

26 March 2020

Attorney-General's Department

By email: IRconsultation@ag.gov.au

Dear Secretariat

1. JobWatch Inc (**JobWatch**) welcomes the Inquiry into Cooperative Workplaces – How can Australia capture productivity improvements from more harmonious workplace relations

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3. The focus of our submission is on the links between temporary migration and workplace exploitation.

Who is JobWatch

4. JobWatch is an employment rights, not-for-profit community legal centre. We are committed to improving the lives of workers, particularly the most vulnerable and disadvantaged.

5. JobWatch is funded by the Office of the Fair Work Ombudsman, Victoria Legal Aid and the Victorian Government. We are a member of Community Legal Centres Australia and the Federation of Community Legal Centres (Victoria).

6. JobWatch was established in 1980 and is the only service of its type in Victoria, Queensland and Tasmania. Our centre provides the following services:

- a) Information and referrals to workers from Victoria, Queensland and Tasmania, via a free and confidential telephone information service (**TIS**);
- b) Community legal education, through a variety of publications and interactive seminars aimed at workers, students, lawyers, community groups and other appropriate organisations;
- c) Legal advice and representation for vulnerable and disadvantaged workers across all employment law jurisdictions in Victoria; and
- d) Law reform work aimed at promoting workplace justice and equity for all workers.

7. Since 1999, JobWatch has maintained a comprehensive database of the callers who contact our TIS. To date we have collected more than 210,000 caller records with each record usually canvassing

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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.

8. JobWatch currently responds to approximately 12,000 calls per year. The vast majority of our callers are not union members and cannot afford to get assistance from a private lawyer.

Case studies provided in this submission

9. This submission is based on the experiences of callers to JobWatch's TIS and clients of JobWatch's legal practice. The case studies are already de-identified. Please note that the facts described in the case studies are not findings of a court or tribunal but rather they represent what our callers have told us on the TIS or what our clients have instructed the JobWatch lawyers. Each of the case studies highlights the vulnerabilities endemic to different types of temporary visa holders.

Dear Attorney-General's Department

1.1 Submission for Cooperative Workplaces – How can Australia capture productivity improvements from more harmonious workplace relations

1.2 About JobWatch

1. JobWatch Inc (**JobWatch**) is an independent, not-for-profit, employment rights community legal centre which is committed to improving the lives of workers, particularly the most vulnerable and disadvantaged. It provides assistance to Victorian, Queensland and Tasmanian workers regarding their rights at work. JobWatch is a member of the Federation of Community Legal Centres (Victoria) and is funded by Victoria Legal Aid, the Office of the Fair Work Ombudsman and the Victorian and Federal Governments.

2. JobWatch was established in 1980 and is the only service of its type in Victoria. It is funded to deliver four key services, which are as follows:

a) A free and confidential telephone information service (**telephone service**) which provides information and referrals to Victorian, Tasmanian and Queensland workers;

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- b) Community legal education through a variety of publications and interactive seminars aimed at workers, students, lawyers and community groups;
 - c) A casework legal practice which provides advice and representation to vulnerable and disadvantaged workers; and
 - d) Law reform work, with a view to promoting workplace justice and equity for all workers.
3. Since 1999, JobWatch has maintained a comprehensive database of the callers who contact our telephone service. To date we have collected more than 200,000 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. The contents of this submission are based on the experiences of callers to, and clients of, JobWatch and the knowledge and experience of JobWatch's legal practice.
4. JobWatch welcomes this opportunity to make a submission to the Attorney-General for Australia, Minister for Industrial Relations, The Hon Christian Porter MP in relation to whether and how improved productivity performance might be available to Australian workplaces through more harmonious workplaces.

1.3 JobWatch's recommendations for the achievement of harmonious workplaces

5. We consider that harmonious workplaces are fair and inclusive workplaces, where employers' and employees' rights are fairly balanced. Fairness and inclusivity for employees will only be achieved when employees are not underpaid or employed in sham arrangements, and are protected from being the victim of discrimination, bullying, and sexual harassment. JobWatch has a number of recommendations for achieving harmonious workplaces:

- a) We consider that the second exposure draft of the *Religious Discrimination Bill 2019* does not adequately balance the rights of employers and employees. All people should be protected against

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discrimination on the basis of religious belief at the federal level, as they currently are in Victoria through the *Equal Opportunity Act 2010* (Vic). However, we consider that the second exposure draft is likely to have the unintended consequence of allowing employers to harm employees in the name of expressing their religious rights, which will compromise the rights of employees not to be discriminated against based on religious belief. An imbalance is struck in the second exposure draft, as the right not to be discriminated against is diminished in order to protect the right of religious expression. It is therefore our belief that this Bill is unlikely to promote a harmonious workplace.

b) We consider that the lack of protection of workers in the gig economy afforded by the *Fair Work Act 2009* deeply undermines the achievement of fair and harmonious workplaces. This is due to protection only being afforded to the narrowly defined *employee*, rather than the more broadly defined *worker*. As a result, vulnerable gig economy workers are denied minimum entitlements, including collective bargaining rights. Since such workers are afforded few rights, a balance of rights cannot be struck for gig economy workers under the current form of the *Fair Work Act 2009*, undermining the notion of fair workplaces.

c) We consider that inadequate protection from wage theft is a further major barrier to the achievement of harmonious workplaces. While wage theft is often not deliberate, it nonetheless is a failure of employers to meet their obligations under workplace law, which is a clear barrier to fair workplaces. At its worst, wage theft is indicative of significant worker exploitation. Wage theft is rife in Australia, and particularly affects newly arrived workers, marginalising and threatening the inclusivity of Australian workplaces, and contributing to a perception that such workers are unwelcome and unvalued. We consider that reducing wage theft would significantly contribute to more harmonious and cooperative workplaces.

Queries/comments

JobWatch thanks the Attorney-General's Department for considering this submission. We would be pleased to meet with you. Please contact Gabrielle Marchetti on (03) 9662 9458 or by email on gabriellem@jobwatch.org.au if you have any queries or for further comment.

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Yours sincerely,

A handwritten signature in blue ink that reads "G. Marchetti".

Gabrielle Marchetti
Principal Lawyer
JobWatch Inc

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