



**Submission to the Senate Education and Employment Legislation Committee**

**on**

**Fair Work (Vulnerable Workers) Bill 2017**

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## **1 Introduction**

Job Watch Inc. (JobWatch) is pleased to comment on the proposed Fair Work (Vulnerable Workers) Bill.

In large part, this submission supports the proposed amendments.

## **2 About JobWatch**

JobWatch is an employment rights community legal centre which is committed to improving the lives of workers, particularly the most vulnerable and disadvantaged. It is an independent, not-for-profit organisation which is a member of the Federation of Community Legal Centres (Victoria).

JobWatch was established in 1980 and is the only service of its type in Victoria, Queensland and Tasmania. The centre is funded by Federal and State funding bodies to do the following:

- a) provide information and referrals to workers from Victoria, Queensland and Tasmania via a free and confidential telephone information service (TIS);
- b) engage in community legal education through a variety of publications and interactive seminars aimed at workers, students, lawyers, community groups and other appropriate organisations;
- c) represent and advise vulnerable and disadvantaged workers; and
- d) conduct law reform work with a view to promoting workplace justice and equity for all workers from Victoria, Queensland and Tasmania.

Since 1999, JobWatch has maintained a comprehensive database of the callers who contact our telephone information service. To date we have collected approximately 184,000 caller records with each record usually canvassing multiple workplace problems including, for example, contract negotiation, discrimination, bullying and unfair dismissal. Our database allows us to follow trends and report on our callers' experiences, including the workplace problems they face and what remedies, if any, they may have available at any given time. JobWatch currently responds to approximately 10,000 calls per year.

This submission is based on the experiences of callers to and clients of JobWatch and the knowledge and experience of JobWatch's legal practice. Case studies have been utilised to highlight particular issues where we have deemed it appropriate to do so. The case studies which we have used are those of actual but de-identified callers to JobWatch's TIS and/or legal practice clients. Case studies appear in text boxes.

## **3 Existing civil remedies insufficient compared with the harm done**

JobWatch agrees that the existing penalties scheme is insufficient. The vulnerable workers we assist generally perform low paid, irregular or casual jobs. They are particularly vulnerable because they are not financially secure and they are, for example:

- newly arrived migrants who are eager to work but do not know their employment rights and do not possess the English language skills to give them good negotiation power;
- young people;
- older workers afraid that they will not find another job.

Our clients tell us that their employers are confident that their breaches of employment laws will not be pursued by the employees or, even if they are, the employers are not scared of any serious repercussions. They (the employers) will have managed to get themselves the extra time to pay out the minimum entitlements and the likelihood of any serious fine or other punitive action is not enough of a deterrent. Accordingly, we agree with the Minister that the current penalties' scheme sets costs which may be regarded by systemic abusers as 'the cost of doing business'.

Conversely, the harm done to vulnerable employees by their employers' non-compliance is huge. The amounts owed to them may seem small, but given our clients' and callers' low wages, non-compliance causes them significant hardship. Typically, our clients and callers rely entirely or in large part on every part of their remuneration and hence they are significantly impacted by any reduction in their entitlements or by any non-compliance with the minimum protections in the FW Act.

***Case study: Beth***

Beth worked at a transport company for over three years. During this time Beth became homeless. Her employer offered to allow her to store her possessions in a company storage container free of charge. He also allowed a co-worker to take a company vehicle to collect and store her belongings. On his way to pick up Beth, the co-worker crashed the vehicle.

Beth came to JobWatch after the employer went back on his offer and demanded payment from Beth for both the storage of her goods and also for the repairs to the vehicle. When Beth didn't agree to pay, her employer sacked her and withheld moneys from her final payout for a portion of his alleged debt. He refused to return her possessions to her until the outstanding amount was paid to him. Beth was homeless, out of work and without her belongings whilst trying to negotiate with her former employer.

Further, through our work with migrant and international student workers, we often see an attitude in many employers that entitlements can be ignored or withheld without repercussions as the workers are so exposed as to make such behaviour a basis for their very business. Many of these workers are on visas with strict conditions as to observing all Australian laws, a fact which is often used against them by unscrupulous employers.

***Case Study: Marta***

Marta came to Australia as an international student from Colombia. While here she heard of a cleaning company run by a countryman who regularly employed Colombians as cleaners.

Needing to support herself Marta agreed to work there for two months. On being hired she was told that she was not an employee but a contractor and required an ABN, which she acquired. She was then told that she would be paid, instead of an hourly rate, a single amount for the two months of \$1000. No records were kept of her hours worked; instead she travelled to jobs at the call of her employer. At the end of two months only \$500 had been paid and the employer refused to pay or even speak to her. When she approached JobWatch Marta informed us that this employer has acted in a similar way to its other staff members who are each in a similar position to Marta.

***Case Study: Ahmed***

Ahmed is an international student studying accounting in Melbourne. To support his studies he took a job at a warehouse. In common with his co-workers, Ahmed signed a contract which purported to entitle him to only \$15 an hour. No superannuation was paid or tax withheld. This was despite Ahmed's repeated insistence that such legal obligations be complied with – he often told his employer that he felt exposed as an international student and that he wanted his employment to meet all Australian laws. Ultimately Ahmed had his employment terminated for this insistence.

JobWatch acted for Ahmed in this matter. At conciliation with his employer before the Fair Work Commission his employer protested that all his employees sign contracts accepting the same rate of pay as Ahmed and that doing so is vital to his business. Though JobWatch was able to secure a settlement of Ahmed's underpayment claim, his former co-workers are all in the same position as he was.

***Case Study: Zhu***

Zhu is a Master's student. Following an ad on his university's careers page he took a job for a city phone repair company. On commencement of his employment he was presented with a 20 page contract detailing the terms of his employment which were frequently illegal and exploitative. The contract expressed that despite being a casual employee he would be subject to both a 'training' phase at the discretion of the employer and a requirement to stay with the employer for one year or face paying a \$2500 fee, described as covering his 'training'.

Despite working regularly and satisfactorily Zhu was paid amounts varying from \$8 to \$13 an hour. After an initial month in 'training' being paid \$8 Zhu was told he needed another such period, which he refused. When his repeated requests for proper pay and tax withholding, Zhu was not given further shifts and at the time of contacting JobWatch had been not paid at all for the final fortnight of his work. He was told that any attempt to leave employment would see his \$2,500 'fee' called in.

#### 4 Liability up organisational hierarchies

JobWatch agrees that there should be liability for workplace breaches extending up the organisational hierarchy. The use of franchise and labour hire arrangements undoubtedly allows companies to allocate risk and isolate portions of business from cost and exposure, but these arrangements should not, in our view, be used as a way of avoiding legal obligations viz-a-viz employees. Workers' contributions to enterprise should be respected and protected as a fundamental core requirement of doing business.

We therefore welcome the amendments outlined in Part 2 of the Bill, which seek to remove the ability of franchisors and holding companies to avoid workplace liability in situations where there is significant influence or control over the franchisee's/subsidiary's affairs and the franchisor/holding company have known of the likelihood of a workplace rights contravention.

However, we agree with WEstjustice's submissions that more could be done to protect workers at the base of organisational hierarchies, especially those who work as part of labour hire arrangements. Too often we see such workers unsure of who their true employer is, with both labour hire and host companies ready to deny liability.

We also urge the Committee to consider the benefits of a reverse onus of proof, so that franchisors, holding companies *and* principals who contract out work through labour hire arrangements, all bear the onus of proving that they could not be reasonably expected to have known of the likelihood of a contravention, once it is established that they exercised a significant degree of influence or control over the franchisee/subsidiary/labour hire provider.

Franchisors, holding companies and principals in labour hire arrangements would all be more diligent in ensuring proper compliance with employment laws at every stage along the supply chain if they knew there were serious potential legal ramifications for them and if they knew that ultimately they were responsible for ensuring that employees across the supply chain receive their minimum entitlements.

#### ***Case Study: Deana***

Deana worked as a cleaner, in a large hotel. Her boss sexually harassed and underpaid her. When she asked to be paid properly and to be "on the books", her boss pulled her aside and asked her how badly she really wanted the money, and whether she was prepared to "please" him in return for higher (minimum) wages. She found out later that he was a sub-contractor running one particular franchise that was part of a large commercial cleaning business with many franchises across Australia. There were no official records of how much she was being underpaid, and he was not providing her with payslips.

**Case Study: Ali**

Ali was an international student who worked at a petrol station, cash-in-hand. He met his boss through a friend. He had his boss's first name, phone number and email address, but no other details. He was not paid for any of the hours that he worked. As he was concerned that he did not understand his visa work conditions, he resigned. His employer told Ali that if he pressed his claim for payment he would report Ali to the immigration authorities. Eventually, he found out that the petrol station was a franchise business. His employer refused to answer his calls.

**5 Vulnerable workers made to repay or deduct wages**

JobWatch agrees that workers being made to reimburse their employer or consent to a deduction of wages is a significant problem for many vulnerable workers. Recent high profile exposures of the practices of certain 7Eleven franchisees amongst others demonstrates this as a pressing need for reform. However, these cases are far from isolated or limited to large organisations. JobWatch frequently deals with many young, immigrant or otherwise vulnerable workers who experience this conduct.

**Case Study: Jean**

John Paul is a student with a part-time job as a removalist. On the commencement of his employment his employer asked him to pay a 'bond' of \$5000. The boss explained this would be deducted from his wages. His employer explained this was a normal thing to do in the business and would be used to cover any property damage that may be caused by John Paul. The employer promised to return the in weekly instalments after the conclusion of John Paul's employment, if no damage needed to be paid for.

John Paul contacted JobWatch because when he left his job his employer withheld the bond, alleging that John Paul had caused extensive property damage. No evidence was provided of this damage.

**Case Study: Mick**

Mick worked for a manufacturing company for eleven years. A year ago he had a stroke and took the year off work to recover. During this time they informed Mick they had audited employee payments and that he had been wrongly overpaid annual leave going back several years. No proof of this amount was ever presented. The employer then pressured Mick to sign a contract stating he agreed that he had been overpaid and would repay the money as calculated by the employer.

**Case Study: Meredith**

Meredith took her first job at the franchise location of a nationwide burger store. She was informed that she would be undertaking a traineeship, to which she agreed. She never heard back from the training organisation and never received any training. However, she was consistently paid as though the training was occurring. On her resignation two years

later she found that the training arrangement had been put through but cancelled within six months. She calculated the extent of her underpayment to be \$8000.

## **6 FWO powers**

We welcome the move to increase the FWO's powers as set out in Part 4 of the Bill. However, any increase in powers seems futile if it is not accompanied by an increase in resources so that the FWO can actively investigate and pursue more matters, rather than relying so heavily on voluntary compliance mechanisms.

### ***Case study: Madeline***

Madeline worked at a franchise location of a popular restaurant chain. She reported to the FWO that she was regularly paid only \$10 an hour. She further claims that payslips provided on her repeated request were forged to show a higher amount - \$12.65. She is adamant that all her co-workers are also being underpaid and denied payslips. However, the FWO has referred Madeline to JobWatch after the FWO's voluntary dispute resolution approach was not successful in resolving her dispute with her former employer.

## **7 Tighter regulation of business registration requirements**

We note that this Bill does not deal address the issue of how vulnerable employees can be expected to identify the correct legal entity that employed them in circumstances where the employer has deliberately chosen to "disappear" or go underground. JobWatch regularly faces this problem of tracking down employers who have breached the minimum protections of the FW Act with respect to our clients and callers who are vulnerable workers. The employees in these situations were typically hired on a cash-in-hand basis and they know very few details about their employer (perhaps a trading name of a business and the boss' first name, mobile number and email address). When these employees attempt to enforce their minimum entitlements under the FW Act, they can run into practical difficulties, especially if the business closes down and the boss "disappears". If the business was not registered, it is near impossible to locate the holder of the business, whether that was an individual or a company (or any other legal entity). Accordingly, we respectfully submit that in order to better protect vulnerable workers there needs to be tighter regulation at the business registration end.

### ***Case study: Joshua***

Joshua is an international student who worked as a waiter in a café. He was underpaid and not provided with payslips. When JobWatch sent a letter of demand to his boss at the café's address, it was returned to sender. It subsequently became apparent to us that the business has closed down and that, as the business was never registered, there is no way of finding who the holder of the business was. Joshua knows the boss' name and surname but we are

unable to find an address for service of documents. Joshua is very frustrated that he cannot enforce his employment rights.

If the Committee has any queries about any aspect of this submission, please do not hesitate to contact Gabrielle Marchetti by email on [gabriellem@jobwatch.org.au](mailto:gabriellem@jobwatch.org.au) or by phone on 03 9662 9458.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'G. Marchetti'.

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