

Review of the *Child Employment Act 2003*

Submission from Live Performance Australia

1. INTRODUCTION

Live Performance Australia (LPA) welcomes the opportunity to provide input to the Department of Premier and Cabinet's review of Victoria's *Child Employment Act 2003* (CE Act).

LPA is the peak body for Australia's live performance industry. Established over 100 years ago in 1917 and registered as an employers' organisation under the *Fair Work (Registered Organisations) Act 2009*, LPA has over 400 Members nationally. We represent commercial and independent producers, music promoters, performing arts companies, venues (performing arts centres, commercial theatres, stadiums and arenas), arts festivals, music festivals and service providers (such as ticketing companies and technical suppliers). Our membership spans from small-medium and not-for-profit organisations to large commercial entities.

LPA's submission is informed by feedback received from our Members who engage children as employees in Victoria, as well as children's consultants employed by Members. Members who employ children include major commercial theatre producers and performing arts companies. LPA understands that some Members have already engaged in Working Parties as part of the consultation process.

2. CONTEXT

The value of the live performance industry in Victoria

Victoria is renowned for its status as the 'cultural capital' of Australia and prides itself on a rich theatre and music community. LPA's research confirms its standing in the entertainment industry. In 2018, Victoria:

- generated the second-highest share of national live performance revenue (nearly \$700 million or 32.3% of national ticket sales revenue); and
- generated the second-highest share of national live performance attendance (8 million people or 30.5% of national live performance attendance).¹

LPA research also shows that musical theatre, which is one of the major employers of children in the live performance industry, is one of the top two categories in live performance revenue and attendance in Victoria. In 2018, musical theatre productions in Victoria welcomed over 1.3 million

¹ EY (2019), *Live performance industry in Australia, 2018 Ticket Attendance and Revenue Report*, prepared for Live Performance Australia

patrons and contributed over \$130 million to the economy. Victoria makes a valuable contribution to the national cultural landscape and delivers social and cultural benefit to locals and visitors alike.

Child employees in the live performance industry in Victoria

LPA's objective is to ensure that employers in the live performance industry are supported by the CE Act and the *Mandatory Code of Practice for the Employment of Children in Entertainment (2014)* (the Code) to effectively maintain their obligations and protect child employees.

Children are employed by a range of organisations in Victoria's live performance industry, including musical theatre production companies, theatre companies, opera and ballet companies, and circuses. Members consulted by LPA have confirmed that while an increasing number of companies in the live performance industry are employing (or seeking to employ) children in productions, Victoria is commonly regarded as the 'trickiest' jurisdiction in which to employ children.

A targeted review of the CE Act and the Code can help ensure that employers in the live performance industry are better able to meet their obligations while continuing to maintain strong protections for children in the workplace. At the same time, the industry must be supported to thrive, offer participation and employment opportunities for child employees, and foster the creative talent of children.

3. KEY ISSUES

Members agreed that the CE Act is effective and responsive to the issues of employers and children in the workplace. The CE Act maintains strong and appropriate protections for children working in the live performance industry. The CE Act also ensures that a child's education is not adversely affected, and preserves their health and safety, as well as moral or material welfare.

LPA's submission outlines key issues associated with the CE Act below and includes a separate section focused on feedback related to the Code. LPA notes that the Code will be reviewed after the review of the CE Act and welcomes the opportunity to be involved in the forthcoming consultation process.

Age limits

In the context of the live performance industry, LPA believes the current age limits mandated by the CE Act are appropriate and align with age limits that operate in other jurisdictions. Children working in the live performance industry are generally more independent and mature given their training and discipline. Introducing regulations for children aged between 15-17 working in the live performance industry would impose further (and unnecessary) administrative and financial burden on employers.

Definition of employment

LPA considers the current definition of employment in the CE Act to be appropriate and reflective of the range of working arrangements and situations in the live performance industry.

LPA is comfortable with the current types of employment/engagement captured by the CE Act. LPA does not believe it should be a mandated requirement for screen tests and casting walk-ons to be paid as work or work-related activity. This would be akin to offering a candidate payment to interview for a professional role. Payment might only be considered necessary if there are multiple

call-backs over an extended period (which may be necessary to monitor a child's growth) and where there is a real or imagined risk of exploiting a prospective child employee.

Those Members consulted also noted that the use of social media by children employed in their productions is strictly monitored and, in some instances, governed by a company social media policy. This is primarily due to the risks associated with cyber bullying. A child often does not have the same level of emotional maturity and ability to de-role as an adult and may view material or commentary that causes harm to their emotional wellbeing and welfare.

While child employees may have official social media accounts (usually managed by a parent/guardian), they are not encouraged, paid, or sponsored by employers to post content related to productions. Instead, child employees may participate in official promotional material, where they receive a payment for services rendered.

Child Employment Permit system

Members felt that the application process for a Child Employment Permit, while time-intensive, is comprehensive and ensures that appropriate protections are in place for children working in the live performance industry. Record-keeping obligations are also clear and appropriate.

However, all Members consulted observed that the process for applying for a Child Employment Permit (or equivalent) and applying for a variation is easier to navigate in other jurisdictions, specifically New South Wales. Employers in New South Wales must apply for an Employer's Authority to employ a child under 15 years of age in the entertainment industry. Once approved, employers are issued with an authority certificate by email, which acts as a 'permit'. Employers can also apply for standard, 'blanket' variations to the Code of Practice for the entire season on short notice (as opposed to applying for each separate variation in advance through the Child Employment Portal) to cover various exceptional circumstances. Employers receive written confirmation once approved.

A few Members also commented on the slow turnaround times for approval of a Child Employment Permit and noted some difficulties in contacting staff at the Department of Premier and Cabinet. Given an employer is unable to employ a child without a Child Employment Permit, any delay in approval interferes with preparatory activities, such as wardrobe fittings and scheduling of rehearsals. This imposes further administrative burden on employers.

Employers and the Department of Premier and Cabinet in Victoria would benefit from a system and process that is transparent and less labour-intensive. LPA is supportive of a system like that in New South Wales that reduces red tape and allows for flexibility in managing child employees. This is particularly critical when circumstances are constantly subject to change and tend to arise unexpectedly and/or on the weekend.

Child Employment Officers

Some Members noted that advice and acceptable standards varied from production to production, depending on the assigned Child Employment Officer. Some Members also reported that often a Child Employment Officer would not attend a scheduled dress-rehearsal, which creates difficulties in readjusting rehearsal schedules for all employees.

Confines of the Code

The key challenges raised by both major commercial theatre producers and performing arts companies relate to the confines of the Code. LPA recommends, based on Member feedback, that

the Code be revised to better reflect the reality of work circumstances and environments in the live performance industry.

Ultimately, the provisions in the Code compromise the 'equal playing field', particularly when it comes to the employment of younger children. While they may have the opportunity to audition, employers may be less inclined to hire younger children who are limited in their hours of work. Some Members have also had to employ more children to accommodate the restrictions of the Code, while others do not have the flexibility or finances to employ multiple child employees.

For the purposes of this summary, and based on Member feedback, LPA has used the provisions in the equivalent New South Wales' Code of Practice as a point of reference.

Hours of work – education and employment

In Victoria, a 40-hour maximum cap for school and work in one week exists, whereas a child in New South Wales can engage in a combined total of 50 hours of school and work in one week. The Code also does not provide for split shifts. The age groupings also differ between Victoria and New South Wales – for example, a child aged 10-12 years can work a maximum of 6 hours per day between 9am-11pm in Victoria, while a child aged 8-15 years can work a maximum of 8 hours per day between 6am-11pm in New South Wales. The extra flexibility of weekly education and employment hours in New South Wales provides a greater buffer and offers more employment opportunities for younger children.

Members are reluctant to hire children aged under 10 in Victoria due to more restrictive hours. One Member noted that they now require children to bring an official Birth Certificate to casting as a parent/guardian may otherwise lie about their child's age to position them favourably. Another Member commented that employer compliance with the maximum weekly cap was challenged at times when a child's agent and/or parent/guardian was not honest about hours worked in other jobs. Members agreed that it can be difficult and time-intensive to educate parents/guardians, and felt that further, targeted guidance is necessary to ensure all parties are adequately informed.

LPA is supportive of a less prescriptive approach, consideration of split shifts being allowed in certain circumstances, and applications for a variation to the Child Employment Permit allowed to be submitted and consequently approved in a shorter timeframe (with the parent's approval). This would facilitate a more positive working experience for children and enable them to become more a part of the production's 'community'.

Travel

In both Victoria and New South Wales, travel over a certain threshold is counted as hours of work. The threshold in Victoria is 60 minutes each way, as opposed to 90 minutes each way in New South Wales. Members noted that this can serve as a disincentive for employers to hire children whose commute is greater than 60 minutes. One Member also stated that they now require children to provide proof of home address at the time of casting as a parent/guardian may otherwise lie about it to position their child favourably.

LPA is supportive of the travel threshold being increased to 90 minutes each way to allow for more employment opportunities and to be consistent with New South Wales.

Tutoring

Those Members consulted noted that tutoring requirements provided for by the Code are restrictive. While a full day of attendance at school is counted as four hours, tutoring is counted hour by hour, which means that a child's work arrangements are not as flexible if they must be tutored.

Furthermore, if tutoring is mandated on certain days, the parent/guardian must bring the child employee into the place of work for one-on-one tutoring rather than the child attending their school. This can be cumbersome for both the parents and the child, as the child can suffer from missing out on the social aspect of the formal classroom setting, where they are familiar and comfortable with their teacher and peers/friends.

Additional guidance

Members consulted by LPA noted some gaps in information and instruction in the Code. When the employer is a smaller company or a first-time applicant, capacity and specialist knowledge may be limited, and the process then becomes a significant undertaking. Members noted the need for additional, or more tailored, guidance on:

- The appropriate qualifications and resources for chaperones, particularly if the chaperone does not have extensive prior experience. This could be set out as it is for tutors in the Code or be in the form of templates.
- Managing behaviour of children that is considered inappropriate and of a bullying nature. Guidance could include requirements for conducting a disciplinary meeting and on how to document the process.
- Accommodating child employees' exposure to adult themes and content in scripts, where it is crucial to the storyline and execution of the live performance.
- Educating parents/guardians as mentioned earlier. Members also noted that it is difficult to ensure that child employees are having an appropriate amount of rest between work, school, and extra-curricular activities.
- Meeting both Victorian guidelines and international guidelines if the child employee is from overseas.

4. SUMMARY

In summary, LPA urges a review of the Child Employment Permit system and a revision of the Code, to be more flexible and allow for greater equality of access for child performers of all ages. LPA believes the New South Wales 'welfare' model would be a more common-sense approach than a 'compliance' model and significantly ease administrative and financial burden for employers. LPA's key recommendations for the Department of Premier and Cabinet are to:

1. Retain existing age limits mandated by the CE Act
2. Maintain the current definition of employment in the CE Act
3. Consider simplifying the Child Employment Permit application process
4. Consider harmonising guidelines in line with other jurisdictions

5. Revise the Code to standardise regulations and processes and better reflect the reality of work circumstances and environments in the live performance industry.

Thank you again for the opportunity to provide input into the review of the *Child Employment Act 2003*. We look forward to liaising further with the Department of Premier and Cabinet on this issue.

Yours sincerely



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