



Compliance and Enforcement Policy

Introduction

The Wage Inspectorate Victoria (the Inspectorate) enforces state-based workplace laws in

- the *Child Employment Act 2003*;
- the *Long Service Leave Act 2018*; and the
- *Owner Drivers and Forestry Contractors Act 2005*.

These Acts aim to protect Victorian workers and improve conditions in Victorian workplaces.

The *Long Service Leave Act 2018 (Vic)* provides long service leave after seven years of service. It makes this leave more flexible and accessible for most Victorian workers, including women, parents and carers. Long service leave is a long-standing entitlement for most Australian employees.

The *Child Employment Act 2003 (Vic)* protects young Victorians in the workplace. The Act requires employers to apply for a permit to employ children under the age of 15. It also sets out the conditions under which an employer can do so.

The *Owner Drivers and Forestry Contractors Act 2003 (Vic)* provides safer and fairer conditions for Victorians who own and operate their own vehicles or machinery to earn a living in the transport and forestry industries. The Act ensures that drivers who are engaged in the delivery of goods have all the information they need to negotiate fair contractual conditions.

We need to ensure that parties understand and follow these laws so that all Victorians can benefit from them.

Each Act has a range of penalties for non-compliance. The Acts empower Inspectorate officers to investigate and enforce the laws. The Inspectorate takes non-compliance with the laws seriously. It aims to prevent, detect and deter non-compliance with the Acts through education, early intervention, investigation and prosecution.

This policy sets out how the Inspectorate will:

- achieve compliance with these laws;
- conduct investigations and monitor compliance; and
- publicise enforcement activities.

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Principles

We are guided by the following principles:

Principles	Inspectorate
Risk-based and proportionate	<ul style="list-style-type: none">• focus our efforts where the worst harms are occurring• place our resources where we can deliver the greatest impact• ensure our response to non-compliance is appropriate
Encouraging behavioural change	<ul style="list-style-type: none">• give businesses, workers and stakeholders advice and information about their rights and responsibilities that is easy to understand and implement• work with unions, employer organisations, community groups, stakeholders and other Government agencies to develop and design compliance interventions that have broad impact• seek to prevent non-compliance through intelligence gathering, early intervention, education and stakeholder engagement
Transparent and accountable	<ul style="list-style-type: none">• act impartially, professionally and consistently• ensure parties understand the reasons for our decisions• publish information regarding our enforcement activities

Preventative compliance

The Inspectorate seeks to achieve compliance through preventative efforts. These include:

- providing advice and information regarding compliance obligations through our information line and other channels;
- gathering and assessing intelligence about compliance practices;
- assessing and issuing child employment permits in appropriate circumstances, for example, if we are satisfied the health, safety, education, and moral and material welfare of the child will not suffer;
- proactive investigations and audits to test and monitor compliance levels; and
- education and compliance campaigns to inform the community and encourage positive behaviour change.

Investigating offences

Where appropriate, the Inspectorate investigates alleged offences under the Acts. Investigations may occur when we:

- receive a complaint from the public;
- receive intelligence from various sources alleging non-compliance; and
- identify non-compliance through monitoring activities.

What are our areas of focus?

The Inspectorate takes non-compliance with the law seriously. It has the following areas of focus:

- whether there is public interest in investigating the matter;
- whether there is risk that vulnerable members of our community are being exploited;
- high-risk industries and the type of work being done;
- child safety and welfare;
- whether the non-compliant behaviour might have occurred deliberately or recklessly;
- whether a party has a history of non-compliance;
- whether the parties have tried to resolve the issue themselves;
- in the case of long service leave, the impact of any outstanding entitlements;
- the availability and reliability of evidence to allow the Inspectorate to prove an offence.

Enforcing compliance

An investigation could conclude in several ways. These include but are not limited to:

1. No offences are found

An investigation might not identify any breaches of the legislation. This could occur:

- a) where the quality of evidence is poor or there is not enough evidence;
- b) no evidence is available; or
- c) where the parties are following the law.

In these circumstances, the Inspectorate may choose to take no further action and/or might not be able to make determinations of fact.

An investigation may determine that there is enough evidence to support a finding that no offences occurred.

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2. Offences are established

An investigation might find that one or more offences have occurred. The Inspectorate may respond in different ways where offences are established on a *prima facie* basis.

These responses may include, but are not limited to:

- a) issuing a breach notice that sets out the nature of the offence and any actions required to remedy it. This may include voluntary compliance and/or rectifying any entitlements (where applicable);
- b) issuing formal warnings for minor breaches;
- c) in the case of long service leave (LSL) matters, if the employer does not voluntarily comply, the Inspectorate may advise workers to recover outstanding LSL entitlements through the Industrial Division of the Magistrates Court of Victoria;
- d) in the case of a permit issued under the *Child Employment Act*, cancelling the permit and removing the employer's right to employ the child, or varying the permit to alter or add conditions;
- e) where serious non-compliance is found, prosecuting the offence in the appropriate Court.

The table below summarises the potential outcomes of an investigation:

Determination	Description	Outcome
No offences identified	No offences are found.	Investigation closed and no further action taken.
Offences identified – voluntary compliance	Minor offences are disclosed and the employer cooperates with the investigation.	Breach notice issued. Investigation closed. Formal warning may be issued.
Offences identified –small claims (LSL matters only)	Offences are disclosed and the employer does not voluntarily comply or rectify any outstanding entitlements.	Complainant may seek to recover outstanding LSL entitlements in the Industrial Division of the Magistrates Court of Victoria. A formal warning may also be issued to the employer.
Offences identified (child employment matters only)	Offences or undisclosed risks are detected through investigation.	The Inspectorate may: <ul style="list-style-type: none"> • issue a breach notice; • issue a formal warning; • vary or cancel the current permit; • issue a direction; • include special conditions on permit applications.

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Determination	Description	Outcome
Offences identified – both Acts	Serious offences and/or non-compliant behaviours are disclosed.	Prosecution initiated.

Factors the Inspectorate considers when deciding whether to take legal action

When deciding whether to prosecute an offence, the Inspectorate considers the public interest. Its decision can be informed by the following factors:

- whether the litigation will have a deterrent effect in the community and on the person(s) involved in the proceedings;
- whether alternatives to litigation are available;
- the length and cost of litigation;
- the likelihood of a successful outcome;
- the impact of the alleged offences on the people who have been disadvantaged by the alleged non-compliance;
- the vulnerability of the people affected by the alleged non-compliance;
- the conduct of the persons alleged to have committed the offences, including whether the offences were the result of deliberate or reckless behaviour;
- the alleged offender's history of compliance;
- the seriousness and specific circumstances of the alleged non-compliance, including any mitigating or aggravating circumstances.

Publicising compliance and enforcement activities

The Inspectorate may publish information relating to its compliance and enforcement activities where it is in the public interest to do so, subject to the *Privacy and Data Protection Act 2014*. Specifically, it may publish this information if it believes public awareness of the activity will help to deter non-compliance.

Where the Inspectorate prosecutes an offence relating to the laws it regulates, it may publish details of the proceedings, including the nature of the alleged non-compliance and the offences listed on the charge sheet.

