

# UNIONS — BALLARAT

## And Western Victoria - TRADES HALL

Ballarat Regional Trades and Labour Council - 24 Camp Street, Ballarat VIC 3350 P: 03 5332 3666 E: balltlc@outlook.com.au

*The voice of Ballarat and Western Victorian Workers since 1856*

**STRONGER TOGETHER**

## Senate Education and Employment Committee Corporate Avoidance of the Fair Work Act

Submission

### Ballarat Regional Trades and Labour Council Inc.

The Ballarat Regional Trades and Labour Council Inc. (BRTLC) is the second oldest TLC in the world after Melbourne. The BRTLC was established in 1883 on the back of the Ballarat Eight Hour Committee of October 1856. Our Council meets at the Trades Hall in Camp Street. We represent 27 affiliated Unions and some 16,800 members across our region. We are the peak union body covering our region which stretches from Bacchus Marsh to Colac, up to Horsham and across to Maryborough. Council meets monthly with Delegates of our affiliated Unions. The Secretary is the only paid Official, the rest of the Council being volunteers. We are also an independent but affiliated body within the Victorian Trades Hall Council and the ACTU.

### AWAs

We have absolutely no idea on how many AWAs are still in operation in our region. FairWork will not release the information they have. It is abundantly clear that in 2005-7 business groups in Ballarat actively encouraged their members to take AWAs up and there was a rush before the incoming ALP Federal Government agreed to scrap them in 2007. Several AWAs have come to the attention of BRTLC through employee enquiries. BRTLC is aware of AWAs being transferred from existing businesses to new greenfield businesses or transferred by partners purchasing additional businesses and applied to the new business as recently as a few years ago – a practice that is clearly illegal and against the spirit of the FairWork Act. In sectors, such as food and hospitality, existing AWAs create an uneven playing field for venues covered by the award often leading to pressure to use cash in hand or other illegal methods to compete. Employees working under AWAs are largely unaware of their rights to terminate the agreements and default to the Award. Employees are unwilling to challenge AWAs knowing they will be terminated more often than not without Adverse Action, Unfair Dismissal rights. It is ludicrous that an AWA can only be terminated by one of the parties to the agreement – when one of those parties (the employee) is often without any protections for exercising their workplace right. The Federal Government must sunset all AWAs – most of which expired in 2011-12 and transition to the Award system or allow Collective Agreements to be negotiated without fear of reprisals to employees. It is a difficult discussion to tell an employee who attends our Young Workers Legal Centre when they question their pay and sign a contract that they will need to wait 6 – 12 months before complaining to the boss because they do not have Adverse Action/Unfair Dismissal rights and that an enquiry 'Exercising their Workplace Right' will usually mean instant dismissal with no legal recourse on their part. **We recommend that the Federal Government passes bills**

# UNIONS — BALLARAT

## And Western Victoria - TRADES HALL

Ballarat Regional Trades and Labour Council - 24 Camp Street, Ballarat VIC 3350 P: 03 5332 3666 E: balltlc@outlook.com.au

*The voice of Ballarat and Western Victorian Workers since 1856*

## STRONGER TOGETHER

to sunset all AWAs currently in operation at a fixed time, transitioning to the Award, or, by vote of staff, a collective agreement under the legislative instruments. FairWork would need to oversee this transition to ensure award compliance and no disadvantage rules are applied and the correct award is applied and complied with.

### CASH IN HAND – OFF THE BOOK ECONOMY

FairWork once stated that after a review of the fast food sector they found 47% noncompliance with the award. We would not be surprised if almost half of young workers aged between 15-25 were being illegally underpaid or paid cash in hand. Cash in hand is out of control in our region – we would honestly describe it as a crisis. Most of these cash in hand payments are well under the Minimum Wage, even considering junior rates. This is not an oversight or unintentional noncompliance – many businesses are running elaborate and sophisticated cash in hand schemes. Cash in hand is not only occurring in retail and hospitality but in domestic building, aged care, private residential providers and many other sectors.

- One business we are aware of that has 60-90 staff across two venues, (more than half off the books) runs an on the book 'book' and an off the book cash 'book' which is kept separately. This is a prestige business in Ballarat and probably one of the worst offenders because of the sheer number of very damaged young people left in its wake. Till takings are collected every night and stored with the bookkeeper. On Thursdays, the bookkeeper puts cash into envelopes (between \$10 and \$15 per hour each – flat rate no penalties or allowances) which staff collect - till takings are then falsified, ripping off the ATO. They do not pay Workcover insurance for the number of staff they have. One staff member upon injuring themselves and presenting to work with a certificate, was sacked on the spot with no legal protections because they were 'off the book' – they simply didn't legally exist in the business even though they had been there for some time working each day. Even staff across the two venues who are lucky enough to be on the books are not paid in compliance with the Award, many offered a 'salary' which is offered contrary to award conditions – many work both on and off the books across the course of their employment as the employer deems. The business owner as well as running these two large businesses is also a builder, exploiting and underpaying his apprentices working on his venues renovations as well. Former staff reporting underpayment have all described his intimidating and aggressive behaviour and how he does not like to be challenged for his underpayments. Many young workers are not prepared to pursue this employer because they wish to continue working in the hospitality industry and that great but usual threat is inevitably made; "I know everyone in this town... and you will never work again."
- A local fish and chip shop (with multiple shops) offers \$8 - \$9 per hour for employees under 18 years of age – no WorkCover insurance in a hot and dangerous environment. If a staff member questions their pay or conditions they are simply sacked on the spot and a line of kids are waiting to take their place.

# UNIONS — BALLARAT

## And Western Victoria - TRADES HALL

Ballarat Regional Trades and Labour Council - 24 Camp Street, Ballarat VIC 3350 P: 03 5332 3666 E: balltlc@outlook.com.au

The voice of Ballarat and Western Victorian Workers since 1856

## STRONGER TOGETHER

- An international student who worked as a delivery driver was paid \$5 per hour and sexually assaulted on almost every shift, it wasn't so much the threat of deportation that stopped them from reporting their abuse but the shame of having to tell their parents they were unable to finish their course - which their parents had worked very hard to save and pay for.
- A private residential care/accommodation unit pays SACS workers \$100 cash for overnight shifts of up to 12 hours, in many cases with high risk residents. Another was recently caught paying adult workers \$15 per hour flat rate for all hours worked.

BRTLCL has a growing list of businesses (now well over 30) paying illegal cash in hand, well under the Minimum Wage or Award; normally as a flat rate for all hours worked and without superannuation or allowances. We are only made aware of non-compliant businesses when someone walks in to our Young Workers Legal centre to seek advice – for every business reported to us there must be dozens more waiting to be reported. The insidious nature of cash in hand is exacerbated by high youth unemployment, the ability to earn additional income to the dole or government pension without having to declare and the scarce nature of unskilled jobs available. While largely an issue for younger workers BRTLCL is finding mature workers increasingly being employed 'off the books' or cash in hand. This is not a victimless crime – denying the ATO, removing workplace rights, undermining awards, failing to insure and setting young people up in their first job to fail – leading to a life of insecure employment, exploitation, abuse and poverty. It is alarming how often cash in hand payments are accompanied with bullying and abuse in the workplace. We are aware of businesses running cash books that FairWork has attended and because of the lack of forensic investigating they have been deemed compliant. It is simply not good enough. **We recommend that the Fairwork Ombudsman is properly resourced, working in conjunction with the ATO, ASIC and state based WorkCover authorities. We recommend regional investigative 'flying squads' who would be solely tasked to conduct forensic investigations of businesses. We also recommend that peak bodies such as unions and TLCs be able to speak to and work in liaison with FairWork regularly to share information and intelligence on non-compliance. We recommend in the strongest terms that penalties and prosecutions for cash in hand not only reflect the amount of theft that has taken place but perhaps be three times the amount of the theft (as well as restitution of the full amount of stolen wages) as a deterrent. We also recommend a three-strike policy so business owners caught multiple times are deemed not to be 'fit and proper people' to own and manage a business. We recommend a fairer process for employees to recover all unpaid monies without having to resort to lengthy and expensive Federal Court processes.**

*"The current system is broken, if I robbed a bank the police are hardly going to negotiate with me on how much of the money I stole must be returned if I was caught – yet we allow this when talking about theft of wages from vulnerable and low paid employees."*

# UNIONS — BALLARAT

## And Western Victoria - TRADES HALL

Ballarat Regional Trades and Labour Council - 24 Camp Street, Ballarat VIC 3350 P: 03 5332 3666 E: balltlc@outlook.com.au

*The voice of Ballarat and Western Victorian Workers since 1856*

## STRONGER TOGETHER

### AWARD UNDERPAYMENT

Presentations to our Young Workers Legal Centre quite often uncover Award underpayment; not applying increases on the 1<sup>st</sup> July each year from wage cases, not following Award conditions and not paying Award allowances. Also prevalent is incorrect classification of employees under the relevant award – it is highly suspicious that so many employees remain on Level one regardless of experience, responsibilities or roles within their organisations. It is shocking that many employers are not even aware of which award covers their staff and business. While Awards are very easy to find and accessible online, few employers seem to know them or provide copies to their employees. One unfortunate common practice is to pay the correct base hourly rate, but not pay overtime or weekend penalties, other award conditions and allowances.

### PAYSHEETS

The provision of legally compliant pay sheets across many industries is either at best ad hoc or at worst does not happen. Confusion often arises where businesses publish their rosters on site in staff rooms or work areas that staff can look at but not take with them – it is then difficult to equate rosters to pay sheets or group certificates to detect underpayment. While we encourage staff to take a picture of their rosters on their phone or keep a diary of their hours, detecting and estimating underpayment is often fraught with lack of information. Lack of pay sheets is particularly bad in domestic building and construction. **We recommend that the ATO or another Federal Government body create a free phone app (multi handset brand compatible) for businesses employing under 15 staff that would calculate for all employees - hours worked, link to award pay tables to calculate wages, penalties and allowances. This would allow employers to manage staff and keep tab of hours worked, provide pay sheets that could be emailed or sms'd to employees and create group certificates. It could also calculate PAYG tax and WorkCover insurance costs and provide guides to the employer's responsibilities. This would then allow full compliance with legislation in a cost-free package that could be used anywhere.**

### VECCI PAY GUIDES

Very alarmingly, we have been recently provided with a pay guide produced by VECCI given to their members throughout the state for the Cleaning Award 2010 that is incorrect – many of the figures do not correspond with the FairWork pay guides most being out by 1c per hour. BRTL is concerned that VECCI is providing advice that causes employers to underpay employees rather than directing them to FairWork pay tables.



# UNIONS — BALLARAT

## And Western Victoria - TRADES HALL

Ballarat Regional Trades and Labour Council - 24 Camp Street, Ballarat VIC 3350 P: 03 5332 3666 E: balltlc@outlook.com.au

*The voice of Ballarat and Western Victorian Workers since 1856*

## STRONGER TOGETHER

### CONTRACTORS

Independent Contracting arrangements seem to be more and more common – mostly they are sham contracts with the contracted employee working exclusively for the employer on regular hours and for long periods of time.

- Five young domestic building workers attended the Young Workers Legal Centre to say that their boss was going to make them all independent contractors to simplify his paperwork. None of them had an ABN or knew what being a contractor would involve. The base hourly rate seemed attractive until they realised they would be responsible for their superannuation, leave entitlements, WorkCover, entitlements and insurances – this would then have left them all being paid well below the award after deducting these costs.

While prevalent in domestic building it is also an issue across a range of sectors from residential care, personal training and fitness, disability services to retail and hospitality. While laws around sham contracting exist, penalties for noncompliance are obviously not a disincentive because it is becoming more and more prevalent.

### MANUFACTURING TRYING IT ON

After the recent CUB dispute, manufacturing industries across our region in EBA negotiations have tried to strip restrictions in their Registered Agreements from using labour hire and contractors. The language seems to be similar in that they will focus on core production but have a right to contract or sub contract all non-production processes, maintenance, cleaning, inwards and outwards goods, stores etc. This has led to a pronounced spike in protected industrial action and long and protracted negotiations to try and preserve and protect local safe and secure jobs for local workforces.

### LINKS WITH DOMESTIC VIOLENCE AND HOMELESSNESS

Most startling is the direct link between illegal underpayment of young women, bullying and harassment in the workforce and domestic violence. Putting young women (and older female workers) in precarious financial positions leaves a significant power imbalance and a lifetime of financial insecurity. Homeless intake services in our Region report that there is a significant growth in women over 55 reporting and the story almost universally the same – no savings, no superannuation, low paid work (in on or off the book employment) and triggered by a loss of employment or relationship breakdown. It is significant that many young women who attend the Young Workers Legal Centre to report illegal underpayment also report bullying, harassment and abuse at work. It would seem the type of bosses who are happily and knowingly financially exploiting their workforce are also the ones, who because of the lack of respect and power imbalance, are bullying, harassing and assaulting them. It is widely acknowledged that financial disadvantage and insecurity leaves women more vulnerable to domestic

# UNIONS — BALLARAT

## And Western Victoria - TRADES HALL

Ballarat Regional Trades and Labour Council - 24 Camp Street, Ballarat VIC 3350 P: 03 5332 3666 E: balltlc@outlook.com.au

*The voice of Ballarat and Western Victorian Workers since 1856*

## STRONGER TOGETHER

violence, it also cannot be denied that the majority of victims in the cash and underpayment economy are young women in hospitality, retail and SACS sectors. Closely followed by young men in the domestic building and construction sectors who are well over represented in alcohol and drug abuse statistics, problem gambling, accidents and rates of suicide. This is an explosive mix of abuse, exploitation and harm – noncompliance with FairWork legislation is not a victimless crime it is just the victims are often marginalised, voiceless, insecure and afraid. We are currently setting an entire generation of workers up to fail, to feel that they are powerless and that workplaces are exploitative rather than supportive and fostering. **We recommend that issues around illegal payment and underpayment be given the prominent public spotlight they deserve, that they are recognised for the crimes that they are, that there be no more slap over the wrist or fines that justify the exploitation for employers. We recommend further research be conducted on the social and economic effect of noncompliance with legislation and that data be collected as to the scope and scale.**

### CASUALISATION OF THE WORKFORCE

Many employers are forcing people into casual employment by not providing people to be employed into positions that are genuinely vacant, i.e. the employer has positions or hours of employment that they need filled to operate their business but choose to employ on a casual basis as it provided them with flexibility and power over the casual employee. The impact of this on the employee is that they are left feeling that they must work whenever they are asked to or fear losing their job, they have no stability of income and they face difficulties with the financial aspects of their life due to having an unreliable source of income. **We recommend where there are genuine vacant hours of employment, the employer should be compelled to offer permanent part time or full time work.**

### DODGY PRIVATE PROVIDERS

There is a huge problem with our job and apprentice agencies and some glaring conflicts of interest. We are finding more and more job providers and apprentice providers placing young workers into employment without determining or monitoring if they are being legally paid and whether they are safe at work. Some providers like VECCI have massive conflicts of interest where they are placing apprentices with their member businesses and if conflict arises have an interest to protect the interest of their financial member businesses over the apprentice. The field officer system for apprentices is broken beyond repair. Most apprentices do not know they have a field officer or who that person is and if they do find them often there is a reluctance to assist the apprentice with their issue – more than often the remedy is to terminate the apprentice while continuing to supply apprentices to the offending employer. **We recommend that the federal Government adopts the Group Training Model for all providers. In Ballarat, we have an excellent model in Group Training where Ballarat Group Training pay the wages in accordance with the award and monitors attendance at training making sure that the apprentice is released appropriately whilst also providing encompassing support.**

# UNIONS — BALLARAT

## And Western Victoria - TRADES HALL

Ballarat Regional Trades and Labour Council - 24 Camp Street, Ballarat VIC 3350 P: 03 5332 3666 E: balltlc@outlook.com.au

*The voice of Ballarat and Western Victorian Workers since 1856*

## STRONGER TOGETHER

### INTERNSHIPS AND TRAINEESHIPS

There seems to be a pronounced increase in the use of Internships as a way of securing cheap, below award labour especially in professional industries and IT. Some of these exploitative Internships are being actively promoted by educational institutions and private training providers, some require the Intern to pay for the privilege. While there is a legitimate role for internships, businesses are extending the length and scope of them, becoming a very grey area – educational opportunity vs cheap labour. Traineeships are likewise being exploited where employees are being employed on trainee wages, not offered the training or being released for training, to complete the traineeship and then continuing for months, sometimes years as a trainee because they are prevented from meeting the requirements to complete the terms of their traineeship by their employer.

### 457 AND OTHER VISAS

Talking with the ANMF, it is disturbing that in our region where there are two excellent training courses for nurses, trainee nurses cannot get placements in the health services but there is a flood of 457 Visa nurses. Maxitrans in Ballarat is using Chinese and Pilipino welders when there are trained welders out of work and no welding apprentice programs within Maxitrans. Ballarat Group Training and Fed Uni also run excellent courses for welding. It is obvious that labour market testing is not being carried out to determine skill shortages and that 457 and other Visa holders are being used for purposes other than filling shortage gaps in the workforce.

The fundamental tenet of the 457-visa program is that it is there to allow the filling of temporary skill shortages that cannot be met through the employment and training of Australian Workers. A number of industries in the Ballarat region recruit and employ people on 457 visas without investing anything into the education and/or recruitment of Australian citizens and permanent residents. The health industry provides a good example where Registered Nurses are being employed on 457 visas whilst Australian Nursing students who have recently graduated are unable to gain employment in a Health service in Victoria. Unfortunately, many of the people that are employed on 457 visas don't fully understand their rights in relation to receiving the same wages and entitlements of Australians employed in the same job or are unable to raise their concerns due to their vulnerability. **We recommend that systems are implemented to ensure investment is put into training, especially in the areas where potential future skills shortages may occur, and that genuine testing of the local labour market is undertaken before 457 visas are accepted. Putting these things into place will reduce the unwarranted use of 457 visas, protect Australian jobs for Australian citizens and residents and level the playing field between employers who are doing the right thing and those that are not.**

### BALLOTING

In a recent ballot for an Enterprise Agreement an employer engaged a private company, the 'Australian Election Company.' Employees had difficulty in logging on to vote and contacting the service. The Union was unable to access or receive results and detailed analysis of numbers. Unions were also unable to independently verify results or scrutinise the process. Serious concerns were raised about the propriety and process of the vote. **We recommend that only the AEC or state**

# UNIONS — BALLARAT

## And Western Victoria - TRADES HALL

Ballarat Regional Trades and Labour Council - 24 Camp Street, Ballarat VIC 3350 P: 03 5332 3666 E: balltlc@outlook.com.au

*The voice of Ballarat and Western Victorian Workers since 1856*

## STRONGER TOGETHER

based electoral commissions like the VEC be allowed to conduct workplace ballots in an open and transparent way where all parties are privy to detailed results and analysis compliant with confidentiality legislation.

### FAIRWORK OMBUDSMAN

There is no FairWork office in Ballarat, but asking the Secretaries of Geelong and Bendigo Trades Halls if having an office makes any difference the answer is a resounding NO. FairWork is under resourced, understaffed and underwhelming. I do not blame the under resourced Officers but political pressure, policy constraint and interference from an ideologically driven government. Given major cases of exploitation have been uncovered by the hard work of Unions and Union Officials, FairWork has acted in a purely reactive way. Major stories on TV seem to animate FairWork but little else. There appears to be little proactive work and virtually nothing in regional areas. FairWork is currently concentrating (quite rightly) on major cases involving the exploitation of foreign students and workers but not a peep on the tip of the iceberg nature – given the same exploitation of Australian workers every day in thousands of businesses around the country. We would have thought that a formal alliance and information sharing with the ATO, ASIC and Worksafe (or its equivalent in each state and territory) would quickly identify many noncompliant businesses for proactive visits. Prosecution is also a joke, normally a slap on the wrist or a fine that financially justifies the illegal practice. Penalties must reflect the severity of the underpayments (perhaps three times the amount) as well as recover all unpaid wages for staff affected. As a Trades Hall Secretary FairWork will not talk to me, or offer any channels of communication so that we can provide information on businesses to target based on employees reporting to us. The FairWork mediation process is also an unfair, unjust and disastrous system for exploited workers. I think the average sum of money recovered for workers, who in many cases are owed tens of thousands of dollars, is around \$2000 to \$5000. The process of seeking justice to recover lost wages if the employee is not willing to accept insulting settlements (normally with confidentiality clauses so they can never discuss the exploitation that occurred to them) through mediation then becomes a costly Federal Court process that no worker can afford. The next step to Federal Court is out of reach and out of the question for the clear majority of workers owed money or suffering other industrial grievances.



# UNIONS — BALLARAT

## And Western Victoria - TRADES HALL

Ballarat Regional Trades and Labour Council - 24 Camp Street, Ballarat VIC 3350 **P:** 03 5332 3666 **E:** [balltlc@outlook.com.au](mailto:balltlc@outlook.com.au)

*The voice of Ballarat and Western Victorian Workers since 1856* **STRONGER TOGETHER**

Your sincerely – on behalf BRTLC

**Brett Edgington**

Secretary – Ballarat Regional Trades and Labour Council Inc.

A: 24 Camp Street, Ballarat VIC 3350