



## JobWatch Submission

### Review of the Child Employment Act 2003 (Vic)

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JobWatch Inc  
Level 10, 21 Victoria Street  
Melbourne VIC 3000  
[www.jobwatch.org.au](http://www.jobwatch.org.au)

This submission was prepared by:  
Gabrielle Marchetti, Principal Lawyer  
Ian Scott, Principal Lawyer  
Tinashe Makamure, Senior Lawyer  
Amanda Chan, Communications Manager  
And interns from the Melbourne Law School: Roberta Hernandez,  
Nicholas Mirgiannis, An Pham and Hugo Rogers

*We wish to acknowledge the Wurundjeri people of the Kulin nation as the Traditional Custodians of the land on which we work, and pay our respects to Elders past, present and emerging.*

*We recognize First Nations peoples as the custodians of the lands and waters of Australia, and the more than 60,000 years of knowledge, strengths and expertise they bring to caring for country.*

*This land is Aboriginal land – always was and always will be.*

## **About JobWatch**

1. JobWatch is an employment rights, not-for-profit community legal centre. We are committed to improving the lives of workers, particularly the most vulnerable and disadvantaged.
2. JobWatch is funded by the Office of the Fair Work Ombudsman, Victoria Legal Aid and the Victorian Government. We are a member of Community Legal Centres Australia and the Federation of Community Legal Centres (Victoria).
3. JobWatch was established in 1980 and is the only service of its type in Victoria, Queensland and Tasmania. Our centre provides the following services:
  - a) Tailored information and referrals to workers from Victoria, Queensland and Tasmania, via a free and confidential telephone information service (**TIS**);
  - b) Community legal education, through a variety of publications and interactive seminars aimed at workers, students, lawyers, community groups and other relevant stakeholders;
  - c) Legal advice and representation for vulnerable and disadvantaged workers across all employment law jurisdictions in Victoria; and
  - d) Law reform work and advocacy aimed at promoting workplace justice and equity for all workers.
4. Since 1999, JobWatch has maintained a comprehensive database of the callers who contact our TIS. To date we have collected more than 210,000 caller records, with each record usually canvassing multiple workplace problems, including contract negotiation, recovery of wages, discrimination, harassment, bullying and unfair dismissal. Our database allows us to follow trends and report on our callers' experiences, including the workplace problems they face and what remedies, if any, they may have available at any given time across State and Federal laws.
5. JobWatch currently assists approximately 12,000 callers to the TIS per year. The vast majority of our callers are not union members and cannot afford to get legal assistance from a private lawyer. In order to become clients of the legal practice, workers must have an employment law matter that has legal merit and their cases must satisfy the requirements of our funding agreements (which typically focus on client vulnerability and public interest issues).

## **Telephone inquiries received by JobWatch in relation to working children under the age of 18 and case studies provided in this submission**

6. JobWatch's records show that the top 5 problem types inquired about by or on behalf of children under 15 years old are:
  - a. General enquiry
  - b. Modelling

- c. Wages – non-payment
  - d. Termination excluded
  - e. Misleading ad
7. The top 5 problem types inquired about by or on behalf of children aged from 15 to 18 years old are:
- a. Unfair dismissal
  - b. General enquiry
  - c. Termination (seemingly excluded from unfair dismissal and GPD-T claims)
  - d. Underpayment of wages
  - e. Apprentice/trainee issues
8. The case studies referred to below are already de-identified. They are based on the experiences of callers to JobWatch’s TIS and they are provided here as examples of the types of inquiries we receive in relation to working children aged under 18.
- a. **Case study: 13-month old models underpaid**  
*Mona’s twins are 13 months old. They were selected by a modeling agent for a retail catalogue. The agency promised they would be paid a certain amount per hour worked but then they only paid a lower amount.*
  - b. **Case study: misleading advertisement affecting a 2-year-old in modelling**  
*Rosa’s 2-year-old son was selected for modelling. Rosa paid in excess of \$500 for photos and membership for a year but the membership ran out and her son had not received a single call or assignment.*
  - c. **Case study: 12-year-old in the entertainment industry not paid**  
*Anna’s 12-year-old daughter was working as an actress. In breach of a written contract, the daughter’s agent had failed to pay for the work performed and had not provided an income statement.*
  - d. **Case study: 13-year-old wanting to work as a babysitter**  
*Kathryn’s 13-year-old daughter wanted to work as a babysitter. She wanted to enter into contracts with families and get them to arrange for insurance and pay her for her work.*
  - e. **Case study: 13-year-old working without a permit in retail**  
*David’s 13-year-old daughter was stacking shelves in a shop for six hours a week. David had never heard of child working permits and neither he nor the child’s mother had signed one.*
  - f. **Case study: 14-year-old doing unpaid trial work**  
*Sandra’s 14-year-old daughter was doing unpaid trial work, with the employer saying they wouldn’t start paying her until she turned 15.*

- g. **Case study: illegal deductions from 15-year-old's pay**  
*Vanessa's 15-year-old daughter was working casually in a take away restaurant. The employer was deducting pay from workers' pay whenever they made a mistake during the course of their work.*
- h. **Case study: underpayment of a 15-year-old in retail**  
*Jane's 15-year-old son was being paid \$4.50 an hour for a Sunday shift as a general sales assistant in a retail store.*
- i. **Case study: 15-year-old in hospitality**  
*Mark's 15-year-old daughter was working in a café. Her hours had initially been increased because of her good performance, but recently, the chef had verbally abused her in front of customers for a mistake she hadn't made. When she complained to the manager, the manager also verbally abused her and subsequently reduced her working hours from 14 hours a week to 3 hours a week.*
- j. **Case study: young worker doing farm work dismissed without recourse**  
*We received a call from Yolanda, who was in the 15-18 years of age category. She had worked for a particular employer as a farm hand for a few days. One of those days had been predicted to be a hot day so she and her co-workers had started work at 5am, doing work they hadn't done before and on a different part of the farm, for a shorter shift. Someone had met them that morning to give them instructions about what work to do. Later that day, Yolanda was told not to return to work. She had thought her supervisors were quite happy with her work and her work ethic but it appeared that it had been the owner of the business whom she'd met early that morning and he had decided that he didn't want her working there.*
- k. **Case study: 18-year-old not on the books**  
*We received a call from 18-year-old Mario, who had been working as a casual employee for a swimming pool shop. He had asked his employer why he wasn't being given pay slips and he wasn't being paid superannuation, after which the employer had become aggressive with him and caused him enough distress for him to ask to go home. His employer had then told him not to set foot on the premises again and subsequently sent Mario a termination letter giving abandonment as the reason for the termination.*
- l. **Case study: child entertainer's pay given to a charity**  
*Paul's grandson was engaged to be one of 10 children performing as an extra on a local film production. His grandson was on set for 20 hours, but was not paid for his work as the film production had apparently agreed with a local charity that the money would be donated directly to that charity. Neither the children nor their parents had consented to this decision.*

- m. **Case study: insufficient time in between shifts**  
*George's 15 year old daughter was scheduled to finish a at midnight and then start the next shift at 8am the following morning.*
- n. **Case study: child injured during cash-in-hand job**  
*15-year-old Brett was promised \$150-\$200 cash in hand for a few days' work with his best friend's stepdad. Brett was injured during work and required several stitches. He was taken to hospital but wasn't offered money for any other medical expenses and wasn't paid for his work.*
- o. **Case study: 14 year old working late shifts**  
*Jake's 14-year-old daughter was working late shifts at her stepfather's business. Jake was worried about her safety and how the work was affecting her studies.*

### **Summary of our recommendations**

1. All children under the age of 18 should receive regular mandatory education about employment rights. Tailored training about basic work rights and obligations and about who to contact for further information if problems arise at work should be delivered to children through the education system at least every two years starting from Year 7. Para 2.
2. All first-time employers of children under the age of 18 should complete training about their basic obligations as employers before employing their first employee under the age of 18. Evidence of completion of the training should be provided before they be allowed to employ children under the age of 18. Para 3.
3. The minimum age for delivery jobs should be raised to 13. Para 8.
4. All employers of children under the age of 18 (including family businesses) should be required to add their name (before advertising or offering any jobs to children) to a publicly available register. Para 11.
5. Employers on the register should be required to declare and demonstrate that they comply with legal obligations, which should be extended so as to protect children under the age of 18. Para 12.
6. The definition of employment should be expanded so as to include work obtained via a social media application or digital platform, so that the platform itself is responsible for obtaining a child employment permit. Para 20.
7. The definition of employment should be expanded to capture all work-related activities associated with the engagement of a child to do work. Para 21.
8. The definition of employment should be expanded to cover companies that use influencers on social media. Para 23.

9. The definition of employment should be expanded to include social media companies where there is the possibility of financially rewarding child users for increasing their number of views. Para 24.
10. There should be fewer exclusions from the definition of employment on the Act. Para 25.
11. Similar accessorial liability provisions to those contained in the *Fair Work Act 2009* (Cth) should be added to the Act. Para 29.
12. Awareness of child employment obligations should be increased, not only among employers, but also among parents and children. Para 32a.
13. A one-stop, online child employment database should be created to regulate child employment permits, information and record keeping. Para 32b.
14. Child Employment Officers should have the right to enter a premises beyond ordinary business hours in certain circumstances. Para 34.
15. Employers should be required to keep some additional records, including whether the child's employment is full-time, part-time or casual and the rest periods and mela breaks for the child. Para 36.
16. Employers of children under the age of 18 should be required to keep records for 7 years. Para 37.
17. Alleged breaches should be thoroughly investigated and prosecuted whenever necessary. Para 43.
18. If there is data showing that some young people under the age of 15 are being exploited in family businesses (including farms) then they need to be better protected and potentially this would mean not excluding family businesses from the permit system. Para 46.

## **Introduction and Background**

**Q: Could the current Child Employment Act be improved to better meet the objective of striking an appropriate balance between protecting children in the workplace and providing them with employment opportunities?**

1. JobWatch congratulates the Victorian Government on reviewing the laws and permit system for employing children under 15 and we are pleased to contribute to this review. We consider that the *Child Employment Act 2003* (Vic) (**the Act**) could be improved, to ensure that all children (not only those aged under 15) are

better protected in employment. We detail our recommendations throughout this submission.

2. As a starting point, we posit that prevention is better than cure – and that empowering young workers with the knowledge of their basic work rights is critical. Too often, when children face problems at work, it is a parent or guardian who calls JobWatch on their behalf. We believe that, generally speaking, if a child is old enough to be employed in some capacity, they are old enough to receive tailored legal information and referrals about their work rights. In the case of young children up to the age of 12 (when most children are nearing the end of primary school), a parent or guardian of the child should complete the training. This training should be built into the Act.
3. Furthermore, JobWatch has long called for basic employment law training to be made mandatory for first time employers – particularly small business employers who are less likely to have specialist HR expertise. It seems ludicrous to us that new employers (whether they be individuals operating through an ABN, companies, partnerships or incorporated associations) be allowed to employ people without demonstrating any knowledge of basic employment law. Especially where an employer (regardless of what kind of employing entity it is) wishes to employ a child under the age of 18, there should be mandatory employment law training, covering issues such as:
  - a. Wages and other entitlements
  - b. Pay slips
  - c. Occupational health and safety (including the type of work and the number of hours employers can lawfully ask their child employees to perform)
  - d. Discrimination, sexual harassment and bullying.

### **Age limits**

#### **Q: Is it appropriate to stagger the minimum working ages for children depending on the type of employment?**

4. Currently, the Act staggers the minimum working ages according to the type of employment. Accordingly:
  - a. The minimum age for employment in a delivery job (delivering newspapers, pamphlets or advertising material, or making deliveries for a registered pharmacist) is 11 years of age (s 10(1)(a));
  - b. The minimum age for other employment is 13 years of age (s 10(1)(b));
  - c. There is no minimum age for employment in a family business or in entertainment (s 10(2)).

5. In both the First and Second Reading Speeches about the proposed Act,<sup>1</sup> back in 2003, staggered minimum ages were justified in “recognition of the fact that some children under the age of 15 obtain some benefits of working.” It was said that:
  - a. Delivery jobs were a long-accepted form of employment for children and therefore children aged between 11 and 15 should be allowed to be employed in these kinds of jobs;
  - b. The entertainment industry employed children of all ages and hence age restrictions should not apply; and
  - c. Children employed in a family business should be exempted because the government believed that “all parents have both a responsibility for and an ability to protect children from health and safety risks, and to ensure their child’s education is not adversely affected.”
6. We understand that not all Australian States and Territories stagger the minimum age for employment in the same way that Victoria does.
  - a. In Queensland and Western Australia, there are staggered minimum ages;
  - b. In the Australian Capital Territory, children under the age of 15 may only be employed in ‘light work’, for a maximum of 10 hours a week, and there is no exemption for family businesses.
  - c. In New South Wales, South Australia, Tasmania and the Northern Territory, there is no minimum age of employment but there are some restrictions on the types and hours of work allowed.
7. We query whether it is appropriate for children as young as 11 to deliver pharmaceuticals, given that this work potentially involves employees entering strangers’ houses and may involve children handling drugs labelled “keep out of reach of children”. We acknowledge that section 19 of the Act requires that children be supervised by their employer at all times while they are working but we expect that different employers interpret the supervision requirement very differently and that enforcement of this provision is problematic.
8. Moreover, we note that the ILO’s Minimum Age Convention 1973 (No. 138) sets the general minimum age for employment at 15 years, or 13 for light work. We are of the view that in Victoria our standards should be broadly consistent with those outlined in this Convention: that is, we should similarly set our minimum ages at 13 for employment in light work (with proper supervision and a properly enforced permit or other registration system) and then 15 for employment without a permit (but still with a registration system and with clear limits that

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<sup>1</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 9 April 2003, 945 (Rob Justin Hulls, Minister for Industrial Relations); Victoria, *Parliamentary Debates*, Legislative Council, 16 September 2003, 41 (Gavin Jennings, Minister for Aboriginal Affairs).



prioritise education over work until at least age 17). Accordingly, we recommend that the minimum age for delivery jobs should be raised to 13.

**Q: Should the Act regulate children over the age of 15 working in certain industries or in certain situations (this could be with or without a permit)?**

9. The Act defines 'child' as a person under 15 years of age (s 3). The Act does not currently regulate the employment of children aged 15 or above. However, JobWatch receives several inquiries each year in relation to the employment arrangements of children aged 15 or above and some of the case studies provided above demonstrate how children in this age category remain vulnerable to exploitation and bullying at work.
10. We acknowledge that for many children, obtaining employment around the age of 15 or 16 is an important step towards developing independence, growth and maturity. However, school in Victoria is compulsory for children until they are 17 years of age<sup>2</sup> and children aged 15 and over require statutory protection to ensure their education is not adversely impacted by employment. We note that all jurisdictions across Australia that have dedicated child employment legislation have provisions which apply to all children under 18 - except Victoria. This needs to change and Victoria should better protect working children under the age of 18.
11. We are not necessarily calling for permits to be required for the employment of children aged 15 or above. However, we recommend that all employers of children under the age of 18 (including family businesses) be required to add their name (before advertising or offering any jobs to children) to a publicly available register. This register should of course be available to both State and Federal regulators, including the Wage Inspectorate Victoria, WorkSafe Victoria and the Fair Work Ombudsman.
12. Employers on this register should be required to declare and demonstrate that they comply with legal obligations, including those contained in the Act's successor, which should be extended so as to protect children under the age of 18. The declaration should be in respect of specific obligations, including the following:
  - a. Ensuring that employment not have a negative impact on children's education, both in terms of attendance at school and capacity to benefit from instruction (including maximum working hours both during and outside of school terms)
  - b. Taxation
  - c. Superannuation
  - d. Occupational health and safety and
  - e. Workers' compensation.

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<sup>2</sup> *Education and Training Reform Act 2006* (Vic) s 2.1.1.

13. Children and their parents should be able to check this register at any time to see if a particular employer who is advertising employment to or employing children under the age of 18 is included and, if not, report them to the Wage Inspectorate Victoria.

### **Definition of employment**

#### **Q: Are there any issues with the current definition of employment?**

14. Section 4 of the Act defines employment more broadly than the traditional employer/employee relationship. Under the Act, a child is employed when they:
  - perform work; and
  - where there is a contract for service or contract of service; or
  - where that work is under another type of arrangement and is for a business operating for profit.
15. This definition was made to ensure that children are protected in a broad range of working situations, including where children are paid in goods and/or merchandise or not paid at all. Nevertheless, whilst this definition is quite broad, it may not be broad enough to capture new ways of working brought on by social media applications (apps) or digital platforms and the gig economy.
16. It cannot be said that the current definition of employment definitely applies to much of the work that is already being done through digital platforms (and this work is only likely to increase in future, especially among young people).
17. We are concerned about children who may register with an app or digital platform to perform certain work – for example, to clean people’s cars, gutters, bins or houses; to assemble furniture; do gardening or cooking; do tutoring or child minding; converse in English online; or do coding. Many of the digital platform operators essentially act as matchmakers between two parties (the worker and the person for whose benefit the work is done). Some of them charge the client for whom the work was performed and then pass a portion of that money (less a fee) onto the worker after the work is complete. In other cases, the worker is paid directly by the client for whom the work was performed and then the worker is required to remit a fee to the digital platform.
18. Even if the protections in the Act were extended so as to cover all workers under the age of 18 (as per our recommendation), unless the current definition is changed, young workers in the gig economy may not be protected as their work will not fit within the definition of employment.
19. One of the factors that may be taken into account in determining whether a child is in *employment* is whether the parties intended that the work would constitute employment (s4(2)(a)). Most platform operators would almost

certainly deny that there was ever any intention to enter into an employment relationship.

20. Whilst it could be argued the primary purpose of the child's work would be for the digital platform operator to derive a profit (s4(2)(c)), we doubt whether it could be established that the child was subject to the direction of the platform operator (s4(2)(d)). Accordingly, the current definition of employment does not adequately protect children working in the gig economy.

**Q: Are all types of employment/engagement captured? Should we include any other types of work or work-related activity (for example, casting, social media)?**

21. Similarly, where there is a chain of people involved in the engagement of children - for example, in advertising or entertainment, where there may be a casting agent, a production company, an advertising agent and the client - the definition of employment should be expanded to capture all work-related activities associated with the engagement of a child to do work. This amendment to the Act would better ensure the safety and wellbeing of children at work.
22. In relation to social media, a recent phenomenon is the rise of the *influencer*. An influencer is a person, often a young person, who may already have a social media presence and is then engaged by a company (X) to promote its products on their channel by, for example, wearing or using the product and giving it favourable reviews. If that person's channel receives increased views, the platform itself (Y), for example YouTube, will pay that person for increasing their number of views because the platform can then make more profit from advertising spots it sells on the person's channel.
23. In this example, a child could potentially enter into two different contracts: one with the company who wants to promote its products (X) and another with the social media platform who wants its channel to be used for the placing of advertisements for its clients (Y). The current definition of employment in the Act would probably not recognise either of these contracts as employment relationships.
24. Where a child under 18 is paid by the social media platform for increasing his or her number of views, a similar problem occurs because the payment of money is not in relation to a contract for services but is akin to a reward or prize for increasing the number of views and, once again, the digital platform would likely argue that the child primarily works for themselves and is not subject to the direction of the platform. Again, the current definition of employment in the Act would not apply.

**Q: Are the current exclusions from the definition of employment and the permit requirements appropriate and risk-based?**

25. Section 4(3) of the Act excludes from the definition of employment a number of work-related activities that may be undertaken by children. Insofar as the excluded activities relate to volunteer-type arrangements with religious groups or schools and fundraising for not-for-profits, they appear to be entirely reasonable. However, we do take issue with two of the exclusions:
- a. Section 4(3)(g) excludes door-to-door fundraising for a non-profit organisation if the child is directly engaged by that organisation: this seems curious, given that there is no limit on the duration or the frequency of the work. A child could therefore work for a not-for-profit doing door-to-door fundraising on a regular, systematic, frequent basis and not be captured by the Act's definition of employment. This needs to change.
  - b. Section 4(3)(h) excludes performing work in relation to a sporting activity (including coaching, refereeing or umpiring) except in relation to certain high-risk sporting activities. If a child's work helps to make money for a business carried on for profit, then it should be regarded (and protected) as employment. Therefore, a child working as an assistant coach, referee or umpire in a sport that does not carry a high risk of injury should not be excluded from the definition of employment provided the work is done for a profit-making business.

**Q: Should responsibility for compliance with the Act be attributed to any other parties involved in the employment process?**

26. JobWatch submits that the Act should be amended so as to include accessorial liability provisions. Currently, a person (including a body corporate), can be penalised for employing a child without a permit or for otherwise breaching the Act. For example, section 9(1) of the Act provides:

*A person must not employ a child unless a permit has been issued for the employment.*

*Penalty: 100 penalty units in the case of a body corporate;  
60 penalty units in any other case.*

27. Nevertheless, there is no penalty available for individual persons involved in the contravention of the Act. For example, Human Resources Departments, Managers, Payroll and anyone else that might be involved in the contravening recruitment and employment process, including potentially schools, sporting and other clubs etc that may have advertised the job or referred a child for the relevant job, are not able to be held accountable under the current penalty provisions of the CE Act.
28. The *Fair Work Act 2009* (Cth) contains a number of accessorial liability provisions. For example, section 550(2) provides:

A person is **involved in** a contravention of a civil remedy provision if, and only if, the person:

(a) has aided, abetted, counselled or procured the contravention; or

(b) has induced the contravention, whether by threats or promises or otherwise;  
or

(c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or

(d) has conspired with others to effect the contravention.

29. JobWatch recommends that the Act be amended so as to include similar accessorial liability provisions to those contained in the *Fair Work Act 2009* (Cth) and thus better deter and/or penalise individuals involved in the contravening recruitment and/or employment process.

### Approach to regulation

#### **Q: What are the main challenges of complying with the current regulatory framework under the Act?**

30. A primary challenge of complying with the current framework pertains to a lack of awareness the legislative framework itself and the obligations contained in the Act. The employment of children brings numerous advantages for both children and their respective employers. Children are kept occupied during their holidays and spare time, they develop important skills and independence and they can earn money while gaining workplace experience. For employers, child employees can help businesses complete some of the errands regular employees cannot always find the time to do, at a cheaper rate than adult employees would require.
31. However, it appears that many employers (and children and their parents) are unaware of the Act or its accompanying Regulations. This ignorance is likely to be even greater when it comes to mandatory codes of practice, such as those which apply to children working in the entertainment industry.
32. Accordingly, JobWatch recommends the following:
- a. Awareness of child employment obligations should be increased, not only among employers, but also among parents and children. Possible methods of increasing awareness include:
    - i. Make it mandatory for employers to provide all new employees under the age of 18 with a Child Employment Information Statement akin to the Fair Work Information Statement. We recommend that the statement also provide information regarding where a child/parent can get further assistance;
    - ii. Make it a mandatory for employers to go through the Child Employment Information Statement with the child/parent/guardian and answer any questions upon commencement of employment;

- iii. Information posters to be placed in schools, highlighting the consequences of non-compliance with the Act;
  - iv. Regular training to be delivered to high school students during school assemblies about work rights and, more specifically, the Act;
  - v. Engage local employers in employment sectors which typically employ children (e.g. retail, agriculture, entertainment, fast food) and provide them with relevant information about the Act.
- b. A one-stop, online child employment database should be created to regulate child employment permits, information and record keeping. The online database should contain: key information, forms and templates; links to the Act and the Regulations and any mandatory codes of practice; an outline of the necessary steps when applying for a child employment permit; and a record keeping system where an employer can digitally record a child's employment hours, duties and conditions. The system should also issue reminders to employers to update their records at regular intervals, and should be accessible to the Wage Inspectorate Victoria, who could check details remotely without the need to make in-person inspections.

**Q: Is the current regulatory framework effective in addressing the risks facing children in the workplace?**

33. One particular shortcoming of the current regulatory framework is with respect to the power of entry for Child Employment Officers. Section 21(3)(b) of the Act provides that a child must not be employed to perform work on any day earlier than 6 a.m. or later than 9 p.m. (unless working in street trading) and s 42(1) of the Act provides that a Child Employment Officer may enter a premises during ordinary working hours. Officers may not therefore be able to effectively detect when a child is working late, or may not be able to check up on a business at a late time and prove that a child has been working late.
34. JobWatch recommends that s 42(1) of the Act be amended so as to give Child Employment Officers the right to enter a premises beyond ordinary business hours if they hold a belief that:
- a. A child (or children) is (or are) performing work; and
  - b. Intervention by the Officer is in the best interests of the child.

**Q: Are record-keeping obligations clear and are they sufficient?**

35. Currently, employers are required to keep records of:
- a. the times the child started work and finished work each day of work; and
  - b. the hours the child worked each day and each week; and
  - c. the date the child started employment and the date that he or she finished employment; and
  - d. each date the child worked.

36. JobWatch recommends that two further things should also be recorded:
  - a. Whether the child's employment is full-time, part-time or casual (bearing in mind that we consider the Act should be extended to protect all children under the age of 18, so some of them may be employed on a full-time basis);
  - b. The rest periods for the child, including meal breaks.
37. We further recommend that, in line with the requirements in the *Fair Work Act* that wages and time records be kept by employers for 7 years, employers of children under the age of 18 be required to keep these records for a similar length of time. Certainly, it seems to us that the current period of 12 months is inadequate.

### **Permit system**

#### **Q: Does the permit system provide appropriate protections for children in the workforce**

38. According to s 1 of the Act, the child employment permit system in Victoria is aimed at protecting children from doing work that could:
  - a. Be harmful to their health or safety;
  - b. Affect their moral or material welfare or development;
  - c. Affect their attendance at school;
  - d. Exploit them in any way.
39. The employer has the burden of applying for and holding the child employment permit for any relevant persons under the age of 15 that they wish to employ. In their permit application, employers must detail what the child will be doing and their hours of work, as well as showing that the work is safe and that the child will not be exposed to harm. Parents/guardians must give written consent to the employment, and approval of the child's school is required where the employment will occur during school hours in all industries except the entertainment industry.
40. Employing a child without a permit is a criminal offence attracting fines ranging between \$1,000 to \$10,000.
41. We understand that at the time of writing, there are 1,335 children in Victoria who are subject to a child employment permit. In the last financial year (2019-20), 9425 individual child permits were issued in Victoria. During the same period, 172 child employment investigations were completed. Of those 172 investigations, 62 resulted in findings of a sustained breach of the Act.
42. In September 2020, the Wage Inspectorate Victoria successfully prosecuted its first major case under the Act.<sup>3</sup> The Melbourne Magistrates' Court found that

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<sup>3</sup> Nick Bonyhady, 'Victoria's workplace cop ready to prosecute under new wage theft laws', *The Age* (online at 3 September 2020)  
<<https://www.theage.com.au/national/victoria/victoria-s-workplace-cop-ready-to->

Ms Elissa Thomas of Event Theatre had employed 129 children illegally for a children's fashion event, after failing to apply for the relevant permits.<sup>4</sup> The Director of the Wage Inspectorate, Mr Hortle, argued that Ms Thomas had been aware of the need to apply for child employment permits as she had previously done so for other children she had employed in the past. Magistrate Hawkins outlined the gravity of the matters relating to child employment and the protective purpose of the Act, stating that 'being busy' is not a valid excuse to not ensure proper permits are in place. Ms Thomas pleaded guilty and was fined \$2,000.00 without conviction by the Court.

43. At JobWatch, we consider that a lack of awareness and understanding about the permit system is a huge impediment to the Act providing adequate protection to working children. Community awareness should be raised through a widespread education campaign (as outlined above), but also by active prosecutions on the part of the Wage Inspectorate Victoria. Successful results should be widely publicised by the media. Laws need to be actively and vigorously enforced in order to be widely respected. If there are no (or insufficiently strong) consequences for breaches of the law, the community will end up ignoring the rules. Accordingly, we call for any education campaign to be matched by adequate resourcing for the Wage Inspectorate Victoria so that it may thoroughly investigate alleged breaches and prosecute whenever necessary, in order to hold non-compliant employers to account and to make examples of them for the wider community.

**Q: Is the permit system needed in all circumstances/industries/age groups/environments or could it be more targeted?**

44. Currently, the permit system is required for employment of children under 15 years of age, unless the child is employed in a family business or farm which is carried on by a parent or guardian of the child.
45. At JobWatch, we have certainly received, over the years, calls from concerned parents or grandparents about children working in family businesses, but we are not in a position to comment on the extent to which children who are employed in a family business may be working excessive hours, late into the night, doing inappropriate work etc (all of which is interfering with and adversely impacting their education). Teachers, educators and health professionals are probably far better placed to comment on the extent to which this is happening, where it is happening in Victoria etc.

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[prosecute-under-new-wage-theft-laws-20200903-p55s24.html](#)>; referring to *Macleod (DPC) v Elissa Thomas*.

<sup>4</sup> Wage Inspectorate of Victoria, 'Court finds fashion event illegally employed 129 children: Wage Inspectorate Victoria investigated an event that employed children as fashion runway models' (Web Page, 2 September 2020) <<https://www.vic.gov.au/court-finds-fashion-event-illegally-employed-129-children>>.



46. Our concern is always about protecting the most vulnerable workers – those who struggle to have a voice and be represented. If there is data showing that some young people under the age of 15 are being exploited in family businesses (including farms) then they need to be better protected because clearly the current system is not good enough for them. Potentially this might mean that family businesses should not be excluded from the permit system.
47. At the very least, and as already noted above, we recommend that all employers of children (including family businesses) be required to add their name (before advertising or offering any jobs to children) to a publicly available register which could be checked by State and Federal regulators, including the Wage Inspectorate Victoria and WorkSafe Victoria.

We thank you for considering this submission. Please do not hesitate to contact Gabrielle Marchetti by email on [gabriellem@jobwatch.org.au](mailto:gabriellem@jobwatch.org.au) if you have any questions.