

# TRANSCRIPT

## LEGISLATIVE ASSEMBLY ECONOMY AND INFRASTRUCTURE COMMITTEE

### **Inquiry into sustainable employment for disadvantaged jobseekers**

Melbourne—Tuesday, 19 November 2019

#### **MEMBERS**

Mr John Eren—Chair

Mr Gary Blackwood—Deputy Chair

Ms Juliana Addison

Ms Sarah Connolly

Mr Brad Rowswell

Ms Steph Ryan

Ms Kat Theophanous

#### **WITNESSES**

Ms Liz Morgan, Employment Program Director, Policy and Education, WEstjustice;

Ms Ashleigh Newnham, Manager, Strategy and Community Development, Springvale Monash Legal Service;

Mr John O'Hagan, Lawyer, JobWatch; and

Ms Bethany Moore, Convenor, Victorian Branch, Australian Lawyers for Human Rights.

**The CHAIR:** Thank you for being here today. All evidence taken by this Committee is protected by parliamentary privilege. Therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, including on social media, those comments may not be protected by this privilege. All evidence given today is being recorded by Hansard. You will be provided with a proof version of the transcript for you to check. Verified transcripts, PowerPoint presentations and handouts will be placed on the Committee's website as soon as possible. We are having a format of just questions and answers. Actually, we might do a couple of minutes each if you wanted to do a couple of minutes of presentation. Or would you prefer that we ask questions? It is a democratic committee.

**Ms NEWNHAM:** Would you like us to talk a little bit about where we are from and our services and those types of things?

**The CHAIR:** Yes, if you like—if you want to do that. Start from left to right.

**Mr O'HAGAN:** JobWatch is a community legal centre that helps employees. We have a telephone service that takes about 10,000 calls a year and we provide legal information to those callers. We also have a small legal practice of three equivalent full-time lawyers and we do whatever casework we can manage to squeeze in.

The focus of our submission has been on the reform and enforcement of existing law. That is our perspective. But I just wanted to acknowledge that the submission from ALHR, with its human rights focus, was entirely compatible with our approach as well, and it is really an example of the strong philosophical approach that should be behind all our work, that should inform all our work in our space. I would also obviously like to commend Westjustice and Springvale Monash for their joint submission and just express JobWatch's support for all the excellent recommendations in that.

The main focus of our submission obviously was this kind of—I can talk about this bit more later if you want—merry-go-round effect of people who are coming from employment service providers into either training with an employment component or directly into employment where that does not lead to full-time employment and results in the person going back to the employment service provider, and around it goes. That was the main focus of our submission.

**Ms NEWNHAM:** I am from Springvale Monash Legal Service. We are a generalist community legal centre, so that means we support people through a lot of different areas of law, but we do have a focus on employment law, which is just due to the need in our community. For many years we just had people coming to us with those types of problems. While we are not funded to do it, we just had to do it basically. Every year it is quite a stretch and it is quite hard to meet the need in terms of employment law, supporting people with employment law problems. As you will see through our submission, we have quite a focus on culturally and linguistically diverse communities, and that is not for any reason other than that just forms a huge proportion of our clients because we are located within the City of Greater Dandenong and the City of Casey, and it is extremely diverse community down there. So that just tends to be our area of expertise.

We do both employment law assistance as well as community development programs, where we try to help people understand their rights and responsibilities; for example, community legal education in schools, in AMEP programs—the English program that migrants and refugees attend when they first arrive. We run programs there to help people understand their employment rights and responsibilities. We have lots and lots and lots of clients every year, and we try to take a strength-based approach to all of our programs and services.

**Ms MORGAN:** My name is Liz Morgan. I am the Director of our Employment Law program at Westjustice. Again, we are a generalist community legal centre and again, just like Ashleigh, we are doing employment law because of the need in our community. Again, this is really focused for us on newly arrived migrant refugee asylum seekers but also young people. We are running from, say, Werribee all the way through to Melton, taking in the whole western suburbs all the way up to Bacchus Marsh.

**The CHAIR:** Huge population.

**Ms MORGAN:** Huge population. We are a combination of three previous CLCs that came together, so it is a huge population and a very diverse population. Again, we started just because of the need. We are kind of

stretching funding. We do not have sustainable funding to continue, but we know how important employment is to sustainable settlement. We help run a face-to-face employment service, and that means actually running cases—everywhere from calculating underpayments to writing letters of demand to actually taking matters to hearing. But also, like our colleagues at Springvale Monash, we have a big education component that I would like to talk about today as well. We run, for example, a train-the-trainer program where we train up community leaders about work rights and responsibilities, and then we have them go out into their community to train their communities in work rights and responsibilities so that they better understand this before—or even if they are currently in—employment.

We also have a school lawyer program that we run where we embed lawyers into schools to help young people better understand their work rights and work safety and other issues. I can talk more about demand for our services maybe further on. I can tell you about the client numbers, but it does not show you the kind of need. We are inundated with need for legal services, particularly in the areas of underpayment and in the areas of unfair dismissals and in areas of discrimination and other areas.

**Ms MOORE:** My name is Bethany. I am the Victorian Convener of the Australian Lawyers for Human Rights. A little bit different to the other three organisations, we are not a client service delivery organisation. We are essentially a human rights advocacy organisation. It is national, and we are split up into state and territory branches but also thematic subcommittees. Relevantly for this Inquiry we have an economic, social and cultural rights subcommittee and they contributed to the submission that we prepared on this matter. Essentially we engage in advocacy through a range of avenues, including media releases and submissions on topics that relate to human rights in Australia and overseas. So I think our broad submission, like John said, is the philosophical underpinning of the issues raised by the Inquiry, and it was very nice to see that our submission does feed in and support the recommendations of the CLCs here.

I am happy to be directed by you in terms of answering questions that might be more focused around clients. We will not have as much to add, but I think more broadly we are interested in ensuring that the Inquiry is underpinned by those issues around protecting people's human rights and in this context particularly, disadvantaged jobseekers.

**The CHAIR:** Can I ask a question about the unfair dismissal applications that you might be all collectively making? Is that on the rise? Is it really high? Is it mainly due to the subsidies finalising with jobactive? Is it related to some of those things?

**Mr O'HAGAN:** One of the problems that we have identified there is that because of the six-month duration of the subsidy it actually enables the employer to arguably dismiss an employee for no reason, because they arguably do not need a valid reason—

**The CHAIR:** Because their contract ended?

**Mr O'HAGAN:** No, because the qualification period for unfair dismissal has not been met. But I say arguably because as a counterpoint it is also arguable that such a dismissal would be unlawful because it is done because of their workplace right to be protected from unfair dismissal at six months—or 12 months for a smaller business—and also perhaps their workplace right to be paid their full unsubsidised wage. I am not aware of a case that has been successfully argued that way, but it is certainly arguable that it is because of the workplace right which is unlawful—that the dismissal is because of the workplace right.

**The CHAIR:** Is it prevalent?

**Mr O'HAGAN:** Yes, we get a lot of calls from people who have been in that system and they have been dismissed exactly when the subsidy expires.

**Ms NEWNHAM:** There is very little that we can do for them.

**Ms CONNOLLY:** Is it particular industries?

**Mr O'HAGAN:** It tends to be smaller businesses but I would not say there is particular—look, we could possibly extract that information from our database, with a bit of difficulty, because our problem when we were

approaching this submission was that we do note that people are jobseekers but if they are calling us about an employment problem and now they are a jobseeker, we will record them as an employee, because the source of the problem was the employment, and so it is hard for us to extract retrospectively from that data that this was the problem.

**Ms NEWNHAM:** And same for us, because we would not necessarily be able to assist them because they have not met that threshold of being at six months, so we would not be capturing them as a client. We would be saying, 'Unfortunately we can't assist you with this matter', so we would not be recording the data.

**Ms MORGAN:** And same—we can see a correlation between that wage subsidy ending and the unfair dismissal. However, we see a whole range of other reasons for unfair dismissal as well so it is not a huge proportion that we see. But we do see them.

**Mr BLACKWOOD:** Apart from unfair dismissal, what are the most common issues you have to deal with on behalf of jobseekers?

**Mr O'HAGAN:** That is the main issue, that they are being dismissed early where there is a subsidy, if we are talking about the subsidy system. Where there is a subsidy, they are just being dismissed as soon as the subsidy is done.

**Mr BLACKWOOD:** And there is really nothing you can do about that, in terms of support?

**Mr O'HAGAN:** Well, apart from that argument that I just made which I would love to—

**Ms NEWNHAM:** You doing any strategic litigation in that area?

**Mr O'HAGAN:** I would love to have a go at that one, but obviously that is federal legislation so there is nothing that we can do here, which is why we have made the recommendations that we have that are more focused on the *Equal Opportunity Act*.

**The CHAIR:** So then can I just do a follow-up question. How can the Victorian Government discourage employers from engaging in this practice? Is there anything? I know we have asked many questions about post-placement follow-up not just for that period of time and then to see how it is all going. Is there something that we can do as a government to discourage employers?

**Ms NEWNHAM:** It is often like this supported period of 26 weeks and then all of a sudden there is just this drop-off—

**Mr ROWSWELL:** 15 hours a week as well over those 26 weeks.

**Ms NEWNHAM:** Yes. So we wondered whether there were other options. Could businesses access the support slightly later than the six months so that they would have to get that last 28 weeks or something like that? And then other things like subsidies for annual leave or long service leave entitlements to help small businesses make it more sustainable to keep that employee on. Those types of things might be a possibility, but I am not sure.

**Ms MORGAN:** Or structuring for incentives around permanent rather than casual employment. With the way that the subsidies or incentives are structured, you kind of get what you pay for, so they cut out at a certain point, as opposed to if you are actually aiming more towards the permanent type of employment.

**Ms MOORE:** I could add one thing here which was drawn from our submission, which sort of draws into providing for enforcement mechanisms within the Victorian context, given a lot of this is Federal legislation. The last review of the Victorian charter of human rights was in 2015, and one of the recommendations was that a further review be undertaken, including consideration of whether social, cultural and economic rights could be included. So this Inquiry could perhaps consider a recommendation that a further inquiry and review of the charter be undertaken to figure out whether there might be a mechanism that could be incorporated in the charter around these sorts of issues so that people's right to work does not have as much scope to be infringed.

**Mr O'HAGAN:** We had a couple of suggestions in our submission as well: to extend the subsidy but also to have a bonus lump sum payable at the end of two years—just to pull that figure out of a hat—just so that there is a longer commitment with a reward at the end of it. We just feel that that two-year period is enough to sift out the people who are just after a short-term hit from those who are actually more serious about it.

**The CHAIR:** Because you really want the employers to take up this opportunity and not have burdens for them so that they get frightened of it. It is a very fine line in terms of incentives that as governments we place on the requirements for them to employ people. It is an experience for those people that have been long-term unemployed to be in employment for that period of time; we appreciate that. But I think if we are looking for sustainable employment, if you are saying to us unfair dismissal is the biggest issue going around legally, then that is a problem.

**Ms MORGAN:** We would add underpayments and other things to those issues, yes.

**The CHAIR:** Well, if you want to talk about that.

**Ms MORGAN:** Yes. There are also issues of underpayment and people not knowing what award they should be paid under and not being able to enforce their rights because they do not understand the workplace relations system and they do not understand their entitlements—particularly for our client group of newly arrived migrants, refugees and asylum seekers—or being told by bosses, 'Because you don't have this visa or because you're not a permanent resident, you don't get those rights'. They are being told incorrect information. So we would really like to see increased support for services that do try and work early with newly arrived communities to skill them up in relation to their work rights, because there is a correlation between understanding your work rights and responsibilities and then being able to maintain suitable and sustained employment.

**Ms NEWNHAM:** Or not entering into an employment relationship that has all these kind of risk signs about it—like being asked to get ABNs when you may not need to and things like that. Similar to Westjustice, wage recovery is a big part of what we do. I think over five or six years we have recovered something like \$900,000 for clients, which would have just gone missing otherwise. Westjustice has similar figures, and I hate to think of what JobWatch's figures are.

**Mr O'HAGAN:** A big part of what we do is underpayments, just through small claims—and round and round it goes. But we are actually reconsidering that at the moment and considering going for more of a penalties approach, because at the moment if you use the small claims procedure, which is easier, the worst that can happen to an underpaying employer is that they have to pay what they owe anyway, which is not a terribly severe disincentive to underpaying.

**Ms ADDISON:** Hopefully our wage theft legislation will really try and address a whole lot of those issues and make things easier for people who are being exploited in their workplace.

**Ms MORGAN:** That and industrial manslaughter laws are things that we would commend.

**Ms THEOPHANOUS:** Is it quite difficult to hold employers to account for wage theft from a legal perspective?

**Ms NEWNHAM:** It depends on the amount, but yes.

**Ms MORGAN:** Yes, sometimes because we cannot find them.

**Mr O'HAGAN:** Yes, that is a big problem, disappearing.

**Ms MORGAN:** We have people who get a job over Facebook because that is the way they have managed to get a job, or they are looking on Gumtree, and they are dealing with "John", and John says, 'I'll send you flyers' or, 'I'll do this, and you have to hand out the flyers, and then I'll send you the money'. So we do training about: 'Make sure you get an ABN and the details of whoever is employing you, and if they won't give them, don't work for them'.

**The CHAIR:** Wow.

**Ms MORGAN:** Yes. Disappearing and phoenixing companies are a big issue. So it is actually tracking them down. I think if you can get them, then there are mechanisms to take them and get monies paid. Often we are dealing with small amounts of money, so we recovered just over \$150,000 in the last year, but we would make it up of \$5,000, \$10,000, \$15,000, a couple of hundred or whatever for clients, because it is big money to our clients. So it is not made up of one big payment; it is huge amounts of small payments that we try and recover. So I think you can do it, but there are issues, particularly with our client group.

**Ms NEWNHAM:** And also sham contracting is a really big issue for us, probably for the other guys as well, and that people are asked to get ABNs. It is very, very easy to get ABNs, and they are asked to get an ABN for all types of employment, basically, because it is just a mechanism which employers can use to avoid paying other entitlements and leave and all of those types of things.

**Mr BLACKWOOD:** So they are employed as a subcontractor?

**Ms NEWNHAM:** Yes. So they will not be hired without an ABN, and it just is rife throughout our entire region. Often people are unwilling to do anything about it because they are just desperate for a job of any sort, but of course a lot of clients do not have the insurance. They have an ABN, but they have no understanding of what that actually means for them and so they are vulnerable as well. But also it changes the way in which we would assist them if they were not to be paid, so that also raises issues because it is hard to get the money then as well.

**Ms ADDISON:** Bethany, we have discussed a lot across our hearings about digital access, and I note in your report that you talk about this really as a human rights issue. We are seeing more and more people having to apply for work online and that there are really shifts of disadvantage when it comes to that. Do you want to just add anything to that about what we should be aware of when it comes to the digital world and disadvantaged jobseekers?

**Ms MOORE:** Yes, absolutely. I note that this was an issue that was raised in the other submissions too, so I think it is a commonly held view that the digitisation of welfare services can have the capacity to seriously dehumanise people seeking to rely on the services that are at the other side of those platforms and can have the capacity to really erode their human rights. Obviously this is a complex issue in terms of pragmatic solutions to resolve such problems. But our approach would be that—given the potential impact that these systems have on the social and economic wellbeing of Victorian jobseekers, including the stories we hear about people being subject to robodebt harassment and debt collection that is just completely abhorrent, really, and also some stories of connecting those experiences with really serious health side effects, often not to the benefit of their experience with jobseeking at all—we really would ask the Government to offer additional non-employment-related services as part of a more holistic approach to dealing with unemployment and to really work with the Federal Government on these issues around addressing entrenched disadvantage and barriers to sustainable employment to overcome some of the really awful side effects that are occurring as a consequence of digital services like the robodebt program.

**Ms MORGAN:** Yes. Can I add to that? My service undertook a comprehensive study of the western region and our CALD clients. We did 300 surveys of community members, community workers and community leaders, 50 community presentations and a literature review, and our report *Not just work* showed resoundingly that face-to-face services were what was needed to support people in their employment and understanding their work rights. It is not just in relation to internet access—and that is an issue for some of our clients. I have a client that has to travel on two modes of transport for over 40 minutes to get to internet he can use for a decent amount of time. That is an issue. There are issues with IT literacy and all of those kinds of things, but it is actually also a trust issue in terms of dealing with government agencies. Face-to-face works best first.

It is one of the reasons we go out and do the Train the Trainer program. What we do with that program is bring people, the community leaders—I recently ran it in Melton—bring them in. They come around. They visit the Fair Work Ombudsman. We go to the Fair Work Commission. We go and visit the Victorian Equal Opportunity and Human Rights Commission and Victoria Legal Aid. So we start introducing people to those agencies—and you could transplant this in a whole lot of different ways—to actually build trust in that

community so that people know even to make a phone call or otherwise. But if it is just all transferred to digital, we just know that people out in the communities that we deal with will not be using it.

**Ms NEWNHAM:** I would say that historically my training is community development, and we have this phrase in community development called ‘strengths-based approach’—probably you have heard of it—where we look at a person or a community and we look at what their strengths are. So often we look at a community and we say, ‘Okay.’ For example, we have got the Rohingya community settling in Springvale and the south-east suburbs, and often they have spent many years in refugee camps. Some of them cannot read and write even in their own languages, and so we look at all these sort of detriments—what they do not have, what they cannot do. They cannot use myGov; I can tell you now. They just cannot use myGov.

**Ms ADDISON:** I cannot use myGov.

**Ms NEWNHAM:** Neither can I. There is one story of one gentleman who, when he was a child, was abducted by the Burmese military and in forced labour his whole life. He spent 15 years in a refugee camp. He has been tortured on multiple occasions. He came to Australia, and then his Centrelink was cut because he did not upload his jobseeking history into the myGov services or jobactive—and he can barely walk. He is in the process of a disability support pension application, but they are very difficult and time-consuming and can take years to access. So that is just one story. And then there are other refugees being asked to write résumés. What do you put when you have got ‘15 years refugee camp’—that sort of thing?

So what we try to do is we work a lot with settlement agencies, and for example we look at, ‘Okay, what are the strengths?’. The Rohingya community: what do they like to do? What are they good at? They are really good at agricultural work. They cannot write a résumé. But one call to the farming community down in Gippsland’s south-east and we were able to get quite a few people placed into employment. So what are we talking about? And in terms of digitising services, we are not going to get anyone a job that way—from those types of communities, I can say—or very limited; maybe the second generation. But in terms of, ‘What can we look at in terms of a strength? What can people do? How do we sort of work with people to their best—

**The CHAIR:** Their individual skill sets, I suppose.

**Ms NEWNHAM:** Exactly, yes.

**Mr O’HAGAN:** I support everything that has been said here, but I just wanted to add that there is probably an obligation already to deal with those kinds of issues because under the *Equal Opportunity Act*—and there are equivalent provisions in federal discrimination law—it may be indirect discrimination to insist on the use of a system that is difficult to use for people with particular protected attributes. And also providers are required to make reasonable adjustments for people with disabilities in any case already under existing law, so providers that are failing to do that may already be discriminating.

**The CHAIR:** Thank you. We are way over time, but it has been very interesting. Thank you so much.

**Witnesses withdrew.**