



# COMPLIANCE AND ENFORCEMENT POLICY

JULY 2021



# Introduction

## Purpose

The purpose of this Compliance and Enforcement Policy is to describe the risk-based approach of Wage Inspectorate Victoria to deliver on our vision and to fulfil our regulatory functions as required under the various pieces of legislation we administer.

This policy explains:

- our regulatory approach and the principles we apply in our compliance and enforcement strategy
- how we will endeavour to achieve compliance with the Acts through voluntary compliance and preventative effort
- how we monitor compliance and conduct investigations
- the range of regulatory tools that we may use to enforce compliance
- how we exercise our discretion to bring a prosecution and our obligations as model litigants
- publicise enforcement activities.

## Who are we?

The Wage Inspectorate is an independent statutory authority established by the *Wage Theft Act 2020*. We commenced operation on 1 July 2021.

In addition to the *Wage Theft Act 2020*, as a result of the *Industrial Relations Amendment Act 2021*, we also have responsibility for administering the *Child Employment Act 2003*, *Long Service Leave Act 2018* and the *Owner Drivers and Forestry Contractors Act 2005* (the Acts) from 1 July 2021.

## The Commissioner

Robert Hortle was appointed the inaugural Commissioner of the Wage Inspectorate on 17 June 2021. The Commissioner is the public service body head of the Wage Inspectorate and holds office for a term not exceeding 5 years.

The Commissioner is responsible for undertaking the strategic leadership of the Wage Inspectorate and has all the duties, functions and powers of the Wage Inspectorate as provided for by the *Wage Theft Act 2020*, and the other Acts.

## Our role

The Wage Inspectorate helps Victorians work better.

Through our work, we aim to even the playing field for businesses and ensure workers are treated fairly. We also hold to account those who break the law, using our powers in a fair and proportionate matter. We believe that nobody should get ahead, in the workplace or in business, by mistreating or short-changing others.

## The laws we regulate

Our key functions are to provide information and education, monitor compliance with, and the enforcement of Victorian based workplace laws under the:

- *Child Employment Act 2003*
- *Long Service Leave Act 2018*
- *Owner Drivers and Forestry Contractors Act 2005*
- *Wage Theft Act 2020*.

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

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

The *Long Service Leave Act 2018* provides long service leave after seven years of service for employees engaged in continuous service with the one employer. This Act makes long service 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 *Owner Drivers and Forestry Contractors Act 2003* 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. This Act ensures that drivers who are engaged in the delivery of goods have all the information they need to negotiate fair contractual conditions.

The *Wage Theft Act 2020* creates employee entitlement offences comprising wage theft offences and record keeping offences – to capture employers who falsify or fail to keep records for the purposes of concealing wage theft. The key objective of this Act is to hold to account employers who withhold employee entitlements dishonestly and protect vulnerable employees from exploitation.

## Regulatory approach and principles

### Regulatory approach

We endeavour to educate and inform individuals and employers of their obligations and responsibilities under each of the Acts to ensure they understand and follow these laws.

While we take a proactive approach through information, education and early intervention to prevent breaches of the Acts, there may be instances where non-compliance is detected and reported. In these instances, the Acts empowers our officers to monitor and investigate the alleged breaches. At a minimum, we expect cooperation with our monitoring activities and investigations – this is a requirement of the law. Where appropriate, we use a range of regulatory tools provided under the Acts to enforce compliance with the laws, including to bring a prosecution.

Our regulatory approach is based on an assessment of risk and impact. Our response to an alleged breach of the Acts and what regulatory tool to use, and when, is based on this

assessment of the risk and its impact on the public interest, the community, and the impact of any proposed action.

## Regulatory principles

Our compliance and enforcement strategy are guided by the following regulatory principles:

| Principles                            | Wage Inspectorate will:  |
|---------------------------------------|--|
| <b>Risk-based</b>                     | <ul style="list-style-type: none"> <li>• use evidence based and intelligence to assess risks in terms of the likelihood of a risk occurring and the consequences of the impact if it were to occur</li> <li>• focus our efforts where the worst harms are occurring</li> <li>• place our resources where we can deliver the greatest impact to achieve meaningful results and outcomes</li> </ul>  |
| <b>Proportionate</b>                  | <ul style="list-style-type: none"> <li>• ensure our response to non-compliance is commensurate with the risk posed</li> <li>• ensure that any corrective action implemented will not place unnecessary regulatory burden on a business</li> </ul>  |
| <b>Encouraging behavioural change</b> | <ul style="list-style-type: none"> <li>• give businesses, workers and stakeholders advice and information about their rights and responsibilities that is easy to understand and implement</li> <li>• work with unions, employer organisations, community groups, stakeholders and other Government agencies to develop and design compliance interventions that have broad impact</li> <li>• seek to prevent non-compliance through intelligence gathering, early intervention, education and stakeholder engagement</li> </ul> |
| <b>Transparent</b>                    | <ul style="list-style-type: none"> <li>• ensure parties understand the reasons for our decisions and actions</li> <li>• publish or compliance and enforcement policy and provide information regarding our enforcement activities</li> </ul>   |
| <b>Accountable</b>                    | <ul style="list-style-type: none"> <li>• act impartially, professionally and consistently</li> <li>• ensure our decisions are subject to third party scrutiny for enforcement action undertaken</li> </ul>   |

## Voluntary and preventative compliance

Across the Acts, we may at times seek to achieve compliance through voluntary action and preventative efforts. These include, but are not limited to the following:

- 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
- education and compliance campaigns to inform the community and encourage positive behaviour change.

## **Monitor compliance and investigations**

We monitor compliance and detect non-compliance using proactive and responsive methods, as well as undertake investigations following detection of non-compliance or reported breaches of the Acts from the public, business, government and non-government organisations.

### **Monitoring compliance**

Compliance is monitored and breaches detected through a number of proactive and responsive methods including:

- field and desktop audits
- employee, community and other reports
- observations and reports from other agencies or regulatory authorities
- analysis of intelligence including information, data, financial records and reports of high-risk industries.

### **Investigations**

One of our core functions is investigating compliance with the Acts. An investigation may occur when we:

- receive a report or complaint from the public
- receive intelligence from various sources alleging non-compliance
- identify non-compliance through our monitoring activities.

### **What are our areas of focus?**

We take non-compliance with the law seriously. Our investigations have 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 us to prove an offence.

## Regulatory tools to enforce compliance

We have a range of enforcement tools at our disposal to promote and enforce compliance with the Acts we regulate.

When deciding what tool to use in response to a breach or following an investigation, we take into account a range of factors including, but not limited to, the nature and circumstances of the breach, the extent and consequences of non-compliance.

We may enforce compliance, in a number of ways, such as:

- to vary or cancel a child employment permit if upon an officer assessing or investigating an application for a permit considers it necessary to vary or cancel the permit if the health, safety, education or moral or material welfare of the child is suffering or likely to suffer, or if the child is being or likely to be subjected to any form of exploitation in the course of employment, or if the employment is prohibited (*Child Employment Act 2003*)
- to include special conditions on a child employment permit (*Child Employment Act 2003*)
- to issue a notice to the alleged offender advising they take a certain course of action (*Child Employment Act 2003, Long Service Leave Act 2018 and Owner Drivers and Forestry Contractors Act 2005*)
- to serve an infringement notice in respect of a prescribed offence (*Owner Drivers and Forestry Contractors Act 2005*)
- to issue a warning letter if an alleged offence(s) can be proven, however a decision has been made not to bring a prosecution due to public interest factors (all Acts)
- enter into an enforceable undertaking (*Wage Theft Act 2020*)
- to bring a prosecution for offences created by the Acts (all Acts).

# Prosecutorial discretion

Where a criminal prosecution is considered an appropriate action, the approach to the exercise of our prosecutorial discretion is consistent with that of the Policy of the Director of Public Prosecutions Victoria (DPP Policy<sup>1</sup>), which states that a prosecution must only proceed where:

- there is a reasonable prospect of a conviction (or finding of guilt)
- it is in the public interest to conduct a prosecution.

## Reasonable prospects

When deciding whether a prosecution has a reasonable prospect of conviction, we consider:

- all the admissible evidence
- the reliability and credibility of the evidence
- the possibility of the evidence being excluded
- any possible defence(s)
- whether the prosecution witnesses are available, competent and compellable and how they will likely present in court.

The above list is not exhaustive.

## Public interest

If there is a reasonable prospect of conviction, we then consider whether the prosecution is in public interest. Our decision is informed by factors set out in the DPP Policy including, but not limited to:

- offender related factors, such as the level of culpability; antecedent and background; age; physical health
- victim related factors
- other factors including: community protection; the likely sentence; the prevalence of the offence and the need for deterrence, both specific and general; the need to maintain public confidence in basic constitutional institutions such as the Parliament and the courts; the availability and efficacy of any alternatives to prosecution; any mitigating or aggravating circumstances.

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<sup>1</sup> The full text of the DPP Policy can be found at <https://www.opp.vic.gov.au/Resources/Policies>

## Consultation with the Director of Public Prosecutions

Where we intend to commence a criminal prosecution for an indictable offence, if time and circumstances permit, we will request advice from the Director of Public Prosecutions (DPP).<sup>2</sup>

## Prosecutorial duties and model litigant

If we make a decision to bring a prosecution, in our conduct of these proceedings we abide by the duties imposed on a prosecutor as set out in the DPP Policy. We will also abide by the standards for how the State of Victoria should behave as a party to legal proceedings as set out in the Victoria Model Litigant Guidelines.

A copy of the Policy of the Director of Public Prosecutions for Victoria can be found at <https://www.opp.vic.gov.au/Resources/Policies>.

The Victorian Model Litigant Guidelines can be found at <https://www.justice.vic.gov.au/justice-system/laws-and-regulation/victorian-model-litigant-guidelines>.

## Publicising compliance and enforcement activities

We may publish information relating to our compliance and enforcement activities where it is in the public interest to do so, subject to the confidentiality provisions under the Acts and the *Privacy and Data Protection Act 2014*.

Specifically, we may publish this information if we believe public awareness of the activity will help to deter non-compliance.

Where we prosecute an offence relating to the laws we regulate, we may publish details of the proceedings, including the nature of the alleged non-compliance and the offences listed on the charge sheet.

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<sup>2</sup> *Wage Theft Act, ss 71 to 73*. Any advice received from the DPP is subject to legal professional privilege.