies on information obtained from the Department of State, the U.S. Embassy in Australia, and other U.S. Government reports. It also relies on a wide variety of reports and materials originating from Australia, international organizations, and non-governmental organizations (NGOs), as well as consultations held by Department of Labor officials with Australian government officials, representatives of worker and employment organizations, and NGOs pursuant to section 2102(c)(7) of the Trade Act.² The report also makes use of information submitted in response to a Department request for public comment published in the *Federal Register*.³

Child Labor Laws and Enforcement

While there is no federal legislation in Australia setting a minimum age for employment,⁴ states and territories regulate the employment of children through laws setting minimum ages for leaving compulsory education, claiming unemployment benefits, and entering

¹ International Labor Organization, *C182 Worst Forms of Child Labour Convention, 1999*, Articles 2, 3 and 4; available from: <http://www.ilo.org/ilolex/english/newratframeE.htm>. ILO Recommendation 190 on the worst forms of child labor provides certain guidelines that countries should consider in determining what constitutes a worst form of child labor under Article 3(d). See International Labor Organization, *R190 Worst Forms of Child Labour Recommendation, 1999*; available from: <http://www.ilo.org/ilolex/english/newratframeE.htm>.

² The consultations were held in Canberra and Melbourne on March 18-20, 2003.

³ Request for Information Concerning Labor Rights in Australia and Its Laws Governing the Worst Forms of Child Labor, *Federal Register*, 68, no. 138 (July 18, 2003), 42783. Comments from the Government of Australia and the AFL-CIO were received in response to this notice.

⁴ U.S. Department of State, *Country Reports on Human Rights Practices – 2003: Australia*, Washington, D.C., February 25, 2004, section 6d, available from <http://www.state.gov/g/drl/rls/hrrpt/2003/27763.htm>.

into certain occupations.⁵ Additionally, many certified collective bargaining agreements and awards by the Australian Industrial Relations Commission (AIRC) and State Industrial Relations Commissions (IRC) regulate various aspects of the employment of children and young people. State laws place responsibilities on employers regarding occupational health and safety for young people.⁶ In 2001 and 2003, laws enacted in the States of Victoria and New South Wales strengthened protections for children in the workplace, and Victoria increased fines for child labor abuses.⁷

There are no federal laws explicitly prohibiting forced or bonded labor.⁸ However, conditions amounting to slavery carry a penalty of up to 25 years imprisonment under the Criminal Code Amendment (Slavery and Sexual Servitude) Act of 1999.⁹ Under this Act, forcing or intending to force a child under 18 years to provide sexual services or having knowledge of such activity warrants a penalty of 19 years imprisonment.¹⁰ The Crimes (Child Sex Tourism) Amendment Act of 1994 provides for a penalty of 17 years imprisonment for Australians who travel abroad for the purpose of sexual exploitation of a child under 16 years.¹¹ The Migration Act punishes smuggling of human beings, including trafficking in persons, with up to 20 years imprisonment.¹² Sexual servitude, slavery, people smuggling, and child sex tourism offenses have been included as serious

⁵ UN Committee on the Rights of the Child, *Initial Reports of States Parties due in 1993*, CRC/C/8/Add.31, prepared by the Government of Australia, pursuant to Article 44 of the Convention on the Rights of the Child, Geneva, January 2, 1996, para. 132. See also U.S. Department of State, *Country Reports – 2003: Australia*, section 6d. Specific laws regulating the employment of children under the age of 15 years include the Australian Capital Territory *Children’s Services Act of 1986*; the New South Wales *Children (Care and Protection) Act of 1987*; the Northern Territory *Education Act of 1979*, and the *Community Welfare Act*; the Queensland *Education Act of 1989*, and the *Children’s Services Act of 1965*; the Tasmania *Child Welfare Act of 1960*; the Victoria *Community Services Act of 1970*; and the Western Australia *Child Welfare Act of 1947*. See UN Committee on the Rights of the Child, *Initial Reports*, paras. 1698, 1699, 1702, 1704-6, 1710-12, and 1716.

⁶ Department of Employment and Workplace Relations, *Wagenet: Young Workers*, [online] [cited February 25, 2004]; available from <http://www.wagenet.gov.au/WageNet/templates/PageMaker.asp?category=FactSheets&file Name=/Wagenet/FactSheets/DataFiles/Employees/YoungWorkers.html#1>. Awards by the AIRC and IRC are akin to broad arbitral findings that regulate wages, hours, and working conditions regionally, by sector, or at the enterprise level. Awards and certified agreements are legally enforceable instruments.

⁷ U.S. Department of State, *Country Reports – 2003: Australia*, section 6d. See also *Country Reports on Human Rights Practices – 2002: Australia*, Washington, D.C., March 31, 2003, section 6d, available from <http://www.state.gov/g/drl/rls/hrrpt/2002/18235.htm>.

⁸ U.S. Department of State, *Country Reports – 2003: Australia*, section 6c.

⁹ *Ibid.*, section 6f.

¹⁰ Section 270.6(2)(b) calls for such penalty for a person “who knows about, or is reckless as to, that sexual servitude.” See Government of Australia, *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999*, No. 104, 1999, as cited in The Protection Project Legal Library, [database online], sections 270.6 and 270.8; available from <http://209.190.246.239/protectionproject/StatutesPDF/Australialaw.pdf>.

¹¹ *Crimes (Child Sex Tourism) Amendment Act 1994*, as cited in The Protection Project Legal Library, [database online], Division 2, Article 50BA ; available from <http://209.190.246.239/protectionproject/StatutesPDF/Australialaw.pdf>.

¹² U.S. Department of State, *Country Reports – 2003: Australia*, section 6f.

offenses in the Proceeds of Crime Act of 2002, which allows for the forfeiture of assets of the guilty party.¹³

State and territory-level agencies overseeing education monitor and enforce compulsory education laws.¹⁴ The federal Department of Family and Community Services plays a consultative role in monitoring children's rights in Australia.¹⁵ The Australian Broadcasting Authority investigates complaints of Internet-based child pornography.¹⁶ Specialized task forces have been set up at the state level to be used in criminal prosecutions involving child victims.¹⁷ The Department of Immigration and Multicultural Affairs and the Australian Federal Police have jurisdiction in trafficking matters.¹⁸ Enforcement of legislation concerning education and employments rests mainly with individual states and territories.¹⁹

The Government of Australia has not ratified ILO Convention 182 on the Worst Forms of Child Labor or ILO Convention 138 on the Minimum Age for Admission to Employment.²⁰ On October 8, 2003, the Government of Australia tabled ILO Convention 182 and an accompanying National Interest Analysis at a meeting of an Australian parliamentary committee, signaling an intent to ratify. However, the Analysis statement recommended the postponement of ratification until all state and territory laws complied with the treaty's obligations.²¹ Four states were in the process of amending legislation to come into compliance with the obligations of Convention 182.²²

¹³ Rex Hoy, Group Manager, Workplace Relations Policy Group, Australia, letter to USDOL official, November 27, 2003. See also *Proceeds of Crime Act 2002*, No. 85, 2002, section 338; available from <http://vigilant.tv/documents/proceeds-of-crime-2002.pdf>.

¹⁴ UN Committee on the Rights of the Child, *Initial Reports*, paras. 1178-1232.

¹⁵ Department of Family and Community Services, *Tomorrow's Children: Australia's National Plan of Action Against the Commercial Sexual Exploitation of Children*, Canberra, 2000, 27.

¹⁶ ECPAT International, *Australia*.

¹⁷ *Ibid.*

¹⁸ Rebecca Tailby, "Organised Crime and People Smuggling/Trafficking to Australia," in *trends & issues in crime and criminal justice*, No. 208, Australian Institute of Criminology, Canberra, May 2001, 3; available from <http://www.aic.gov.au/publications/tandi/ti208.pdf>.

¹⁹ Department of Family and Community Services, *Tomorrow's Children*, 2000, 7. See also, U.S. Department of State, *Country Reports – 2003: Australia*, section 6d.

²⁰ ILO, *Ratifications by Country*, in ILOLEX [database online] [cited December 3, 2003]; available from <http://www.ilo.org/ilolex/english/newratframeE.htm>.

²¹ U.S. Embassy-Canberra, *unclassified telegram no. 2345*, November 3, 2003. See also Hoy, letter to USDOL official, November 27, 2003.

²² Australian Capital Territory, one of the four non-complying jurisdictions, tabled amended legislation on May 14, 2004. See Labor Officer, U.S. Embassy-Canberra, email communication to USDOL official, May 20, 2004.