/ NOVEMBER 2024

THE McKELL INSTITUTE

Safety Not Guaranteed

PREVENTING YOUNG WORKERS FROM EXPERIENCING PREDATORY BEHAVIOUR

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About the report

This report has been prepared by the McKell Institute in consultation with Shop, Distributive and Allied Employees Association.

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Acknowledgement of country

This report was written on the lands of the Darug and the Eora Nations and on Ngunnawal Country. The McKell Institute acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Owners of Country throughout Australia and their continuing connection to both their land and seas.

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One Page Brief

CONTEXT

This report outlines an action plan to ensure children at work are not exposed to sexual predation in workplaces.

THE POLICY PROBLEM

Over 500,000 children work in Australia, yet they're not adequately protected. Most Australians would be surprised to learn that **there are few requirements for adults working *alongside* children** to get working with children checks (**WWCCs**). This had led to incidences where adults charged, or even convicted, with child sex offences are working alongside children in retail, fast-food and hospitality settings. In March 2024, the South Australian Government passed legislation that banned sex offenders from working with children. In the Northern Territory, reporting laws require any adult who is aware of abuse to report that abuse to authorities. The laws vary around the country, and it's time to act to prevent sexual abuse of children in the workplace.

MCKELL'S PLAN TO PROTECT CHILDREN AT WORK

THE REPORT PROPOSES THREE RECOMMENDATIONS FOR ALL STATE AND TERRITORY GOVERNMENTS:

1. **Ban sex offenders from working with children. To do this, governments need to:**
   - **A. Tighten Bail Conditions & Reform Sex Offender Registries**

     All state and territories should amend bail legislation to specify that individuals charged with child sex offences cannot work alongside children while awaiting trial. All states and territories should replicate South Australia's reforms to its sex offender registry legislation, so that any convicted child sex offender is prevented from being able to seek and obtain employment alongside children.
   - **B. Include workplaces in Working With Children Check systems**

     All adult employees working alongside children should be required to access WWCCs to do so, in every state and territory. All state and territories should also ensure that eligibility for working with children checks should be expanded to allow all businesses that voluntarily seek WWCCs for employees are able to do so without increasing costs to workers.
2. **Clarify and standardise reporting obligations on employers where there is reasonable suspicion of sexual assault of children, including where the suspected offender is an employee.**
3. **Establish a targeted review of predatory sexual behaviour in the workplace**

BENEFICIARIES OF THE REFORM

If enacted, the proposed changes would offer greater protection for the half-a-million children in Australia and give parents the confidence that their children will not be preyed upon at work.

Contents

One Page Briefing **4**
Foreword **7**
Executive Summary **8**
Key Findings **10**
Recommendations **12**
Introduction **14**
Part 1: Children are vulnerable in many Australian workplaces **16**
Children are most common in a handful of industries 17
There are structural vulnerabilities to younger workers 17
Child work is poorly defined and inconsistent around the country 18
Available data suggests half of young workers have experienced sexual harassment 18
Children at work need to be supported when dealing with complex cases of abuse 19
Part 2: Current Working With Children Check Requirements Are Inadequate **20**
Each state and territory has its own pre-employment screening regime 21
WWCCs are usually available only for the highest risk workplaces 21
There are limitations to pre-employment screening 22
There are still gaps in Australia's pre-employment screening approach 22
Part 3: Businesses still benefit even with expanded WWCC criteria **23**
Employing children is a privilege that benefits business bottom lines 24
Businesses still benefit employing children under any expanded WWCC criteria 26
WWCC costs are minimal compared to the cost-benefit of employing children 27
Part 4: Gaps in Australia's bail laws present risks to children **29**
Bail law frameworks need strengthening to protect working children 30
Bail law limitations expose children to avoidable workplace risks 31
Part 5: Improving 'Child-related employment' definitions and offender registries **32**
The narrow definition of child related employment leaves children vulnerable 33
South Australia is leading the way on defining 'child-related work' 34
This model should be replicated throughout the Commonwealth 34
Part 6: Gaps in mandatory reporting laws present further risk **35**
Current mandatory reporting laws are inconsistent in each state and territory 36
Only NT's mandatory reporting criteria cover all workplaces 36
Conclusion **39**
Appendix – Nature of Working With Children Checks in Each Jurisdiction **40**
References **42**

Foreword

The primary obligation of all governments is ensuring the safety and well-being of their citizens – especially our children. But too often, children at work are exposed to unnecessary risks in workplaces.

Across Australia, more than 500,000 children — those aged 17 and under — are employed. Of those, a disproportionate number work in the retail, hospitality, and fast-food sectors.

Employing children is highly beneficial to employers. Wages for children are significantly lower than for workers aged 21 and over. Most child workers also do not receive superannuation.

Despite over half a million children working, many of them are poorly protected at work, especially from exposure to predatory behaviour, even by previously convicted offenders.

While many jobs require working with children checks if an adult employee is working *with* and providing services *for* children, i.e., in childcare settings or schools, working with children checks are not required for adult employees working *alongside* children, i.e., as colleagues in a café, restaurant or supermarket.

In fact, many Australians would be shocked to learn that in most workplaces where adults work closely alongside children, working with children checks are not only not required — they're often not available.

In some states, employers proactively seeking to purchase working with children checks for their adult employees are unable to do so, as working with children checks are often limited to those working in a specific set of occupations.

Additionally, in every Australian state and territory except South Australia, there are currently no specific protections for children in these industries from individuals seeking employment while on bail for sexual criminal offences, including those directed towards children. Even on release, convicted child sex offenders may still seek and obtain employment alongside children in many workplaces.

> This creates a scenario where it is possible for even convicted predators to be working alongside children in retail, hospitality, fast-food and other workplaces.

Recognising this unacceptable risk, the South Australian Government passed legislation in late 2023 closing this loophole and going some way to protecting South Australian children at work. In the Northern Territory, reporting laws require any adult who is aware of abuse to report that abuse to authorities. These laws are an important start, and as this report demonstrates, there are lessons other state and territory governments can learn from the South Australian and other reform processes. There is still work to be done, both in South Australia and across the nation to protect children from sexual harm in the workplace.

Young workers play a critical role in our society and economy.

Hiring children is a privilege for an employer and should confer upon all employers of children additional responsibilities to ensure children at work are adequately protected from predatory behaviour.



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Executive Summary

This report details the unacceptable risks Australian children face in workplaces and presents a suite of policy recommendations for each state and territory to consider to better protect children from predatory behaviour.

Part 1 begins by detailing the critical role workers under the age of 18 play in our economy and society, noting their disproportionate representation in the retail, fast food, and hospitality industries.

It notes that the very nature of work in these settings poses a risk to young workers. It is not uncommon in these industries for high school aged employees to be working closely with managers or other employees who are adults. Often, this occurs after hours — think weekend hospitality work or night fill at the local supermarket. These working conditions present a risk to these underage workers that is specific to the retail, fast food, and hospitality sectors.

Part 2 then considers the status quo with regards to workplace screening, in the form of Working with Children Checks (WWCCs) in each Australian jurisdiction. It finds that there is inconsistency among states and territories with WWCCs, in terms of the ability for firms to voluntarily access WWCCs and the criteria which mandates adult employees attain a WWCC. Crucially it finds that there are generally *no requirements* to obtain a WWCC when working *alongside* children.

Part 2 then explains why these inconsistencies should be addressed and proposes how this can best be executed.

In **Part 3,** the impact on business from a more expansive requirement to protect underage employees through the WWCC process is considered. It is found that in any scenario where WWCCs were mandated for adult employees working adjacent to child employees, the overall cost-benefit for the employer hiring the underage worker remains significant. Given the considerably lower costs associated with hiring children (junior rates start as little as half the adult minimum wage, and there is no requirement to pay superannuation for workers aged under 18), businesses stand to benefit financially even if they are required to provide a safer workplace for their staff.

In **Part 4**, this report explores another unacceptable risk to young workers — inadequate bail laws. It finds that existing laws create an unacceptable level of risk for children, who may find themselves working alongside persons formally charged with child sex offences.

Part 5 explores the loopholes which allow *convicted* sex offenders to work alongside children without any restrictions or limitations. While most sex offender registry regimes allow their respective police commissioners to limit offenders' access to 'child-related work', this definition does not yet include work in which the alleged offender would work *alongside* children in most of Australia. It then highlights South Australia's reform approach as an appropriate national avenue for reform.

Finally, **Part 6** considers the gaps in reporting frameworks that mean many employers are uncertain of their reporting obligations if they suspect abuse of a child, or if they become aware of consensual relationships between children, or between children and young adults, in their workplaces. It notes that existing reporting obligations are unclear, and that a broader reform package designed to protect children should establish consistent, codified reporting obligations that cater for real-world nuance.

Key Findings

1. **There are over 500,000 workers aged 17 or under in the Australian labour market** — Children play a critical role in the Australian economy, filling demand in service industries in retail, fast food, and hospitality, and employing children is a privilege for employers, given the lower labour costs associated with doing so.

2. **Many young workers are exposed to unnecessary risks at work** — These workers are often exposed to hours at work alongside adult co-workers, sometimes in vulnerable, late-night settings, particularly in the retail and hospitality industries. Usually, adult workers in these settings do not require a WWCC, or any specific pre-employment screening.

3. **There are inconsistencies with WWCC requirements** — WWCCs provide an important layer of protection in many industries where the job requires providing services or care directly to children. But WWCC's are not required for jobs where adult employees work alongside children.

4. **There are barriers to the voluntary ascertainment of WWCCs** — Some businesses want their employees to receive WWCCs and are willing to pay for the process, but certain jurisdictions prohibit the voluntary purchase of WWCCs by businesses for their employees. This is limiting the voluntary uptake of WWCCs by employers.

5. **Expanding WWCC requirements would impose a negligible cost on business** — Given the costs and benefits associated with employing workers on junior rates, any additional costs to business associated with expanded WWCC requirements would be significantly outweighed by the financial benefits associated with employing children.

6 **Bail laws do not specify that offenders cannot work in settings where children also work** — There are gaps in state and territory bail laws, such that people formally charged with sex crimes, even against children, are not specifically prohibited from employment in settings, such as retail or hospitality, where they may be working alongside children. This is a loophole that has been closed in South Australia and should be closed in all other jurisdictions.

7 **Sex offender registry legislation around the country does not restrict post-offending employment alongside children in workplaces** – The various sex offender registry and reporting statutes often contain a definition of 'child-related employment' very similar to WWCC legislation, but rarely specify barriers to prevent these individuals working *alongside* children meaning post-release offenders are free to seek employment in enterprises with children as young as 13. This is another loophole that has recently been closed in South Australia, and should be followed in all other jurisdictions.

8 **Employers aware of child abuse are unclear about their reporting obligations and options** – The is a lack of clarity, consistency and enforceable laws in all jurisdictions with regards to the reporting of child abuse. In certain settings, such as schools, an employee is required to report to authorities an abuse of a child if they form a belief that abuse is occurring, irrespective of the child's willingness to report that abuse. This is not the case in most of the workplaces described in this report. In fact, mandatory reporting laws vary considerably across each state and territory. This is creating scenarios where employers are aware of child abuse occurring to a child employee, but are not able to report that abuse without first receiving the consent of the child to do so. Only in the Northern Territory do existing mandatory reporting laws require *any* adult who is aware of abuse to report that abuse to authorities. This report explores this challenge and argues for a more consistent and clear approach to reporting these circumstances.

Recommendations

RECOMMENDATION 1

Ban sex offenders working with children

TO DO THIS, GOVERNMENTS NEED TO:

A. Tighten Bail Conditions & Reform Sex Offender Registries

All state and territories should amend bail legislation to specify that individuals charged with child sex offences cannot work alongside children while awaiting trial. All states and territories should replicate South Australia's reforms to its sex offender registry legislation, so that any convicted child sex offender is prevented from being able to seek and obtain employment alongside children.

B. Include workplaces in Working With Children Check systems

All adult employees working alongside children should be required to access WWCCs to do so, in every state and territory. All state and territories should also ensure that eligibility for working with children checks should be expanded to allow all businesses that voluntarily seek WWCCs for employees are able to do so without increasing costs to workers.

As this report details, current policy gaps exacerbate the risk that children will be working alongside sex offenders in various settings. This report considers a two-pronged reform approach to prohibiting sex offenders from working alongside children.

A. Tightening bail conditions and reforming sex offender registries

State and territory governments should each reform bail laws to specifically prohibit individuals who have been formally charged with child sex offences from seeking or obtaining employment alongside children. South Australia's reforms to its sex offender registry legislation (discussed below) affect the operation of its bail legislation and give bail authorities the ability to prevent those charged with sex offences from working alongside children. It is recommended that this change be replicated across the Commonwealth.

Additionally, in almost all sex offender registry legislation there is nothing preventing convicted child sex offenders from working alongside child workers after their release. Without appropriate precautions, this poses an unacceptable risk to children.

Accordingly, the McKell Institute recommends that states and territories with a definition of 'child-related work' in their sex offender registry legislation follow South Australia's lead and expand their definition to include places in which children are employed. In jurisdictions which do not operate on a 'child-related' work framework for their sex offender registry, it is recommended that another bespoke legislative mechanism be passed to ensure former child sex offenders are limited in their ability to seek and obtain employment alongside children.

However, recognising that these measures may severely limit the few employment options available to offenders, the limitation should be subject to exemptions based on whether the offender's original conduct occurred in a workplace setting, and whether they pose an ongoing and unacceptable risk to the community.

B. Including workplaces in Working With Children Check systems

State and territory governments should amend their WWCC legislation to provide that 'child-related employment' extends to working alongside children. States should reform WWCC legislation to ensure that workers who are likely to be working *alongside* children in industries that employ large numbers of children are able to ascertain a WWCC. This may be practically achieved by amending

the definition of 'Child-Related Work' in each jurisdiction's WWCC regime.

In instances where WWCCs are not required by legislation (or in cases where they would not be required under the expanded regime), but employees come into irregular contact with children, businesses should be freely able to obtain WWCCs for their employees without arbitrary barriers. Any reform should ensure that any costs associated with this adjustment are not borne by the employee.

There are currently inconsistencies in each jurisdiction with respect to the accessibility of WWCCs when the individual seeking a WWCC is doing so for employment not specifically defined as 'child-related'.

Broadening the definition of 'Child-related work' will expand the eligible pool of workers able to ascertain WWCCs, even if they are not specifically mandated to do so. But even if employees do not meet the definition, there should be no barriers preventing them from voluntarily obtaining the check.

It is critical that any additional costs associated with protecting children at work are not borne by employees, either directly or indirectly.

RECOMMENDATION 2

Clarify and standardise reporting obligations on employers where there is reasonable suspicion of sexual assault of children, including where the suspected offender is an employee.

Employers that may be aware of an abusive sexual interaction between an adult and child employee are unclear of their reporting obligations of these suspicions in many states and territories.

This is unlike in other workplaces, such as schools, where mandatory reporting of known abuse to a child is required. The status quo does not protect children adequately. It also creates scenarios where employers may know of abuse occurring to a child worker, but are unable to report that abuse if the victim does not wish them to do so.

These situations can become incredibly complex when the circumstances may involve two individuals whose ages are immediately adjacent to the relevant age of consent within any jurisdiction (i.e. a relationship between a 16 and a 17 year old).

Clarifying and codifying reporting obligations and expectations would further deter the abuse of children, protect children, and give employers of children clarity when it comes to reporting suspected abuse when they become aware of it.

Northern Territory's broad mandatory reporting criteria, as defined in the *Care and Protection of Children Act 2007 (NT)* may serve as a template for national reform.

RECOMMENDATION 3

Establish a targeted Commonwealth review into children's vulnerabilities in the workplace

This report highlights the policy issue of children's vulnerability in the workplace and proposes several actionable recommendations for state and territory governments.

The Commonwealth, however, should also consider establishing a targeted review of existing policies and protections for vulnerable children in the workplace, helping to guide a consistent national approach to reform. The review may consider further protections, and harmonised definitions of 'child-related work' to ensure national consistency and best-practice, as well as considering the supports needed for both children and adults in workplaces to adequately identify and respond to incidences of abuse.

Introduction

More than 500,000 children are employed in Australia, each making meaningful contributions to the country's labour force and economy.

Children (defined in this report as all employees under the age of 18) can gain valuable experience in real-world settings, while businesses benefit from the lower rates of pay and minimal superannuation obligations.

The inclusion of children in the workforce also helps address issues of labour supply in lower-skilled occupations, particularly during periods of low unemployment and labour shortages, but the prevalence of young workers in Australia demands that appropriate protections are in place to ensure this vulnerable cohort are not exposed to unnecessary risks.

Broadly speaking, Australia has a well-developed and robust framework for protecting children in the workplace. Recent reforms prompted by the findings and recommendations of the *Royal Commission into Institution Responses to Child Sexual Abuse* has improved workplace protections for children.

Unfortunately, there remain significant gaps in workplace regulations across Australia that ultimately expose children to avoidable risks, including predatory sexual abuse, in workplaces where adults regularly work *alongside* child colleagues.

There are many situations where children work with adult supervisors. A 14-year-old girl, for example, could be required to close a café while working with an adult manager; or a 16-year-old boy may be required to stack shelves in a supermarket later in the evening with only adult colleagues present.

States and territories retain responsibility for administering a framework to ensure child protection in workplaces. As a result, each jurisdiction has developed different regulations and policies associated with WWCCs and oversight of convicted offenders once they re-enter society and potentially the workforce.

In some jurisdictions, accessing WWCCs is restricted to those working within specific sectors, and there are limits on who from outside of those prescribed sectors can access such checks. This has restricted employers that are voluntarily seeking WWCCs for managers of teenager and young workers from accessing them.

Similarly, bail laws in Australian jurisdictions vary, and rarely specify that convicted offenders must avoid working in certain types

of workplaces where children are likely to be working as the offender's colleague.

To a similar end, there is significant variation in legislation concerning sex offender registries. In most states and territories, convicted sex offenders are not limited in their ability to seek and obtain employment *alongside* children. Despite this, South Australia in late 2023 made commendable amendments to both its bail and sex offender registry framework to prevent those charged or convicted from working *alongside* children.

These inconsistencies and variations across state and territory jurisdictions expose children to a degree of risk that could be minimised addressed by an extension of working-with-children principles and formal checks to managers and colleagues of children in at-risk workplace settings.

However, governments must strike a balance between making gainful employment possible for offenders and keeping children safe at work.

This report will outline the nature of children's participation in Australia's labour market, detail the vulnerabilities of children face at work, examine current frameworks for protecting children in the workplace across each state and territory in Australia, and propose an actionable set of policies designed to improve workplace safety for children in Australia.

Part One: Children are vulnerable in many Australian workplaces

KEY POINTS

1. More than 500,000 children work in Australia.
2. Children are vulnerable to abuse in certain workplaces.
3. There is no national framework designed to keep children safe from abuse at work.
4. Existing protections for children at work are inconsistent across states and territories.

According to the Department of Employment and Workplace Relations (**DEWR**), a survey in June 2022 found an estimated 214,500 children in Australia under 15 years of age had worked at some time in the past 12 months. A survey conducted in August 2022 found 367,100 children between the ages of 15 and 17 had been employed in the week of the survey.[1]

Rather than necessarily indicating any unlawfulness, DEWR stated these figures referred to children engaging in formal work activities and reflected that 'having children working is actually seen, within our society, as being an excellent development opportunity and an ability to get a work ethic'.[2]

CHILDREN ARE MOST COMMON IN A HANDFUL OF INDUSTRIES

The National Skills Commission has noted that 'young workers have a higher employment share than average in accommodation and food services, retail trade, and arts and recreation services'.[3] Children's participation in the workforce is usually limited by compulsory educational requirements. These requirements limit the times in which child workers can participate in the workforce. As a result, many children seek employment in industries and roles characterised by shift work and irregular hours, typically early morning, later at night and on weekends.

The services and hospitality industries – working at cafés and restaurants or in the retail sector – present an attractive and accessible option for this cohort. As Australia's youth unemployment rate continues to trend below average rates of the past decade,[4] it is likely that employment of young workers in these industries will continue to rise. Indeed, industry advocates have been vocal about the benefits of facilitating the participation of children. The Australian Retailers Association, among others, has actively campaigned for a nationally consistent approach to workforce participation for teenagers as one initiative to ease the pressures of a tight jobs market.[5] It is evident that reform and a consistent approach to the employment of children in Australia is a priority for industry and can be a useful lever for governments seeking to accelerate a post pandemic economic recovery. These genuine benefits, however, need to be paired with serious efforts to protect these children from any risks they make face at work.

THERE ARE STRUCTURAL VULNERABILITIES TO YOUNGER WORKERS

Much of the focus for ensuring children are protected concentrates on the potential for exploitation because of children not being aware of their rights and not having the life experience to navigate the power imbalance with their employers.

Concerns have been raised about workers being asked to work free trials and being paid a training wage, having wages withheld and leave requests denied.[6] Ensuring children are protected against these exploitative practices is a justifiable priority, but too often the focus on these genuine employment issues has been emphasised over the need to protect children from physical threat at work.

CHILD WORK IS POORLY DEFINED AND INCONSISTENT AROUND THE COUNTRY

Gaps in protections for children at work are not surprising once it is established that there are such inconsistent laws governing the employment of children in every state and territory. In fact in some jurisdictions, such as South Australia and New South Wales, there is no minimum age for employing a child. While the employment of a child requires such employment to be in certain hours as not to impact a child's primary and secondary education, the laws governing such employment vary in every jurisdiction.

National laws governing employment, such as the Fair Work Act, make no specific mention of child employment and defer all matters relating to minimum working ages and the protection of children to individual states and territories.

Only in Victoria is a specific license to employ children required. In July 2023, Victoria's *Child Employment (Amendment) Act 2022* commenced operation. The law mandates that employers of children under the age of 15 require a license to employ those children. Such a license was required prior to 2023, but the 2022 reforms expanded the workplaces in which such licenses were required. This includes all non-profits and community fundraising employers.

The patchwork of child employment laws has created inconsistencies and vulnerabilities across Australia, including exposure to sexual abuse and predation.

AVAILABLE DATA SUGGESTS HALF OF YOUNG WORKERS HAVE EXPERIENCED SEXUAL HARASSMENT

Children are disproportionately vulnerable to sexual, physical, and mental abuse in Australian workplaces. There are limitations in the data available to precisely quantify the extent to which sexual harassment in the workplace. This is particularly the case for younger workers, who may feel even less inclined to report incidences than more experienced workers, both due to their inexperience or unfamiliarity with their rights, as well as the higher rates of precarity and job insecurity young workers experience.

From the data that is available, there is cause for concern regarding the extent to which sexual harassment does effect young people at work. The most recent national survey by the Australian Human Rights Commission (AHRC) found that, In the past 5 years, 47 per cent of workers aged between 15 and 17 have experienced some form of sexual harassment in the workplace.[7] It should be noted, however, that the AHRC data has limitations due to the relatively small sample size from which the concerning figure is derived.

The AHRC further found that, across all age groups, 41 per cent of women and 26 per cent of men "have been sexually harassed at work" in the past five years, and that one in three had experienced similar abuse within the past 12 months[8] These figures were derived from surveying over 10,000 Australians, and represent a valid and robust sample size.

The Australian Bureau of Statistics has further found that 26 per cent of all sexual abuse occurs in Australian workplaces,[9] with incidences of sexual abuse at work more likely than in the households or in the general community. Only places of 'entertainment',

such as nightclubs, recorded higher rates of sexual assault than workplaces. The ABS has further noted that incidences of sexual assault are most prevalent for younger people. While the ABS data does not survey workers under the age of 18, it notes that Australians aged 18-24 were most likely to experience sexual assault in all environments.

While acknowledging the limitations in the availability of nation-wide data on the prevalence of sexual abuse on young workers, the available evidence demonstrates the acute need to ensure that children at work are adequately protected from prospective sexual violence in workplaces, and that currently, the status quo is inadequate in protecting young workers from potential abuse at work. .

CHILDREN AT WORK NEED TO BE SUPPORTED WHEN DEALING WITH COMPLEX CASES OF ABUSE

In responding to incidences of sexual abuse and harassment in workplaces, policymakers should be cognisant of the complexities associated with adequately identifying, reporting and acting upon alleged predatory behaviour. Young people may feel disincentivised to report cases of abuse for myriad reasons. These may include an unfamiliarity with their rights; concerns over their job security if they report abuse, especially if that abuse is inflicted by a superior; or worries over navigating the criminal justice system.

Children are more likely to be working in casual jobs, and may also experience a financial burden associated with taking time away from work to interact with the criminal justice system to pursue justice after experience an incidence of sexual abuse in the workplace. Children engaging in these processes are also at risk of re-traumatisation, and this needs to be considered by policymakers.

It should be noted that younger workers require considerable support in these circumstances, and that in any reform process designed to adequately protect children at work, the support needs of children must be adequately considered.

Part Two: Current Working With Children Check Requirements Are Inadequate

1. There are inconsistencies and gaps with WWCC regimes across the states and territories.
2. Critically, WWCCs are not required for working alongside children.
3. In some states, businesses seeking WWCCs voluntarily are prohibited from accessing them, due to limited eligibility.

EACH STATE AND TERRITORY HAS ITS OWN PRE-EMPLOYMENT SCREENING REGIME

A key feature of Australia's policy framework designed to protect children is pre-employment screening for people seeking to engage in child-related work in the form of WWCCs. Responsibility for WWCCs is retained by the states and territories, each with their own distinct requirements.

WWCCs check for an individual's criminal records and any reports on their professional conduct. They are designed to help ensure that the right people are chosen to work or volunteer with children. They aim to prevent people from working or volunteering with children if records indicate that they may pose a risk.[10]

Research has highlighted the advantages of having structured pre-employment screening processes in place, including:

- Minimising subjective decision making by creating standardised points of reference;
- Assumptions on which risk assessment models are based can be tested and amended over time;
- Information is dealt with transparently; and
- Structured risk assessment models may deter possible offenders.[11]

WWCCS ARE USUALLY AVAILABLE ONLY FOR THE HIGHEST RISK WORKPLACES

Since June 2013, all jurisdictions in Australia have some form of child-related employment pre-screening legislation. These laws make it mandatory for certain individuals engaged in occupations such as education and childcare, child protection, child and family welfare, health, entertainment and recreation, and religious instruction to meet screening requirements. There are differences across the states and territories about who is required to undergo screening and how different occupations are identified.

Police Checks identify and release relevant criminal history information relating to convictions, findings of guilt or pending court proceedings. However, due to spent conviction/non-disclosure legislation and information release policies, there are limitations on the information a Police Check can provide (e.g. the Spent Convictions Scheme stipulates that prior convictions are not to be disclosed where 10 years have passed from the date of the conviction).

WWCCs are more extensive but also more targeted than Police Checks, as the purpose of a WWCC is to assess the level of risk an individual poses to children's safety. For example, WWCCs draw together information from various sources but may include a primary focus on certain types of offences (e.g. sexual offences, offences related to the harm or mistreatment of a child). Generally, WWCCs consider:

- Convictions – whether or not they are considered spent or were committed as a juvenile;
- Apprehended violence orders and other orders, prohibitions or reporting obligations;

- Charges (i.e. where a conviction has not been recorded because a proceeding has not been heard or finalised by a court, or where charges have been dismissed or withdrawn);
- Relevant allegations or police investigations involving the individual; and
- Relevant employment proceedings and disciplinary information from professional organisations (e.g. organisations associated with teachers, childcare service providers, foster carers and health practitioners).

THERE ARE LIMITATIONS TO PRE-EMPLOYMENT SCREENING

Policy and legislation that provide for the pre-employment screening of adults who work or volunteer in child-related organisations are important for creating and maintaining child-safe organisations. However, the 2015 Royal Commission into Institutional Responses to Child Sexual Abuse found the schemes operating in Australia to be inconsistent and complex.

The Royal Commission report highlights several issues including inadequate information sharing and monitoring of WWCCs across jurisdictions, the non-transferability of WWCCs across jurisdictions, and the inability of screening agencies to access WWCC decisions in other jurisdictions.[12]

THERE ARE STILL GAPS IN AUSTRALIA'S PRE-EMPLOYMENT SCREENING APPROACH

Despite the findings of the Royal Commission relating to the limitations of pre-employment screening, not all recommendations relating to WWCC reform have been implemented. A national approach has not been developed or delivered and there remains significant variability in the application of WWCC across jurisdictions.

The WWCC system of Australia's states and territories focuses on risk assessments for individuals on their suitability to work with children. This is reflected in the industries and types of work each state and territory legislation prescribes or defines as requiring a WWCC.

However, less focus is given however to the responsibilities employers have, to ensure that employees are suitable to be working with and *alongside* children. This is a significant gap in the WWCC approach that will require reform as governments and industry seek to encourage larger numbers of children to enter the workforce.

In addition, the definition of child-related work in all jurisdictions excludes instances where an adult may be working with an underage colleague. Instances of this type of work are prevalent throughout the labour market, and low unemployment rates will continue to make this more prevalent. In this context it is imperative that Australia's WWCC framework is fit for purpose and ensures the highest level of protection for child workers. Allowing employers to access or request WWCC of their employees in these circumstances is also a powerful tool to ensure that children remain safe at work – regardless of whether the statutory definition of 'child related' work is met.

Part Three: Businesses still benefit even with expanded WWCC criteria

KEY POINTS

1. Any additional cost to business associated with expanded WWCC protections would be minimal compared with the benefits associated with hiring children.
2. A child employee working 15 hours per week costs least $7000 less per year to employ than an employee aged 21 or over.
3. The clear financial dividend associated with hiring younger workers obliges employers to do all they can to protect children states and territories.

EMPLOYING CHILDREN IS A PRIVILEGE THAT BENEFITS BUSINESS BOTTOM LINES

This report recommends expanding WWCC mandates, which would mean more employers are responsible for the ascertainment of WWCCs for their adult supervisors of children. Inevitably, such a change will be criticised by those concerned about imposing further costs on business.

This argument, however, ignores the considerable financial benefits businesses gain by employing children, which would remain considerable even under a scenario where mandated WWCCs were expanded.

In Australia, there are separate minimum wages for workers under the age of 21, and for those aged above 21. For these employees, employers can pay them a percentage of the national minimum wage or relevant award, though not all awards include junior rates. Table 2 shows rates of pay for junior employees not covered by an award.

TABLE 1 AWARD RATES NON- AWARD[13]

AGE	% RATE OF PAY
At 15 years of age	36.8
At 16 years of age	47.3
At 17 years of age	57.8
At 18 years of age	68.3
At 19 years of age	82.5
At 20 years of age	97.7

The rationale for a junior pay rate is to facilitate the employment of young people often entering their first or second job, recognising their competitive disadvantage in the job market relative to older Australians who generally have more work experience.

Proponents of the lower rate believe it is necessary to give employers an incentive to hire young people and that employment opportunities for young Australians, which are extremely important to their future career development, would decline if junior pay rates did not exist.

Further, it is argued that providing these opportunities comes at a cost to employers because younger employees are less productive and have a higher turnover rate than other, more experienced employees who are paid the national minimum wage or relevant award.

When children work, they more often work part-time – with approximately 93 per cent of junior rate employees working part-time or casual compared to almost 40 per cent adult rate employees.[14]

Linked to this, the types of jobs they perform are more likely to be low-skilled and low-paid. Employees paid junior rates generally do the same work as older workers low-paid industries that do not always require further education, including retail, accommodation, and food services, with minimal differences in skills, experience and productivity.

Table 3 below outlines the rates of pay for workers under the General Retail Industry Award 2020 and Table 4 highlights the percentage discounts to pay of this award for employing children.

TABLE 2 GENERAL RETAIL AWARD 2020 - MINIMUM RATES[15]

EMPLOYEE CLASSIFICATION	MINIMUM WEEKLY RATE (FULL-TIME EMPLOYEE)	MINIMUM HOURLY RATE
Retail Employee Level 1	$939.60	$24.73
Retail Employee Level 2	$961.10	$25.29
Retail Employee Level 3	$976.00	$25.68
Retail Employee Level 4	$995.00	$26.18
Retail Employee Level 5	$1035.90	$27.26
Retail Employee Level 6	$1050.90	$27.66
Retail Employee Level 7	$1103.60	$29.04
Retail Employee Level 8	$1148.40	$30.22

TABLE 3 JUNIOR RATES (RETAIL EMPLOYEE LEVELS 1,2 AND 3 ONLY)[16]

AGE	% OF MINIMUM RATE
15 years of age and under	45%
16 years of age	50%
17 years of age	60%
18 years of age	70%
19 years of age	80%
20 years of age and employed by the employer for 6 months or less	90%
20 years of age and employed by the employer for more than 6 months	100%

There is a significant financial dividend for businesses who employ children. Table 5 below outlines the economic dividends for employers from employing children. This table also does not account for employers' 11 per cent superannuation liability for employees over 18 years of age.

BUSINESSES STILL BENEFIT EMPLOYING CHILDREN UNDER ANY EXPANDED WWCC CRITERIA

Even when taking account of the annualised cost of purchasing WWCC's to ensure children are safe, employers still experience a significant economic benefit by employing children. Requiring employers in certain industries to purchase WWCC for their staff to ensure the safety of these young and vulnerable workers will have a negligible impact and will still see employers much better off than if those employees were adults over the age of 18, let alone aged over 21 and earning full adult rates.

TABLE 4 ANNUALISED WWCC COSTS AND ECONOMIC DIVIDEND OF EMPLOYING CHILDREN

	WWCC COST	TERM OF VALIDITY	COST TO EMPLOY JUNIOR (17YO) – 15 HRS P/WEEK ON AWARD LEVEL 1 FOR 1 YEAR	COST TO EMPLOY 1 ADULT – 15 HRS P/WEEK ON AWARD LEVEL 1 FOR 1 YEAR	ANNUAL ECONOMIC DIVIDEND OF EMPLOYING 1 CHILD WORKER	ANNUALISED WWCC COST
NSW	$80	5 years	$11,573.64	$19,289.40	$7,715.76	$16
VIC	$128.20	5 years	$11,573.64	$19,289.40	$7,715.76	$25.64
QLD	$101.30	3 years	$11,573.64	$19,289.40	$7,715.76	$33.77
SA	$125.40	5 years	$11,573.64	$19,289.40	$7,715.76	$25.08
WA	$87	3 years	$11,573.64	$19,289.40	$7,715.76	$29
NT	$81	2 years	$11,573.64	$19,289.40	$7,715.76	$40.50
ACT	$135	5 years	$11,573.64	$19,289.40	$7,715.76	$27
TAS	$124.60	5 years	$11,573.64	$19,289.40	$7,715.76	$24.92

WWCC COSTS ARE MINIMAL COMPARED TO THE COST-BENEFIT OF EMPLOYING CHILDREN

Even when considering additional costs associated with expanded WWCC obligations for business, the cost-benefits for employing children remain for employers. For example, consider a workplace which employs 85 adult full-time employees and 15 child part-time employees under the General Retail Award at Award Level 1. The employers yearly staffing wage cost, assuming weekly rates are constant, is $4,326,636.20.

As 15 of these employees are under 18 years old, 85 WWCC's need to be acquired for the remaining 85 adult workers, this equates to an annualised WWCC cost of between $1,360–$3,442.5 depending on the jurisdiction.

Assuming all these child employees are 17 years old and working 15 hours per week, the reduction in annual wage liabilities compared to employing adults in these part time roles is $115,736.40 plus super contributions equating to 11 per cent of earnings over this time. This is a significant benefit for the employer. In this context, the economic impact of the maximum annualised WWCC cost of $3,442.50 for the same period is negligible.

This benefit multiplies the more children are employed, as wage and superannuation liabilities continue to reduce at a greater rate than the increase in WWCC liabilities. Tables 5 and 6 jointly detail the cost/benefit ratios of various proportions of adult and 17-year-old child employees at the General Retail Award at Award Level 1 for an enterprise with 100 employees.

TABLE 5 TOTAL LABOUR COSTS AT VARYING PROPORTIONS OF ADULT AND CHILDREN ON MINIMUM RETAIL AWARD RATES

CHILD EMPLOYEES	ADULT EMPLOYEES	COST TO EMPLOY ALL CHILD EMPLOYEES AT 15 HOURS PER WEEK	COST TO EMPLOY ALL ADULT EMPLOYEES AT 15 HOURS PER WEEK	COST OF 11% SUPERANNUATION GUARANTEE FOR ADULT EMPLOYEES	TOTAL LABOUR COST
25	75	$289,341	$1,446,705	$159,137.55	$1,895,183.55
50	50	$578,682	$964,470	$106.091.70	$1,649,243,70
75	25	$868,023	$482,235	$53,045.85	$1,403,303.85
90	10	$1,041,627.60	$192,894	$21,218.34	$1,255,739.94

The total cost of operating the enterprise with 100 adult employees and paying the minimum 11 per cent superannuation would be $2,141,123.40. The minimum and maximum annual costs of WWCCs are calculated by applying the annualised rates of NSW ($16 per year) and NT ($40.50 per year) respectively to the number of adult employees.

TABLE 6 COST/BENEFIT RATIOS AT VARIOUS CHILD/ADULT WORKER PROPORTIONS

CHILD/ ADULT RATIO	TOTAL LABOUR COST	TOTAL ADDITIONAL BENEFIT	MINIMUM ANNUALISED COST OF WWCCS	MAXIMUM ANNUALISED COST OF WWCCS	MINIMUM COST/ BENEFIT RATIO	MAXIMUM COST/ BENEFIT RATIO
25:75	$1,895,183.55	$245,940.85	$1,200	$3037.5	0.487%	1.23%
50:50	$1,649,243,70	$491,879.70	$800	$2025	0.163%	0.412%
75:25	$1,403,303.85	$737,819.55	$400	$1012.5	0.054%	0.137%
90:10	$1,255,739.94	$885,383.46	$160	$405	0.018%	0.046%

High child/adult worker ratios such as those used in Tables 6 and 7 are not uncommon.

For example, McDonalds Australia currently state that approximately 70 per cent of their employees are in secondary school, TAFE, or university.[17] More specifically, their 2012 Corporate Responsibility and Sustainability Report identified that 67 per cent of their employees were children. There is no reason to think that this proportion has changed in the past decade.[18]

As the above analysis has shown, there are negligible costs to business of acquiring WWCC's on behalf of their adult employers and these costs are more than offset by the inordinately greater economic benefits that employers experience from employing children. It is important that any reforms to employer obligations ensure that the employees do not bare any additional costs.

Part Four: Gaps in Australia's bail laws present risks to children

KEY POINTS

1. There are gaps in many state and territory bail frameworks that risk convicted offenders working side-by-side with underage workers.
2. Adjustments to bail laws, in addition to WWCC reforms, would better protect children.

When a person is charged with a criminal offence, they may be remanded in custody or granted bail by the policy or by a court. As with the WWCC framework in Australia, states and territories administer their own bail laws. The general principles regarding bail are the same throughout Australia, although there is some variation as to how this is expressed in legislation in different jurisdictions.

BAIL LAW FRAMEWORKS NEED STRENGTHENING TO PROTECT WORKING CHILDREN

Bail and its interplay with the common law legal system, which emphasises the importance of concepts such as the right to liberty and the presumption of innocence, can be a complex framework to interact with.

Article 14.2 of the *International Covenant on Civil and Political Rights*, which Australia is a signatory to, states that '[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law'.[19]

There are, of course, reasons and instances where a person may be deprived of this right to liberty before being found guilty. These instances must be carefully considered and the process for determining and granting bail is designed to facilitate this decision making by considering the appropriate balance between the rights of the individual to be presumed innocent and the safety of the community.

In Australia, an individual will generally be refused bail if their release would pose a risk to the community and bail conditions could not mitigate this risk.

When considering a bail application, courts consider several factors, including:

- The alleged offences;
- The strength of the case;
- The accused's prior criminal record;
- The accused's bail record; and
- The accused's circumstances.

Bail conditions may also be set in each jurisdiction. These conditions are broadly similar across jurisdictions, examples include any of the following:

- A requirement to live at a particular address;
- To report to police at particular times;
- To be supervised by corrections officers;
- Not to contact particular people;
- To abide by a curfew; and
- To forfeit money if bail is breached.

Bail is granted and bail conditions are issued based on the opinion of the court or police as to the level of risk to the community at large, or members of the community, if the accused were to reoffend. Bail conditions are typically issued to mitigate these risks.

Some jurisdictions have processes and legislative provisions that limit the ability of an accused to seek or be granted bail if they have committed a serious offence, typically murder and manslaughter, serious sexual offences, and serious personal violence offences.

While these restrictions for serious offences limit risk to the community, Australia's

bail frameworks are broadly based on risk assessment and the discretion of police and the courts do present ongoing risks. Indeed, under South Australia's current bail law framework, for example, bail may be granted to someone charged with serious sexual offences.[20]

BAIL LAW LIMITATIONS EXPOSE CHILDREN TO AVOIDABLE WORKPLACE RISKS

Currently, no state or territory has a bail framework that adequately protects children from convicted or charged offenders in workplaces.

As these bail laws currently stand, there is little prohibiting a someone charged with a child sex offence from working alongside children in workplaces where children are routinely present — such as the industries cited in this report.

The determinants of this unacceptable risk are twofold. First, the definition of 'child-related work' remains narrow across all jurisdictions, typically referring to those sectors where individuals provide services or support to children. 'Child related work' does not apply to settings where children may work, but where the primary purpose of that business is not child-related.

In the retail, fast food, and hospitality industries, this remains the case. For example, the South *Australian Bail Act 1985* (SA) uses the exact same narrow definition of 'child-related work' as does its sex offender registry legislation.[21] The amendments to 'child-related work' definition in South Australia's sex offender registry act, as discussed in the next party, therefore empower bail authorities to limit the ability of those formally charged with sex offences to work alongside children.

Part Five: Improving 'Child-related employment' definitions and offender registries

1. There are currently minimal prohibitions on convicted child sex offenders working alongside children after serving their sentence.
2. There is considerable variation in the definition of 'child-related employment' in state and territory sex offender registration legislation.
3. South Australia's expansion of the definition to include businesses in which children are employed should be replicated across the Commonwealth.

Changes to, and harmonisation of WWCC requirements throughout the Commonwealth would be a meaningful step towards protecting children. However, as this report has noted with concern, WWCCs are not required in Australia to work *alongside* children.

Similarly, reforming bail conditions would go some way towards ensuring that people charged with child sexual offences cannot work alongside children while they await trial.

But even if someone is charged *and convicted* of a sexual offence towards a child, they will eventually be released into the community. Child sex offenders released into the community will understandably need to obtain employment to get by. But due to the nature of their offending, their employment prospects will often be extremely narrow and confined to high-demand and low-skilled roles.

Concerningly, such roles overlap considerably with those that children routinely engage in. Despite this, in almost all Australian jurisdictions, there is nothing preventing a convicted and released child sex offender from seeking and obtaining employment in a workplace in which children, some as young as 13 years old, also work.

THE NARROW DEFINITION OF CHILD RELATED EMPLOYMENT LEAVES CHILDREN VULNERABLE

All Australian state and territory jurisdictions maintain legislation which allows them to monitor, and to some extent control, serious offenders after the completion of their prison term. This legislation exists independently of each jurisdiction's respective WWCC legislation and differs greatly between jurisdictions.

South Australia, Victoria, the Northern Territory, and the Australian Capital Territory's offender registration legislation all impose restrictions on offenders seeking or obtaining 'child-related employment'.[22]

Other jurisdictions integrate employment considerations into other aspects of their registration legislation. For example, Queensland's legislation allows its police commissioner to apply for a prohibition order if the person has engaged in 'concerning conduct',[23] which includes seeking employment 'that will involve the employee coming into contact with children'.

Jurisdictions which restrict offenders' ability to seek and obtain 'child-related employment' all maintain similar definitions. These definitions are broadly identical to the definitions used in the WWCC legislation[24] They concern employment which *services* clients which are likely to be children, such as education, child protection, community services and counselling services. But crucially, like WWCC legislation, 'child-related work' does not include work in which offenders will be working *alongside* children. This gap in the definition means that state and territory authorities cannot restrict offenders seeking or obtaining employment alongside vulnerable children.

SOUTH AUSTRALIA IS LEADING THE WAY ON DEFINING 'CHILD-RELATED WORK'

In late 2023 the South Australian Parliament moved to bar child sex offenders from applying for or engaging in work in workplaces which hire underage employees by tabling the Child Sex Offenders Registration (Child-Related Work) Amendment Bill 2023.

The Bill proposes to expand the definition of 'child-related work' with a new paragraph to s 64(1) of the *Child Sex Offenders Registration Act 2005* (SA). The paragraph (ka) would expand the definition of 'child-related work' to include any work involving contact with a child in connection with 'businesses or undertakings in which children are employed'.[25] As mentioned in Part 4, this definition of 'child-related work' is directly connected to the definition in the *Bail Act 1985* (SA).

Read with s 65(1) of the same Act, the amendments would prevent any child sex offender from applying for, or engaging in, employment in businesses which hire child employees.

However, this would not operate as a complete blanket ban. The Bill strikes the middle ground between making employment impossible for offenders and keeping children safe. It proposes a tailored exemption for those caught under s 64(1)(ka) by the addition of s 66B(5a).

Section 66B(5a) would allow the South Australian Police Commissioner to exempt offenders caught under s 64(1)(ka) if the relevant offences were not committed in connection with child related work,[26] and the Commissioner is satisfied that the offender does not pose a risk to the safety and well-being of children employed in the business.[27]

THIS MODEL SHOULD BE REPLICATED THROUGHOUT THE COMMONWEALTH

Children are some of the most vulnerable people in the workplace. They are already subject to intolerably high levels of workplace sexual harassment – with 47 per cent of them reporting it in some form over the past 12 months.

But sex offender registration laws throughout the Commonwealth do nothing to prevent *convicted* child sex offenders from working alongside children. South Australia's approach recognises that this situation is unacceptable, and severely limits the ability of child sex offenders to obtain employment alongside children. Importantly, the regime still recognises that there are cases in which offenders pose no ongoing risk and should be free to seek and obtain (alongside other appropriate oversight mechanisms) employment alongside children.

These changes are a common-sense step to protect Australian children and should be replicated to the greatest extent possible in each jurisdiction's sex offender registry legislation.

Part Six: Gaps in mandatory reporting laws present further risk

KEY POINTS

1. In certain workplaces, individuals are mandated to report child abuse occurring either within the workplace or to a child employed or receiving services from that workplace.
2. These mandatory reporting requirements vary considerably in each state and territory, and a lack of clarity of these obligations creates uncertainties for employers.
3. Current gaps in mandatory reporting requirements mean that many employers of children, such as managers of supermarkets or cafes, are not mandated to report abuse if they form a suspicion or belief that the abuse is occurring.
4. Northern Territory has the broadest mandatory reporting criteria which may serve as a model for other jurisdictions.

Mandatory reporting of child abuse or neglect is common in many workplaces where employees interact with children. In settings such as schools, medical facilities, youth services centers and more — environments where children receive some form of service and adult employees provide that service — a variety of laws in each state and territory require adults to report physical, sexual and emotional abuse, as well as neglect and exposure to family violence, of children if they reasonably believe such abuse or neglect is occurring.

In other settings where children are working, however, this is not usually the case. All states and territories, with the exception of Northern Territory,[28] require mandatory reporting only in prescribed settings, such as those mentioned above, rather than throughout the entirety of the economy.

This means that in many workplaces where children are employed, their supervisors or colleagues are not mandated to report abuse of that child, even if they genuinely suspect that such abuse is occurring.

This is the case for abuse occurring to that child at the hands of an individual away from the workplace, but even if such abuse is occurring at the hands of an adult employee of the same workplace. If, for example, about adult employee of a supermarket is sexually abusing a child employee of that same workplace and other staff are aware of such abuse, these staff are not mandated to report such abuse. Although some may voluntarily do so, this becomes challenging if the child employee explicitly requests that adult employee not to report the abuse. This dynamic creates a challenging scenario for colleagues or supervisors of children experiencing abuse, but who may not want to report that abuse for any reason.

CURRENT MANDATORY REPORTING LAWS ARE INCONSISTENT IN EACH STATE AND TERRITORY

The mandatory reporting criteria in every state and territory differs.

There are differences in not just who is required to report abuse, but what type of abuse mandates reporting; the age of 'children' whose abuse is to be reported; and what the punishments for not reporting are.

ONLY NT'S MANDATORY REPORTING CRITERIA COVER ALL WORKPLACES

Northern Territory is the only jurisdiction to have a mandatory reporting regime that requires anyone, in any setting, to report all forms of child abuse, for all children under aged 18, irrespective of the workplace setting in which the operate.

Sections 15, 16 and 26 of the *Care and Protection of Children Act (2007) NT* govern mandatory reporting of child abuse in the Territory.

It mandates that 'any person' who has 'a belief on reasonable grounds' that 'a child has suffered or is likely to suffer harm or exploitation' are required to report that belief to a police officer, or their CEO if they are in a workplace setting. This is the broadest criteria in the country and means that in the scenarios described above — where a colleague or a supervisor of a child believes or is aware of sexual abuse occurring to that child employee, irrespective of whether that abuse is perpetrated by another employee or an abuser external to the workplace — that reporting of such abuse is mandated.

TABLE 6.1 DIFFERING ATTRIBUTES OF MANDATORY REPORTING REGIMES IN EACH STATE AND TERRITORY. SOURCE: AUSTRALIAN INSTITUTE OF FAMILY STUDIES.

STATE/ TERRITORY	DEFINITION OF CHILD FOR REPORTING PURPOSES	TYPES OF ABUSE WHERE REPORTING IS MANDATED					WORKPLACE SETTINGS REQUIRING MANDATED REPORTING		
		Physical	Sexual	Emotional	Neglect	Exposure to Family Violence	Specific Occupations Only	Any Setting	Acts Governing Reporting
QLD	All under 18	✓	✓	✓	✓	✘	✓	✘	Multiple
NSW	All under 16	✓	✓	✓	✓	✓	✓	✘	Single
ACT	All under 18	✓	✓	✘	✘	✘	✓	✘	Single
VIC	All under 17	✓	✓	✘	✘	✘	✓	✘	Single
TAS	All under 18	✓	✓	✓	✓	✓	✓	✘	Single
SA	All under 18	✓	✓	✓	✓	✘	✓	✘	Single
WA	All under 18	✓	✓	✓	✓	✘	✓	✘	Multiple
NT	All under 18	✓	✓	✓	✓	✓	✘	✓	Single

The simplicity and breadth of Northern Territory's mandatory reporting regime has multiple positive outcomes. First, it deters abuse in the first place as it makes it more likely any abuse will be reported. Secondly, it extends protection for abuse victims. And finally, it delivers clarity for employers of children with regards to their obligations should they form a belief that their child employee is being abused.

CLARITY OF REPORTING OBLIGATIONS THAT REFLECTS REAL-WORLD NUANCE IS KEY

This report recognises the complexity and nuances related to the identification of inappropriate or abusive interactions occurring between young people and/or children. Circumstances raised during the consultation phase of this project noted the complexities associated with, for example, relationships occurring between two individuals that straddle either side of the relevant age of consent laws within their jurisdiction. If, for example, two individuals at a workplace aged 16 and 17 were engaged in a consensual relationship, there may be genuine privacy concerns related to the reporting of that relationship.

Where the ages between individuals suspected or known to be in a relationship, whether consensual or otherwise, breach established age of consent laws, (i.e., if it were an interaction between a 19 and a 15 year old) reporting obligations may be clearer and more able to be codified.

A codified suite of reporting obligations may range from mandatory obligations, where the employer is aware of abuse afflicted upon a child at the workplace, through to reporting advice depending on the nuanced circumstances related to consensual relationships between children and between individuals under the age of 18.

The status quo, however, creates a dynamic where employers aware of likely illegal or abusive interactions between staff are not incentivised to report these to relevant authorities. While recognising the nuances, codified reporting obligations should be established so that all employers of children can quickly ascertain their obligations and responsibilities should they become aware of suspected inappropriate interactions involving children in the workplace.

Conclusion

Children play a critical role in our workforce and in our economy but remain exposed to unacceptable levels of risk in certain workplaces.

This report has detailed the risk to children driven by a lack of barriers preventing high-risk potential offenders, or those formally charged or convicted with child sex offences, from working alongside children.

The prevalence of younger workers in the retail, fast-food and hospitality sectors means that children in these settings are presented with a considerable risk.

There are ways, however, to better protect children in these settings.

This report has explored areas of reform that state and territory governments should adopt to better protect children.

Governments should consider expanding the eligibility and access to WWCCs, so that all businesses where children are present are able to access WWCCs for their adult employees.

This report has also argued that state and territory governments should reform bail laws, so that there are specific restrictions placed on individuals convicted or charged with child-related offences from being employed in workplaces where children are present.

It notes South Australia's leadership on the both issues and suggests that the South Australian model be replicated in all jurisdictions with comparable legislative regimes.

A society's most sacred obligation is to ensure the protection of its young people.

The status quo presents an unacceptable degree of risk to children at work. Common sense reforms to better protect these children are required and, as this report has detailed, will not adversely affect businesses that rely on youth employment.

Appendix: Nature of Working With Children Checks in Each Jurisdiction

	NSW	VIC	QLD	NT
Who is required to get a WWCC	18 years + working in contact with one or more children	18 years + working in contact with one or more children	18 years + providing services or activities to children	15 years + working in contact with one or more children
Are categories of work specified or prescribed?	Yes	Yes	Yes	Yes
Is hospitality or services industry work prescribed?	No	No	No	No
What records are checked?	Criminal history and misconduct information	Criminal history and misconduct information in some instances	Criminal history and misconduct information in some instances	Criminal history and misconduct information
Ability to work while application is assessed?	Yes	Yes	No	Yes
Portability of WWCC	Not across jurisdictions	Not across jurisdictions	Not across jurisdictions	Not across jurisdictions
Timeframe for valid WWCC	5 years	5 years	3 years	2 years
Ongoing monitoring	Yes	Yes	Yes	Yes

	WA	SA	TAS	ACT
Who is required to get a WWCC	Contact between any volunteer or employee and one or more children	14 years + working in contact with one or more children	16 years + working in contact with one or more children	16 years + working in contact with one or more children
Are categories of work specified or prescribed?	Yes	Yes	Yes	Yes
Is hospitality or services industry work prescribed?	No	No	No	No
What records are checked?	Criminal history and misconduct information	Criminal history and misconduct information	Criminal history and misconduct information	Criminal history and misconduct information
Ability to work while application is assessed?	Yes	No	No	Yes
Portability of WWCC	Not across jurisdictions	Not across jurisdictions	Not across jurisdictions	Not across jurisdictions
Timeframe for valid WWCC	3 years	5 years	5 years	5 years
Ongoing monitoring	Yes	Yes	Yes	Yes

References

1. Department of Employment and Workplace Relations, Submission No 2 to Joint Standing Committee on Treaties, parliament of Australia, *Report 206 – International Labour Organization Convention Concerning Minimum Age for Admission to Employment* (6 February 2023)
2. Ibid.
3. National Skills Commission, *State of Australia's Skills 2021: now and into the future* (Report, 2020)
4. Australian Bureau of Statistics, *Labour Force, Australia, April 2023* (Catalogue No 6202.0, 18 May 2023).
5. Australian Retailers Association, *Submission to Jobs and Skills Summit* (Submission, September 2022) < https://www.retail.org.au/wp-content/uploads/ARA-Submission-Jobs-and-Skills-Summit-DEWR-Sept-2022-1.pdf>.
6. Amber Schultz, 'Half a million children are working amid Australia's labour shortage', *Sydney Morning Herald* (online, 16 April 2023) <https://www.smh.com.au/national/half-a-million-children-are-working-amid-australia-s-labour-shortage-20230414-p5d0g6.html>.
7. 'Time for respect: Fifth national survey on sexual harassment in Australian workplaces', *Australian Human Rights Commission* (Web Page, 30 November 2022) <https://humanrights.gov.au/time-for-respect-2022>.
8. 'Time for respect: Fifth national survey on sexual harassment in Australian workplaces', *Australian Human Rights Commission* (Web Page, 30 November 2022) <https://humanrights.gov.au/time-for-respect-2022>.
9. Australian Bureau of Statistics, Sexual harassment, 2021-2022 financial year. <https://www.abs.gov.au/statistics/people/crime-and-justice/sexual-harassment/2021-22#key-statistics>
10. Australian Institute of Family Studies, *Pre-employment screening: Working With Children Checks and Police Checks* (Resource sheet, June 2021) < https://aifs.gov.au/resources/resource-sheets/pre-employment-screening-working-children-checks-and-police-checks#footnote-001>.
11. *Royal Commission into Child Protection Systems* (Final Report, August 2016) vol 1.
12. *Royal Commission into Institutional Responses to Child Sexual Abuse: Working with Children Checks Report* (Final Report, 2015).
13. 'Junior pay rates', *Fair Work Ombudsman* (https://www.fairwork.gov.au/pay-and-wages/minimum-wages/junior-pay-ratesWeb Page, n.d.) < >.
14. Kyle Taylor, 'The problem with junior pay rates, explained', *The McKell Institute* (Report, 2020) < https://mckellinstitute.org.au/wp-content/uploads/2022/10/The-problem-with-junior-pay-rates-explained.pdf>.
15. Fair Work Commission *General Retail Industry Award 2020 [MA000004]* < https://www.fairwork.gov.au/employment-conditions/awards/awards-summary/ma000004-summary>.
16. Ibid.
17. 'Jobs, inclusion & empowerment', *McDonald's Australia* (Web Page, n.d.) <https://mcdonalds.com.au/our-impact/jobs-inclusion-empowerment>.
18. McDonald's Australia, *McDonald's Corporate Responsibility and Sustainability Report* (Report, 2012) 42.
19. *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 14.2.
20. See generally *Bail Act 1985* (SA).
21. See *Bail Act 1985* (SA) s 11(13) (definition of 'child-related work').
22. *See Sex Offenders Registration Act 2004* (Vic) s 67; *Crimes (Child Sex Offenders) Act 2005* (ACT) s 124; *Child Protection (Offender Reporting and Registration Act) 2004* (NT) s 91; *Child Sex Offenders Registration Act 2006* (SA) s 64.
23. *See Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (Qld) s 13A.
24. See, eg, *Sex Offenders Registration Act 2004* (Vic) s 67; *Working with Children Act 2005* Vic) s 9(3). See also *Child Sex Offenders Registration Act 2006* (SA) s 64(1); *Child Safety (Prohibited Persons) Act 2016* (SA) s 6.
25. See Child Sex Offenders Registration (Child-Related Work) Amendment Bill 2023 (SA) cl 3.
26. See Child Sex Offenders Registration (Child-Related Work) Amendment Bill 2023 (SA) cl 4(3)(5a)(a).
27. See Child Sex Offenders Registration (Child-Related Work) Amendment Bill (SA) cl 4(3)(5a)(b).
28. Australian Institute of Family Studies, 2023. 'Mandatory reporting of child abuse and neglect'. Accessed online: https://aifs.gov.au/resources/resource-sheets/mandatory-reporting-child-abuse-and-neglect#:~:text=Northern%20Territory,-The%20Northern%20Territory's&text=What%20must%20be%20reported%3F,victim%20of%20a%20sexual%20offence.



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