

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Budget estimates 2020-21 (Pallas)

Melbourne—Tuesday, 1 December 2020

MEMBERS

Ms Lizzie Blandthorn—Chair

Mr Richard Riordan—Deputy Chair

Mr Sam Hibbins

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Mr Gary Maas

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Ms Pauline Richards

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Ms Bridget Vallenge

WITNESSES

Hon. Tim Pallas, MP, Minister for Industrial Relations, and

Mr Matt O'Connor, Deputy Secretary, Industrial Relations Victoria, Department of Premier and Cabinet.

The CHAIR: We declare open again the Public Accounts and Estimates Committee, and welcome the Treasurer and his officials for the consideration now of the industrial relations portfolio.

We ask that phones be turned to silent.

We remind you that evidence taken by the committee is protected by parliamentary privilege.

You will be provided with a proof version of the transcript to check.

We welcome you again, Treasurer—Minister—and your officials. Thank you. We invite you to make a 5-minute presentation, to be followed again by questions from the committee. Thank you.

Mr PALLAS: Thank you, Chair, and it is a great pleasure to be here again. I also thank the committee for the opportunity to be able to address the committee on the industrial relations portfolio.

Visual presentation.

Mr PALLAS: In this short presentation, I will take you through an overview of the key budget initiatives in the industrial relations portfolio. I will outline how the government is supporting its public sector workforce during the COVID-19 pandemic.

Wage Inspectorate Victoria is currently an administrative unit within Industrial Relations Victoria. It is responsible for providing education and advice, and enforcing Victoria's industrial relations laws, including the new *Wage Theft Act* when it commences on 1 July 2021. Victoria became the first state in the country to pass laws establishing criminal penalties for employers who deliberately underpay or do not pay their workers. The 2020–21 Victorian budget invests \$17.4 million over two years to establish the Wage Inspectorate Victoria as a new statutory authority to prosecute employers who commit theft offences.

The Women in Construction strategy was launched in October 2019, and it is predicated on a four-year work program with actions at three key points of intervention: attraction, recruitment and retention. The government has allocated \$5 million over three years to implement the short-, medium- and long-term actions in the Women in Construction strategy and implement the building equality policy, which will create training and employment opportunities for women on government construction projects valued at \$20 million or more.

The Victorian government has provided \$1.516 million in 2020–21 to continue to fund the functions of the public sector industrial relations unit. The public sector industrial relations unit within Industrial Relations Victoria provides centralised industrial relations services to government. The public sector industrial relations unit oversees enterprise bargaining across the public sector. It facilitates compliance with the government's industrial relations policies, it provides advice and assistance to departments and agencies in dealing with industrial relations issues and disputes, and it oversees industrial relations in two sectors of significant importance to government—rail and construction—including convening the Building Industry Consultative Council.

We have introduced a range of supports for Victorian public sector employees to provide them with certainty about their employment during COVID-19 and also to ensure that employees do not attend work when they are unwell. Our primary focus has been to make sure that employees who can work from home do work from home by implementing a range of supports for remote work. Where work at home is not possible our guidance notes provide paid special leave for employees, including casuals. Victorian public sector employees are not eligible for commonwealth government JobKeeper payments, hence the need to fill that gap. As a result the industrial relations framework provides for fortnightly payments of up to \$1500 before tax for regular public sector casual employees who have exhausted their special paid leave and ceased performing work or are working reduced hours due to COVID-19. We have extended fixed-term contracts until 30 June 2021. And the industrial relations framework provides for rapid deployment of public sector workers, including casuals, to fill roles in response to COVID-19 through a secondment model and the jobs and skills exchange. Our priority is to

ensure the continued employment of Victorian public sector employees, and the government is making sure workers get the support that they need to make it through to the other side of this crisis. Thanks, Chair.

The CHAIR: Thank you very much, Treasurer. I will hand to Mr Gary Maas, MP, for the first questions.

Mr MAAS: Thank you, Treasurer, for your time, and thank you, Mr O'Connor, for your attendance today too. If I could take you to the topic of the Wage Inspectorate Victoria and page 120 of budget paper 3 as the reference, which shows that the government is providing \$17.4 million to establish the wage inspectorate as a statutory authority under the *Wage Theft Act*. Treasurer, would you be able to explain how Wage Inspectorate Victoria will enforce the *Wage Theft Act* when it commences on 1 July 2021?

Mr PALLAS: Well, the Wage Inspectorate Victoria has had a successful track record in enforcing Victoria's industrial relations laws. It has had responsibility to date for providing education and advice, and ensuring compliance with the *Long Service Leave Act*, the *Child Employment Act* and the *Owner Drivers and Forestry Contractors Act*, and from 1 July 2021 it will also have responsibility for the *Wage Theft Act 2020*.

Victoria became the first state in the country to pass the laws establishing criminal penalties for employers who deliberately underpay or do not pay their workers. So for far too long I think we have heard these stories, and perhaps if anything the pandemic has demonstrated some of the weaknesses in our community. One of the greatest weaknesses is the exploitation of insecure workers, and as a government we believe that everybody deserves the dignity of a job that is paid in accordance with the law, and we do not support the idea of workers being effectively ripped off in their employment. It is after all their lawful entitlement, and withholding that lawful entitlement should be a crime. It is ultimately theft from that worker. It is theft for the value of their undertaking and their work that is being denied them. This is why the government has committed to introducing new laws to make wage theft a crime. The *Wage Theft Act* establishes the inspectorate as a new statutory authority which will retain its existing responsibilities in addition to the new wage theft laws. So it will effectively have these responsibilities added to its pre-existing statutory responsibilities. As you know, this year's budget allocated \$17.4 million to establish the inspectorate as an independent statutory authority with powers to investigate wage theft offences and to prosecute in a summary jurisdiction.

The *Wage Theft Act* establishes new criminal offences that target employers who deliberately withhold wages and other employee entitlements. Employers who dishonestly withhold wages, superannuation or other employee entitlements will face fines of up to \$198 264 for individuals and \$991 320 for companies and up to 10 years jail. Importantly, offences will also capture employers who falsify entitlement records such as payroll records or who fail to keep employment records. New record-keeping offences are aimed at employers who attempt to conceal wage theft by falsifying or failing to keep those necessary records.

These laws are not aimed—I want to be very clear about this—at the honest mistake, the administrative error. Genuine mistakes are not the focus of this legislation, and of course for criminal requirements to have been met they would necessarily have to be proven to warrant such an action. They are aimed at criminalising behaviour that is dishonest and intended to deprive people of their entitlements. Employers who make honest mistakes or who exercise due diligence in paying wages and other employee entitlements will not be subject to the legislation.

The impacts of wage theft laws extend beyond those directly affected. It leads to an uneven playing field. The greatest group in society who are disadvantaged by an untrammelled approach towards enforcement of wage theft, a failure for the state to ensure that the laws of the country are applied, is those competitors with the businesses who have taken those dishonest opportunities. Because quite frankly you deprive them of a level playing field to provide their services to the community, and it ultimately leads not only to the exploitation of the worker but a deprivation of the entitlement to compete on a level playing field. And that ultimately does not serve the economy any good in the long term.

Investigative and prosecutorial functions of the inspectors will be independent, and they will not be subject to ministerial direction or control. I think it is important that that is understood. This is not a government seeking to apply policy intervention that is at the whim of a minister. It is a proper process of oversight and investigation. The inspectorate will be led by a commissioner who will have the power to appoint specific wage theft inspectors. In addition to that enforcement and prosecution function and powers, the inspectorate will have information- and evidence-gathering powers that will be a necessary and a key function of their responsibilities.

Just an illustration of some of those functions and powers in a broader sense: the power to compulsorily examine on oath, with appropriate safeguards and protections for individuals; the power to enter premises and to search and seize evidence; the power to require people to answer questions or produce documents after entering premises; the power to accept undertakings and to enforce any undertakings which may have been breached; and the power to bring criminal proceedings and to refer matters to the Office of Public Prosecutions.

So the Act will provide, I think, targeted and specific powers to enable inspectors to gather information, to gather evidence required to investigate offences and also to enforce the new laws. A strong regulatory framework I think will result in a more effective criminal scheme, but I also think it will send a very salutary and educational message to the community that this government is serious about wage theft, that it is unacceptable and that when it is performed it is effectively a theft against an individual's—an employee's—due entitlements. As a government we remain implacably committed to ensuring that there is justice in the workplace, because whether it is wages that are being stolen, or anything else for that matter, that is theft and there ought to be and there should be appropriate sanctions brought to bear as a consequence. That really gives you an understanding of the approach that the government is taking in respect of this area, Mr Maas.

Mr MAAS: Thanks, Treasurer. Your presentation spoke to women in construction, and I would like to take you to that area. I refer to page 2 of the 'Gender Equality Budget Statement' in that regard, which notes that women have borne the brunt of the pandemic, highlighting inequalities that existed long before the pandemic. How has the government responded to this impact and supported women so far?

Mr PALLAS: Yes, well, I suppose of course the budget paper does provide that \$5 million in terms of the women in construction program. It has been an activity that the government has been actively pursuing over some time, and the aim behind it is to make sure that we can not only deal with areas of opportunity for women that are seen as being areas that have high proliferation of female employment but recognise that injustice manifests itself in so many other ways—the denial of activity to appropriate workplaces and the denial of access to high-paid jobs that would historically not have fallen to women. When we announced this policy in October last year, it was about recognising that all cohorts of the industry have to play a substantive role towards it, whether it was businesses recognising through their peak organisation that they have to actively become engaged in terms of addressing the inbuilt bias against women being able to apply for jobs that were ordinarily advertised through an old boys network, that we had to require them to broaden their vision and that business had to take responsibility for that, that unions have to change their culture and take a leading role, working with companies, about the culture in many workplaces so that they were not seen as workplaces that threaten women but rather seen as conducive workplaces where women had a role to play. And of course other industry bodies such as Incolink could make a contribution by effectively providing online portals that would provide access to information and job opportunities as they become known and by supporting, assisting and facilitating mentoring arrangements so that women who had already made the difficult journey got the opportunity to support others getting there.

Mr MAAS: Thanks, Treasurer.

The CHAIR: Thank you, Treasurer. I will hand to Ms Bridget Vallence, MP.

Ms VALLENCE: Thank you. Treasurer, you have just spoken a lot about wage theft and the value of people's work. Is the wage inspectorate undertaking any investigation in relation to private security guards being underpaid who worked on government sites for the hotel quarantine program?

The CHAIR: Sorry, Ms Vallence, that might be an appropriate question for the next inquiry, which will meet this afternoon. I would like a budget reference if you would like to ask it in this inquiry.

Ms VALLENCE: Yes, it refers to the wage inspectorate and also to the Treasurer's initial presentation.

The CHAIR: What specifically?

Ms VALLENCE: The budget allocated to the wage inspectorate and the work that they do. The question is around whether they will be inspecting—

The CHAIR: I do not think the question is in order, Ms Vallence. You can ask it this afternoon at the COVID inquiry, but it is not in order now.

Mr PALLAS: Look, I am happy to answer it in terms of a broad observation about the wage inspectorate. Its statutory remit under the Bill that has established it means that it does not commence its work until 1 July of next year.

Ms VALLENCE: Okay. Treasurer, I refer to budget paper 3, page 115. In table 1.19 it lists an allocation of \$5 million for the secure work pilot scheme. Can you confirm that \$5 million allocation is only for the purposes of the consultation and design of the scheme?

Mr PALLAS: What else might it be? I am interested to know from the nature of your question, but the aim of the arrangements is absolutely for consultation with industry to design the scheme. They are not, for example, if the question is going to: where is the resourcing for the scheme? When it becomes effective then the state will pay for it, and we will of course be provisioning for it once we have got an appreciation of what it costs. As you would understand, that scheme will be restricted to a number of industries for the purpose of the pilot. How broad that industry is, how many employees are affected by it, will obviously have a direct impact upon its cost.

We have identified, by way of example only, a number of industries where we see they would obviously lend themselves to the support of the trial, but if your concern is that we have not funded it in a forward estimates sense, well, of course we cannot do that until we appreciate which industries we intend to apply, and the consultation process will enable us through engagement with industry to make that appropriate provision.

Ms VALLENCE: Yes, so that is about the consultation side. You said the pilot would run for a period of two years. Can you let us know when the pilot will commence?

Mr PALLAS: We would anticipate, we are hoping, that it will commence towards the end of 2021, and it will run for a minimum of two years. During the time of the pilot, Ms Valence, the government will not be requiring business to make a contribution to that pilot, but once we move outside of the pilot stage—and the pilot stage will be in two parts; it will start with a smaller cohort of industries and then it will expand progressively—at the end of that two years it is our intention that, once again subject to a continuing discussion with industry, unions and workers, once we have had an appreciation of what the appropriate intervention should be, we would expect industry to make payment to that scheme.

Ms VALLENCE: Right. So you have described that you are going through that consultation and development process. Understanding that, how much is the two-year pilot scheme projected to cost?

Mr PALLAS: Well, as I say, it is impossible for me to tell at the moment, and we are keeping an open mind in terms of the engagement. It would be a relatively minor cost if the state were to apply it to a limited area of employment where, I do not know, we have limited numbers of casual employees. But it will become progressively more expensive. What I can tell you is that when we have finished the process of engagement with industry, when we have got a better appreciation of the scope of at least stage 1 of the pilot, we will reflect that in our budget papers going forward. But to speculate on that would be to pre-empt that process of engagement with industry and unions.

Ms VALLENCE: You said that the scheme will be subject to an industry levy, and you are looking at which industry sectors that would include. What happens if you are an employer in one of the specified sectors and you do not employ casuals? Would you have to pay the levy?

Mr PALLAS: Well, if the question is: are we anticipating that this would be a broad-based levy, it is not the government's intention at this moment, but once again we are keeping an open mind in terms of the engagement. We do see that there are high levels of insecure work in a number of industries, and we identified some of those industries by way of explanation—cleaning—

Ms VALLENCE: But for argument's sake, hospitality industry. You are a small hospitality, and as a business you definitely do not employ casuals, would you have to pay the levy?

Mr PALLAS: So in terms of whether or not we would have opt-out arrangements for businesses, once again that will all be subject to the engagement. Quite frankly from a government point of view, our policy approach is always to encourage businesses that employ people in secure work. So in terms of the design of these arrangements, yes, we will have to keep an open mind about how that might work.

Ms VALLENCE: Okay. Who remits income tax and superannuation payments in respect of income paid under the scheme, and will the employer have to pay that? And just for context, the instance of a casual takes, let us say, five days of personal leave in a month, that would equate to paying \$753.80 at the national minimum wage, which would exceed the threshold for superannuation contribution to the employee. Who pays that super contribution, the government or the employer?

Mr PALLAS: For the purposes of the trial the state will assume all liabilities. We would hope—I do not know whether we are going to be successful in our hope, but we would hope—that the commonwealth would necessarily waive taxing what is effectively state money, and we will have some engagement with the commonwealth about that. Otherwise it would seem a counterproductive taxing regime where effectively a payment for the welfare of insecure workers is ultimately being taxed by the commonwealth. But we will have to have that engagement with the commonwealth going forward.

The CHAIR: Thank you, Treasurer, and the member's time has expired. I will pass to Mr Sam Hibbins, MP.

Mr HIBBINS: Thank you. Thanks, Chair. Just quickly, with the secure work pilot, which I think is a terrific initiative, one of the issues that has obviously been identified is the fact that so many casual and insecure workers are working in the cash economy or the informal economy. Are you going to, within the trial, be looking at those issues as well and see how those workers, you know, getting cash in hand are actually going to be able to be included in the scheme?

Mr PALLAS: Well, you now pose an entire new level of exploitation that all governments—and I imagine the commonwealth government—would be very concerned about, because the black economy essentially is a way that some disreputable players in industry avoid their lawful obligations. And it is not just lawful obligations to pay tax, it is also the provision of adequate protection for workers in terms of their workers compensation entitlements. They deprive the state on occasion of their payroll tax liabilities. So it is a genuine and a substantial issue, and I know that the federal government have spent a fair bit of time looking at how profound this proliferation is and how substantial it is in terms of economic activity.

I think, realistically, Mr Hibbins, in the short term we are going to focus on the application to the trial area to begin with. It is a broader issue around black economy payments that really will be picked up to some extent through our wage theft legislation. Obviously if you are not paying lawful amounts, if you are not providing entitlements—and invariably if you are operating in a black economy, you are not—then you are stealing wages and entitlements from the workforce, and that is probably the more effective mechanism that we are looking to put in place to deal with these matters.

Mr HIBBINS: Thanks. I want to ask now about the on-demand workforce. Obviously we have got an inquiry, but we have seen five deaths across the country of delivery cyclists. I just want an update in terms of where the inquiry now is at. My understanding is the submissions for the recommendations have now closed. One of the recommendations did focus, I think, on the platforms that delivery cyclists actually use, and that has been noted as possibly contributing to their safety. So can I get an update in terms of now when can we expect the next steps from that inquiry?

Mr PALLAS: In short order, soon, probably early next year or late this year, but I suspect early next year depending upon exactly how the consideration is going within my agency and of course government's consideration of a response. It has been a very valuable piece of work, I have got to say, and that is something that is a very vexed issue in the sense that we do not want to take away the economic opportunity of appropriate, performing and adequate systems of on-demand access to work. But there are—and what Natalie James, the former workplace ombudsman, did demonstrate was that there were—genuine cases of disadvantage. I would like, if you care, to pass to Mr O'Connor to take you through where we are at.

Mr O'CONNOR: Thanks, Treasurer, and thanks, Mr Hibbins, for your question. The government committed, once the report was released in July, to undergo a second round of consultation with some of the key stakeholders on the actual recommendations of the report. As you will be aware, there were roughly 20 recommendations across a range of areas. Some of those related to work that the chair thought the commonwealth should look at, but they also provided a range of other measures that the state could look at in the absence of commonwealth activity. We are at the tail end of those consultations with those stakeholders,

and we will obviously go back and advise the government around those, with a view to a government response early next year.

Mr HIBBINS: All right. Terrific. Thanks.

Mr PALLAS: And just a shout-out to my parliamentary secretary who has been managing those engagements with all submitters and also key stakeholders to make sure that they have had the opportunity to respond themselves to those recommendations.

Mr HIBBINS: Terrific. I just want to finally follow up on a question from the last budget hearings, and that was in regard to the provision of superannuation payments for employees on maternity leave. The question was around whether that would become now a standard feature of enterprise bargaining agreements, and you indicated that you had a number of EBAs coming up. Has that provision now been applied to subsequent EBAs? You can take that on notice.

The CHAIR: I am sorry to interrupt, but the member's time has expired. Perhaps as a simple answer, you—

Mr PALLAS: I am happy to provide that answer out of session.

Mr HIBBINS: Thanks.

The CHAIR: Thank you very much, Treasurer, and thank you to all of your officials that have appeared before our committee at the estimates inquiry this morning.

The committee will follow up on any questions taken on notice in writing, and responses are required within 10 working days of the committee's request.

I will adjourn this hearing until 4.10 pm, but this committee will meet to consider our reference in relation to COVID with the Treasurer at 1.40 pm. Thank you very much, Treasurer.

Witness withdrew.