



Children, Work and Other Rights

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Introduction

The employment of children in Queensland is governed by the *Child Employment Act 2006* (Qld) (Child Employment Act) and the *Child Employment Regulation 2006* (Qld) (Child Employment Regulation). The laws are complemented by the *Children and Young Workers Code of Practice 2006*, which outlines the special characteristics of young workers and the standards to which their health and safety in the workplace must be managed by the employer.

The purpose of the Child Employment Act is to safeguard children working in Queensland. This is achieved by ensuring that work does not interfere with a child's schooling and preventing children from performing work that may be harmful to their health or safety, or physical, mental, moral or social development.

Other rights and responsibilities of children, such as when entering into a contract or when deciding the degree of liability in negligence actions, are also considered in this chapter.

Legislation Relevant to Children and Young Workers

Children and young workers' employment will be governed by a number of legislative instruments:

- Child Employment Act
- *Fair Work Act 2009* (Cth) (Fair Work Act)
- *Industrial Relations Act 1999* (Qld) (Industrial Relations Act)
- *Further Education and Training Act 2014* (Qld) (FET Act)
- *Education (Work Experience) Act 1996* (Qld) (Work Experience Act)
- *Workers' Compensation and Rehabilitation Act 2003* (Qld) (WCR Act).

Part 2 of the Child Employment Regulation places restrictions on the age a child can work, the type of work a child can engage in, the number of hours that a child can work when they are attending school, and sets out requirements for parental consent.

The restrictions relating to age and hours of work do not apply where the child is employed in their family's business or in the entertainment industry. There are separate regulations covering children in the entertainment industry that deliberately exclude some of the general restrictions (e.g. minimum age and hours). Separate provisions for working hours have been created, and there are greater supervisory conditions.

The general child employment laws provide that the maximum allowable hours of work for school-aged children are:

- on a school day 4 hours
- on a non-school day 8 hours
- during a school week a total of 12 hours
- during a non-school week a total of 38 hours.

Children aged between 11 and 13 years are only able to perform delivery work or voluntary work, and not between 6 pm and 6 am, while all children under the age of 16 are not allowed to work between 10 pm and 6 am (reg 5(7) Child Employment Regulation).

A child can apply for a special circumstances certificate to the chief executive of the Department of Justice and Attorney-General to be exempted from certain restrictions (s 12 Child Employment Act).

These laws do not regulate work carried out as part of work experience, vocational placements, apprenticeships, traineeships and charitable collections, all of which are covered by other legislation.

A parent commits an offence if they employ or permit their child to be employed during school hours unless the parent has a reasonable excuse (s 230 *Education (General Provisions) Act 2006* (Qld)).

For many jobs, the relevant award or industrial agreement also has special provisions for young people.

Like all employees, children are protected from sexual harassment, discrimination and bullying in the workplace (see the chapter on *Employment* and on *Discrimination and Human Rights*).

Work Experience, Apprenticeships and Traineeships

The Work Experience Act permits participation in work experience for children who are students and at least 14 years of age (see definition of student in sch 1 of the Work Experience Act). The child must be enrolled in an educational establishment with written consent from a parent or guardian (s 12 Work Experience Act). The arrangement must be in writing and must not be entered into unless the responsible body holds suitable insurance for workers' compensation (ss 6, 8 Work Experience Act). The work experience must not be arranged until the child's educational establishment has suitable insurance indemnifying the child and the work experience provider against liability for personal injury or property damage suffered by the student, the work experience provider or another person arising out of the work experience (s 9 Work Experience Act).

Apprenticeships and traineeships can be complex employment relationships. The formalities of entering into a valid apprenticeship or traineeship are found in the FET Act.

Apprentices and trainees are employees and consequently they can access workers' compensation, if they are injured, and the protections found within the Fair Work Act.

Employers must provide adequate training for apprentices and trainees including the provision of proper facilities, a range of work and appropriate supervision.

An application to cancel an apprenticeship can be made by agreement of all parties, at the behest of the apprentice or at the employer's initiation. Where the employer initiates the cancellation outside the apprentice or trainee's probationary period, a show cause process must be undertaken. Details of how to cancel an apprenticeship or traineeship are found in pt 2 div 6 of the FET Act.

Further practical information about the rights and obligations of apprentices and trainees (including how to make a complaint or appeal a decision) can be found at the Queensland Department of Education and Training website.

Youth Employment Enterprise Agreements and Awards

The employment terms and conditions of a young worker will in most cases be governed by an enterprise agreement or an award. The agreement or award should be given to the young worker at the time they are employed, and they should have their working arrangements explained to them. Most large corporate employers, like McDonalds or Coles, will employ workers under an agreement while most small businesses will employ workers in accordance with an award. Awards and agreements can be found via the Fair Work Commission website.

Working in Queensland

Some young workers may also be employed in accordance with the Queensland Industrial Relations system. These are workers who are employed by the state government. State government working arrangements are found within the Industrial Relations Act and the *Public Service Act 2008* (Qld), and information about certified agreements and awards can be found on the Queensland Industrial Relations Commission website.

Casual work

Most young workers, who are not apprentices or trainees, will find themselves in precarious casual employment. Being a casual employee means there is no obligation on the employer to call on the worker to attend the workplace on a regular or ongoing basis. A casual worker's employment begins at the start of the shift and ends when it is completed, and their shifts are generally subject to minimum shift lengths mandated by the agreement or the award.

Long-term or regular and systematically employed casual workers may have access to the unfair dismissal remedies in either the state or federal jurisdictions.

Youth Allowance

Youth Allowance is paid in certain circumstances to young people who are studying full time, undertaking a full-time Australian apprenticeship or traineeship, are looking for work or are sick. Whether or not a young person is eligible for Youth Allowance can be found on the Department of Human Services website.

Generally, a young person is considered a dependant until they are 22 years of age after which they can access Youth Allowance up to 25 years of age. If a person turns 25 while finishing an apprenticeship or course, they will continue to receive Youth Allowance.

There is a variety of information that will assist a young person to establish that they are independent by showing that they have been engaged in a certain amount of employment or that it is unreasonable for them to be living at home (e.g. because of an extreme family breakdown or because it poses a serious risk to their health and wellbeing).

There is a youth disability supplement payable to a Youth Allowance recipient who is under 22 years and has established that they only have partial capacity to work due to illness.

A young person under 18 who has not completed Year 12 will usually have to participate in full-time education or training to qualify for Youth Allowance, but it is possible to seek an exemption in some circumstances.

If a young person is under 16, a full-time student and not living with a parent or guardian, they may be able to access a special benefit subject to satisfying Centrelink's eligibility criteria.

Children and Contracts

There is no law prohibiting children from entering into contracts. Children enter into contracts every day when they purchase goods. Generally, however, a contract entered into by a child cannot be enforced against that child. It is for this reason that some businesses (e.g. banks, finance companies and mobile phone companies) have policies not to enter into contracts with children. Although such a policy might appear to discriminate against children on the basis of their age, the *Anti-Discrimination Act 1991* (Qld) (Anti-discrimination Act) allows such discrimination.

Exceptions to this rule that contracts cannot be enforced against children include:

- contracts for necessities. A child is obliged to pay for necessities that are supplied under a contract. Necessities are not confined to articles necessary for basic existence, but include goods and services needed to maintain the lifestyle of the child. To receive payment, a supplier must also prove that the goods were consistent with the child's needs at the time of delivery
- beneficial contracts of service. These contracts (e.g. contracts for apprenticeships) will only be enforceable if a court considers that the terms of the contract are more beneficial than onerous
- contracts for food, clothing, lodging, medical attention and legal advice. These have been held by courts to be necessary.

Expensive clothing has been held not to be necessary when the child already had an adequate wardrobe (see *Nash v Inman* [1908] 2 KB 1). A contract for necessities will not be enforced against a child if it contains harsh or particularly onerous terms. When substantial sums of money are involved, suppliers will usually require an adult to guarantee the child's performance of the contract for necessities. The adult (guarantor) then becomes personally liable if the child fails to perform the contract (see the chapter on *Consumers and Contracts*).

Liability of Children and Parents

Children's liability

Whether or not a child is liable for the consequences of their wrongful acts depends on the degree of reasonable care required of them. This in turn depends upon the standard of care normally expected of a child of that age.

The defence of infancy may be used by a very young child in a negligence action. A young child may be aware of what they are doing and may know that the action is wrong, but still be incapable of foreseeing the consequences. In such a case, there would be no liability in negligence (see the case of *McHale v Watson* (1964) 111 CLR 384). The capacity of a child is a question of fact to be considered and decided in each case. Obviously, the closer a child is to the age of maturity, the more the standard

of care resembles that required of an adult. Where a child engages in an adult activity, such as driving a car or handling a gun, they are expected to conform to a standard of care applicable to an adult. A child is also judged by a standard appropriate to their age where the child's contributory negligence is being considered in reducing their own claim for damages.

Parents' liability

Normally, parents are not liable for torts (civil wrongs) committed by their children. Liability will usually only arise if the child who commits the wrong was acting as the parent's agent or with their authority, or when it is found that a parent has not exercised proper control or supervision over a child who has committed a tort. Naturally, the circumstances will differ in each case.

Parents who know their child to have uncontrollable tendencies have a much stricter duty to control them.

Children and Civil Court Proceedings

Special procedures must be followed to bring an action in a court against a child or on a child's behalf.

Child as plaintiff

A person under 18 cannot sue another person without a litigation guardian. A litigation guardian is an adult whose name appears on the court documents and who is liable to pay the court costs if they are ordered to be paid by the young person. Usually, the parent of the young person acts as the litigation guardian. Time limits relating to claims that a child may have generally commence when that child turns 18. However, this time limit is shorter in some actions involving personal injuries (see the chapter on *Accidents and Injury*).

Child as defendant

An action against a child need not describe the defendant as a child. Service of the proceedings is normally effected on the parent(s) or guardian of the child. If the child has no parent or guardian, then the proceedings will normally be served on the person with whom the child resides or on the person who cares for the child (r 108 *Uniform Civil Procedure Rules 1999* (Qld) (UCP Rules)). However, the court may order that service on the child is good service. A child, when appearing or defending an action, does so by a litigation guardian (an adult who has consented to act as such). The litigation guardian is not personally liable for costs unless guilty of some misconduct. If a child has been served with court proceedings and has not entered an appearance or a defence within the relevant time, the plaintiff cannot continue to pursue their action without the court making an order that some proper person be appointed as litigation guardian (r 96 UCP Rules).

Proceeds of successful claims

A claim made by or on behalf of a child cannot be validly settled out of court unless the settlement is sanctioned by the Supreme Court or, in the appropriate case, the District Court, Magistrates Court or the Public Trustee. This applies whether an action has been commenced or not (r 98 UCP Rules).

Where an amount has been awarded to a child by a court, the money must be paid into court unless the court orders otherwise. However, application can be made to the court for payments to be made which the court considers are in the interests of the child. In the same way, the Public Trustee has power to discharge or reimburse any expenses reasonably incurred by or on behalf of the child (s 59 *Public Trustee Act 1978* (Qld)).

Tribunal proceedings

Unlike courts, most tribunals do not require children to be represented by a litigation guardian. Children who have the capacity to act for themselves or to instruct a lawyer directly may usually do so in a tribunal. Many tribunals also allow parents or guardians to bring actions on behalf of children who are too young to bring an action themselves. A tribunal must not award costs against a child but may make an order for costs against the child's representative in certain circumstances (ss 101, 103 *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act)). There are also specific provisions for dealing with children as special witnesses (s 99 QCAT Act).

Evidence in court

The way in which children may give evidence in court differs depending on a range of factors, such as their age and the nature of the case. Children may give evidence on oath if they can understand the nature and consequence of the oath. If the child does not understand the oath, unsworn evidence may be given if the child understands the importance of telling the truth.

A court may hear expert evidence as to the level of intelligence of a child under 12 years before determining whether to admit the child's evidence under s 9C of the *Evidence Act 1977* (Qld) (Evidence Act). The Evidence Act provides protection for those deemed to be special witnesses (which includes children under 16 years) and children who are complainants or witnesses in criminal or civil proceedings (including sexual assault cases). These protections, which include the way a child gives evidence (e.g. prerecorded statements or from behind screens), are designed to assist children to give evidence which may otherwise be too traumatic for them to give in the usual way (s 93A Evidence Act).

Support workers are also available to explain to children the nature of the court process, which will often be extremely foreign and intimidating to a child, and they can be available to be present when the child does give evidence (s 21AV Evidence Act).

Children and Drinking

It is an offence to sell or otherwise supply liquor to any person under the age of 18 years (ss 155A, 156 *Liquor Act 1992* (Qld) (Liquor Act)). It is an offence for any person under the age of 18 to be found consuming or in possession of liquor, or being on any licensed premises (s 157 Liquor Act). It can be an offence for anyone to drink alcohol in a public place and, if a child, to be in possession of alcohol in a public place (s 157(2) Liquor Act). There are exceptions, and the exempt minor definitions in the Liquor Act need to be carefully considered. For example, a person under the age of 18 should not be on licensed premises, however, certain exemptions can apply to this prohibition, such as that the person is eating a meal or is accompanied by a responsible adult (s 155(4) Liquor Act).

Exemptions also apply to minors who are residents at the licensed premises, who are attending a function on the premises or to an employee of the licensee who is on the licensed premises in the course of employment (s 155(4) Liquor Act).

A person under 18 should not be in an area of a licensed premises where adult entertainment (i.e. an act of explicit sexual nature (s 103N Liquor Act)) is provided (s 155AA(2) Liquor Act).

It is an offence for a person under 18 to falsely represent that they are over 18 for the purposes of gaining entry to a licensed premises, to obtain liquor or to get a proof of age document (s 158 Liquor Act). A person under 18 can be charged with being drunk and disorderly in a public place (s 10 *Summary Offences Act 2005* (Qld) (Summary Offences Act)).

Drinking at home

There is no law that makes it an offence for a person under 18 to drink alcohol in a private home, but it is an offence if the supply is not consistent with the responsible supervision of the minor. To determine if the supply is consistent with the responsible supervision of the minor, a number of factors are considered including whether the adult or the minor are unduly intoxicated, the age of the minor, whether the minor is consuming the liquor with food, the quantity of the liquor supplied, over what period it is supplied and whether the adult is responsibly supervising the consumption by the minor (s 156A Liquor Act).

Children and Driving

Young driver laws

There are special rules for people aged under 25. These people are classed as young drivers. It has been specifically declared that it is not unlawful to discriminate on the basis of age and that the Anti-discrimination Act does not apply to these rules for young drivers.

The young driver laws are found in pt 4 of the Transport Operations (*Road Use Management—Driver Licensing*) Regulation 2010 (Qld) (TORUM Regulation) and deal with:

- testing and licensing of young drivers
- fulfilling the mandatory 100 hours of practice prior to going for a provisional licence
- prohibiting the use of hands-free mobile phone devices
- prohibiting young drivers from driving high-powered vehicles
- restricting the number of passengers under the age of 21 years they can carry late at night.

Learner licence

The age of eligibility for a learner licence is 16 years (reg 8 TORUM Regulation). Each phase of the licensing process has age requirements and time frames attached to it along with conditions for moving from one phase to the next, leading to an open licence.

Young people with a learner licence can apply for exemptions from the 100 practice hours in circumstances where they:

- do not have a car reasonably available to drive on the road
- do not have a supervisor reasonably available (a supervisor has to hold an open licence for a C class vehicle and has had this open licence for at least one year)
- live in an area with a limited road network, will not benefit from driving on the road network, are not likely to move from the area or have an opportunity to drive in an area without a limited road network (reg 34 TORUM Regulation).

There is a set form to apply for an exemption. A fee applies and is forfeited whether or not the application is successful. The granting of the exemption will depend on relevant traffic history and is ultimately at the discretion of the Department of Transport and Main Roads. If granted, the young person will need to hold their learner licence for a two-year period. There are other exemptions that can be applied for under these laws, such as exemptions from late-night driving and high-powered vehicle restrictions. There are rights of appeal to the Queensland Civil and Administrative Tribunal within 28 days in relation to these applications once the applicant has gone through a process of seeking reconsideration of any refusal by the Department of Transport and Main Roads under s 65 of the *Transport Operations (Road Use Management) Act 1995* (Qld).

Provisional licence

Pursuant to pt 3 of the TORUM Regulation, people under 25 years who are issued with a provisional licence are subject to a two-phased P1 and P2 provisional licence system.

A P1 provisional licence holder under 25 must:

- display red P plates for a minimum of 12 months
- carry only one passenger aged under 21 from 11 pm to 5 am (excluding immediate family members)
- adhere to the relevant bans on using hands-free mobile phone devices, on passengers using a loud speaker function on their mobiles and vehicle power restrictions.

A P2 provisional licence holder under 25 must:

- display green P plates for the rest of the provisional period (the length of time will depend on the person's age)
- adhere to vehicle power restrictions.

A late-night driving restriction between 11 pm and 5 am will only apply to a P2 licence holder as a penalty if other licence requirements are not observed.

If a person is 25 and over, they will bypass the P1 stage and go straight to the P2 stage, which they will be required to hold for one year.

The provisional licence is issued after an applicant passes a practical driving test, a test of knowledge of traffic law, and a sight and hearing test.

Licence suspension

The commission of traffic offences incurs demerit points for the driver. The number of points per offence depends on the nature of the offence. If a person on a learner licence incurs four or more demerit points within a 12-month period, they will be suspended for a period of three months. If a person on a provisional licence incurs four or more demerit points within a 12-month period, they must choose between either having their licence suspended for a period of at least three months or being put on a good driving behaviour period of one year.

If the driver then incurs a further two demerit points during that time, the driver licence will be suspended for a period twice as long as the original suspension would have been (six months).

A person who is under 25 and has a learner licence, probationary or provisional licence, or is driving without a licence commits an offence if they have any alcohol in their system that is capable of being discerned by police using testing equipment (see chapter on *Traffic Offences*).

Other Activities Involving Children

Wills

A person can make a valid will if they are 18 years, are under 18 and married at the time of making the will, the will is made in contemplation of a marriage, the court has made an order authorising a person under the age of 18 to make a will, or if a person who is under 18 makes a valid will outside Queensland. If a will is made in contemplation of a marriage and the marriage does not take place, the will is of no effect (s 9 *Succession Act 1981* (Qld)) (see chapter on *Wills and Estates*).

Tattooing and body piercing

It is a criminal offence to tattoo a person under 18 years of age (s 19 Summary Offences Act)). There is no provision for consent by the minor nor their parent or guardian.

It is a criminal offence to perform some types of body piercing (e.g. piercing a girl's external genitalia, a boy's penis or scrotal skin or the nipples) on a person under the age of 18 (s 18 Summary Offences Act). These forms of piercing cannot be consented to by the minor nor their parent or guardian. There is no law prohibiting other types of piercing of children under 18. To consent to being pierced, a child must be capable of forming a sound and reasoned judgment. In those circumstances, a parent's consent is not necessary but in practice many piercing studios require it. However, the criminal law may apply to some cases of body piercing. If a child is pierced without their consent, it amounts to an assault.

Voting

A person aged 18 or over must vote in federal government elections, state government elections and local council elections. A person under the age of 18 has no right to vote.

Smoking

It is an offence for an adult to sell, give or supply tobacco to anyone under 18 years. This does not apply if the person giving the child tobacco is a parent or other responsible person (s 19 *Tobacco and*

Other Smoking Products Act 1998 (Qld) (TOSP Act). Businesses on which cigarette vending machines are situated have to take precautions to ensure access to these machines is restricted (s 16 TOSP Act). Suppliers also have to warn staff about supplying tobacco products to children. Employees may be liable for penalties if they do not heed these warnings or do not ask to see age identification. It is an offence for a person to falsely represent that they have reached 18 years for the purposes of being supplied with a smoking product (s 19A TOSP Act).

Legal Notices

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