

# WEstjustice

27 September 2018

Committee Secretary  
Senate Education and Employment Committees  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Committee Secretary

**WEstjustice submission to the Inquiry into the appropriateness and effectiveness of the objectives, design, implementation and evaluation of jobactive.**

Thank you for the opportunity to make a submission to the Committee's Inquiry into the appropriateness and effectiveness of the objectives, design, implementation and evaluation of jobactive.

Employment is widely recognised as the most vital step for successful settlement in a new country. However, recently arrived migrant and refugee workers face many barriers. Finding employment is difficult, especially for those who have recently arrived in Australia. For those who do access jobactive services, WEstjustice is of the view that changes can be made to the scheme to improve the experience of those who seek employment, and build in protections for newly arrived and refugee communities.

This brief submission seeks to address the terms of reference most relevant to the WEstjustice Employment Law Program, specifically:

- (d) the ability of jobactive to provide long-term solutions to joblessness, and to achieve social, economic and cultural outcomes that meet the needs and aspirations of unemployed workers; and
- (k) any other related matters.

**Summary of recommendations**

This submission recommends:

1. Specialist employment law advice and education programs should be made available for newly arrived and refugee communities as part of the jobactive program
2. Jobactive should provide assistance for employers specifically engaging newly arrived migrants and refugees

3. Updates should be made to the jobactive website with information for newly arrived migrants and refugees providing tips for those seeking work in Australia for the first time
4. Jobactive providers must be required to play a role in stopping wage theft by providing assistance when exploitation occurs
5. Jobactive providers must be required to have all wage subsidy agreements independently reviewed to ensure compliance with minimum entitlements
6. Job providers must provide additional support to newly arrived migrants and refugees before they are placed with labour hire companies or in other insecure work. To promote secure work, providers should receive greater incentives for placing workers in secure positions.

### **About WEstjustice and the Employment Law Program**

WEstjustice is a community organisation that provides free legal help to people in the western suburbs of Melbourne. Our offices are located in Footscray, Werribee and Sunshine, with a number of outreach services.

We assist with a range of every day legal problems including consumer disputes, credit and debt, family law and family violence, fines, motor vehicle accidents, tenancy, and employment related matters.

We also provide free community legal education, undertake law reform activities and work in partnership with local communities to deliver innovative projects that build legal capacity and improve access to justice.

With a long history of working with migrant and refugee communities, in 2014 we identified a large unmet need for employment law assistance for these communities, who are particularly vulnerable to exploitation at work. In response, WEstjustice established the Employment Law Project, which provided legal assistance to over 200 migrant workers from 30 different countries, successfully recovering or obtaining orders for over \$120 000 in unpaid entitlements and over \$125 000 in compensation for unlawful termination. We also trained over 600 migrant workers, as well as leaders from migrant communities and professionals supporting these communities. Based on evidence from our work, and extensive research and consultation, WEstjustice released the **Not Just Work Report**,<sup>1</sup> outlining 10 key steps to stop the exploitation of migrant workers.

Given continuing and unmet need, WEstjustice now operates an ongoing Employment Law Program. The Program seeks to improve employment outcomes for vulnerable workers including migrants, refugees and temporary visa holders. We do this by empowering migrant and refugee communities to understand enforce their workplace rights through the provision of tailored legal services, education, sector capacity building and advocacy for systemic reform. To date our service has recovered almost \$400 000 in unpaid entitlements or compensation, trained over 1000 community members, delivered four roll-outs of our award-winning Train the Trainer program, and participated in numerous law-reform inquiries and campaigns.

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<sup>1</sup> Catherine Hemingway, [Not Just Work: Ending the exploitation of refugee and migrant workers](#), 2016 (**Not Just Work**).

**Terms of Reference (d): The ability of Jobactive to provide long-term solutions to joblessness, and to achieve social, economic and cultural outcomes that meet the needs and aspirations of unemployed workers.**

The jobactive website states “*Job Seekers can get help from a jobactive provider to get and keep a job. Job active providers have the **flexibility to tailor their services to a job seeker’s assessed needs.***”<sup>2</sup>

Recently arrived and refugee communities face multiple barriers that prevent them from accessing mainstream services and thus, obtaining sustainable employment. Low levels of rights awareness, language, literacy, cultural understandings and practical considerations all form critical barriers to accessing mainstream employment services.

In recognition of the fact that newly arrived and refugee jobseekers require targeted, face-to-face assistance to find and maintain sustainable employment, the Federal Government should fund a specialist employment and education program for newly arrived and refugee communities as part of the Jobactive regime.

***Specialist employment law advice and education programs should be made available for newly arrived and refugee communities***

WEstjustice believes that specialist employment programs should be made available for newly arrived and refugee communities.<sup>3</sup> These should be holistic, build on and expand on successful past and existing programs, and should provide the following:

- Ongoing one-on-one support commencing before employment begins (to assist with recognition of overseas qualifications; ensure adequate training and preparation including awareness of laws and workplace practices; and to assist with finding employment and dealing with job service providers);
- Ongoing one-on-one support continuing well after employment commences (to assist newly arrived workers and employers navigate communications or other challenges that may arise and to ensure their rights are protected);
- Services delivered by staff and agencies that are experienced in working with clients from newly arrived and refugee communities, utilising culturally appropriate service delivery models and access to interpreters, ideally located;
- Targeted education to raise awareness of employment laws, minimum entitlements and agencies that can assist where workers have a question or think they might be facing an exploitative situation;
- Targeted legal advice and assistance to prevent or resolve disputes at an early stage where employment rights have been breached or workers require assistance to maintain employment.

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<sup>2</sup> <https://www.jobs.gov.au/jobactive>.

<sup>3</sup> [Submission to the Victorian Government Employment Programs Review](#), Western Community Legal Centre, 2015.

Awareness of rights and responsibilities at work and an ability to access to help to prevent and/or resolve disputes at an early stage form key parts of job readiness and job retention. Yet, as set out in our Not Just Work Report, newly arrived migrants and refugee communities have very limited understanding of Australian employment laws and rarely access help to resolve disputes. In a WEstjustice survey, 88% of community workers reported that newly arrived communities do not understand Australian employment laws at all or understand a little. To date, mainstream approaches have been largely unsuccessful in informing workers about their rights, and where they can find assistance with employment problems.

In response to community feedback regarding the importance of face-to-face, targeted employment law services and information, WEstjustice developed and implemented a Community Legal Education Program (**CLE Program**), commencing May 2014.

The CLE Program has consisted of:

- information sessions for community members (delivered at a variety of locations including English as Additional Language classes, community meetings, settlement agencies and schools);
- information sessions for community workers (to enable staff to identify when their clients have an employment law issue and make appropriate referrals); and
- the Train the Trainer Project, working with community leaders.

We have developed numerous resources including template PowerPoint presentations, activity sheets and educational videos especially tailored for English as Additional Language students. Please visit our website for access to these resources.<sup>4</sup> Some example images and scripts from one video are below:

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<sup>4</sup> See:

<<http://www.westjustice.org.au/community-development-and-law-reform/community-legal-education/newly-arrived-and-refugee-employment-law-140>> last accessed 26 July 2018.

ANDREA

Jill!

JILL

Andrea! Hey! How are you?

ANDREA

Good. How's the new job?

JILL

Loving it. Six months, and they  
just gave me a promotion!

ANDREA

That's so exciting!

JILL

I know - what about you?

ANDREA

Still working in the kitchen at the  
pub.

JILL  
Is it good pay?

ANDREA  
Depends on whether it's a busy  
night.

JILL  
(concerned)  
Really?

ANDREA  
If they can't pay me much they give  
me a meal, so...

JILL  
(concerned)  
But a meal is *not* pay! Don't you  
have an hourly rate?

ANDREA  
If nobody comes in, how can they  
pay me?

JILL  
But they *have* to pay you the Award  
rate.

ANDREA  
They said they opted out of the  
Award...

JILL  
They can't do that. What about  
overtime?

ANDREA  
No.

JILL  
Penalty rates, for weekends?  
Holidays? Superannuation?

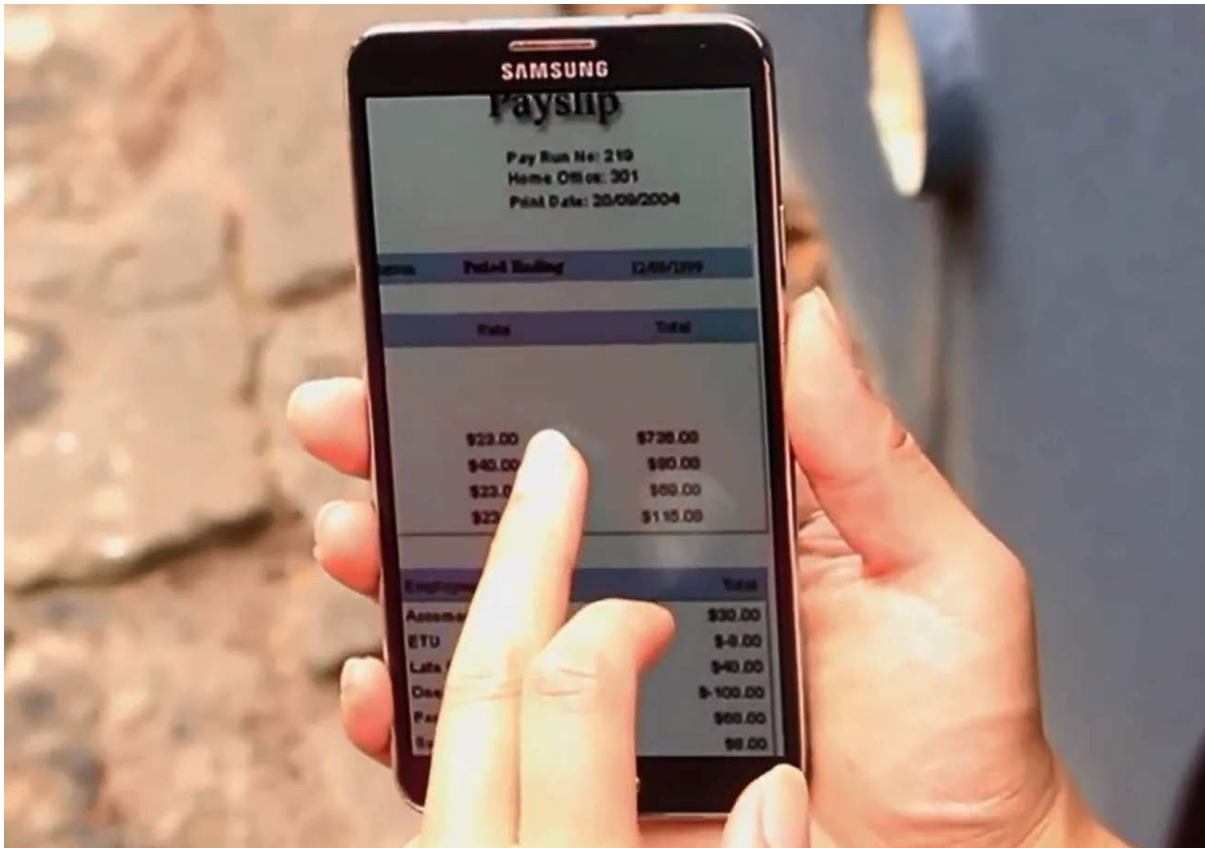
ANDREA  
I know it sounds bad... but they're  
really nice people.

JILL  
(thinking, but with  
caution)  
Listen... do you have a pay slip I  
could have a look at?

ANDREA  
What's a pay slip?

JILL  
It's a document that you get every  
time you get paid. It sets out the  
hours you worked, your payment and  
how much you've been taxed. I get  
mine by email.

(showing Andrea an example  
on her phone)  
Look, I'll show you.





ANDREA

I don't get those.

JILL

You have rights in the workplace,  
you know! You should get some  
advice about your pay.

ANDREA

Who can I speak to?

JILL

There are legal services that can  
help for free - and they're  
confidential, so they're not going  
to tell your boss unless you want  
them to. And then later, if you  
feel like it, you could talk to  
your boss or you could get a lawyer  
to write a letter.

Data collected by WEstjustice through our pilot education programs (and documented in the Not Just Work report) demonstrates the utility of face to face information sessions. For example, after attending a WEstjustice information session, 89% of participants surveyed stated that as a result of the session they now knew where to go for help with an employment problem.

Benefits of community education include:

- Education not only informs people about their rights at work and where they can access assistance with their employment issues, but empowers communities to enforce their rights by building relationships and trust between vulnerable workers and services that can assist.
- Information is better understood when communicated via culturally sensitive services using language translation services and appropriate resources in community languages.
- Timing and method can be considered in a culturally appropriate way.

Further, when asked about the helpfulness of face-to-face information service in clients' first language, 89% of survey respondents thought this would be very helpful, or somewhat helpful.

WEstjustice sees that the provision of these services through the jobactive regime will assist CALD jobseekers in their efforts to seek and maintain employment, and protect themselves from exposure to exploitative work practices.



### ***Assistance for employers specifically engaging newly arrived migrants and refugees***

Jobactive providers assist Australian employers find employees, understand and meet staffing needs. This assistance includes:

- Refer potential employees for businesses who are ready to work;
- Provide support after the new employee starts work and as they settle in; and
- Provide wage subsidies for eligible job seekers who are mature aged, long-term unemployed, Indigenous, under 30 years of age, or a parent.

WEstjustice believes this assistance – specifically the third point - could be expanded to providing wage subsidies for eligible job seekers who are newly arrived in Australia or a refugee. This may encourage employment of newly arrived and refugee workers and combat long term joblessness in these cohorts.

Other options, addressing the needs of both employers and employees may include:

- Tax concessions for companies that meet diversity targets;
- Quotas or other affirmative action measures including a positive duty to recruit a diverse workforce;
- Requiring businesses to collect data and report on the diversity of their workplace;
- Assisting skilled workers to have qualifications recognised;
- Amending government employment and procurement policies to set minimum standards for diversity;
- Targeted employment programs to provide training and ongoing support for newly arrived and refugee workers;
- A large scale education campaign to raise awareness of the business case for diversity and inclusion.<sup>5</sup>

### ***Updates to the Jobactive website with information specifically for working in Australia***

We note the jobactive website offers a number of resources for those seeking employment / seeking to employ in Australia, including information available in a number of community languages. Job seekers are provided information relating to:

- Finding work harvesting fruit and vegetables
- Get training and practical help to find and keep a job
- Resumé and cover letter assistance.

Although our experience demonstrates that face to face education is the most effective means of conveying information to migrant and refugee communities, to complement this work further information could be added to the website relating to working in Australia. These could include short

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<sup>5</sup> Not Just Work, Chapter 2.

videos, translated materials, and links to relevant Government and community websites (i.e. Fair Work Ombudsman, union and community legal centres) to assist these communities understand Australian work culture, rights and entitlements.

**Terms of Reference (k): Any other related matters.**

WEstjustice has observed a number of underpayments cases where clients have found employment with the assistance of a jobactive provider. Often, the provider will give the employer a wage subsidy agreement, and the employer will receive financial incentives to employ newly arrived or refugee workers.

***Jobactive providers must play a role in stopping wage theft by providing assistance to those who have been exploited<sup>6</sup>***

Unfortunately, some employers underpay their workers, yet still receive financial benefits from jobactive providers. WEstjustice acknowledges that many jobactive providers work hard to find employment for their clients. There are limited resources and significant casework loads on individual workers. However, there is no excuse for jobactive playing any role in the exploitation of workers in Australia. Instead, jobactives must be required to assist with the prevention and resolution of disputes when they occur.

Without help, our clients find it immensely difficult to pursue claims or resolve disputes with their employers. The piecemeal and multijurisdictional nature of the workplace relations landscape means that without assistance from an expert, enforcement is impossible for many vulnerable workers. There are currently different jurisdictions and agencies for the enforcement of workplace safety, wages and entitlements, unfair dismissal, general protections, superannuation and discrimination laws. This makes choice of jurisdiction and case management extremely challenging. Some claims carry a costs risk (meaning if you lose your case, you may be ordered to pay the other side's legal costs), some claims prohibit other claims being made, and each claim has different processes and different limitation periods (for example, only 21 days to bring an unfair dismissal claim, but up to six years for an underpayment of wages claim). Furthermore, a decrease in union membership has significant implications for monitoring and enforcement of workplace rights.<sup>7</sup>

Our clients generally require active assistance from the time of making a complaint through to mediations, and formally settling their dispute. At the initiation of an application, clients require assistance with the completion of the relevant forms and calculations. Many clients faced with the requirement to calculate underpayments and prepare a letter of demand, let alone a Court application, outline of submissions or witness statement would be locked out of the system without extensive assistance. The imbalance of power inherent in many of these disputes makes independent assistance for vulnerable workers crucial.

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<sup>6</sup> Not Just Work, page 161.

<sup>7</sup> Ingrid Landau, Sean Cooney, Tess Hardy and John Howe, 'Trade Unions and the Enforcement of Minimum Employment Standards in Australia (Research Report, January 2014), page 8.

Despite significant need for employment law services there are limited avenues for workers to get help with their problems. Given the amount of time required to prepare and run underpayment and other employment matters, few private firms offer employment law advice on a no win no fee basis. Therefore, for low income earners, private legal assistance is not an option. While the Fair Work Ombudsman can offer limited assistance for unpaid wages and entitlements, both FWO and other mainstream agencies, with their focus on telephone-based self-help models of assistance, are largely inaccessible to newly arrived and refugee communities, and do not provide enough ongoing support.

Unfortunately, there is very little funding available for employment law services. Existing services are struggling to meet demand with limited resources. JobWatch, a community legal centre specialising in employment matters, cannot meet 57% of demand for telephone assistance (even fewer receive casework support and the most vulnerable will not utilise a telephone service). Justice Connect, a community organisation that helps facilitate pro bono referrals, reports that employment law is one of the top four problems that people request assistance for, however only around one fifth of matters receive much needed help.<sup>8</sup> In Victoria, Legal Aid does not provide assistance with employment matters (except where discrimination is involved) and frequently refer matters to other services. Apart from WEstjustice, there are no other targeted employment law services for newly arrived communities in Victoria. As observed in a Report by the Federation of Community Legal Centres, 'there is a significant gap between the need and demand for assistance and the services that are currently available.'<sup>9</sup>

Despite being best placed to provide face-to-face comprehensive assistance embedded in the community, very few generalist community legal centres provide employment law services. This is not due to a lack of need. Employment law is a highly specialised area of law with short limitation periods, and there is no recurrent funding for generalist centres to do this work. This means that centres are often unable to allocate scarce resources to this area.

Jobactive providers must be required to contact workers and offer assistance where they suspect wages are not being paid correctly. If they do not provide adequate assistance, or are found to be repeatedly referring clients to employers known to underpay staff (which we have seen), there must be a contractual penalty enforced by the Government or an appropriate agency. At the same time, jobactive providers must be provided with the funds to provide assistance to underpaid workers.

In addition to the provision of education programs and targeted support outlined above, WEstjustice recommends that Jobactive provider contracts must require each provider to have a designated support worker for clients who have not been paid properly. That worker must assist clients to pursue underpayments claims, report unscrupulous behaviour to FWO and ensure that no further job seekers are referred to that employer until the employer can demonstrate they have taken steps to ensure compliance.

This role may be delivered by or in collaboration with a community legal centre or other specialist agency equipped to provide expert support to vulnerable workers. Alternatively, the Government should establish a separate fund as part of the jobactive program, to fund community-based

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<sup>8</sup> Not Just Work, page 139.

<sup>9</sup> Ibid.

face-to-face comprehensive employment law services for jobseekers and those recently placed in employment.

We see education about rights at work and help to enforce minimum standards as key factors in obtaining and maintaining sustainable employment. The jobactive program should recognise this and fund much-needed programs to improve employment outcomes.

***Jobactive providers must be required to have all wage subsidy agreements independently reviewed to ensure compliance with minimum entitlements***

WEstjustice has observed a number of instances where the provider will give the employer a wage subsidy agreement, and the employer will receive financial incentives to employ newly arrived or refugee workers. In some instances the wage subsidy agreements do not meet minimum standards.

Jobactive providers must be required to subject all wage subsidy agreements to external review, to ensure compliance with minimum working entitlements. Further, providers must be properly funded to provide support to workers who are not paid properly.

Employers must face serious consequences if they engage with jobactive providers then fail to provide minimum entitlements.

#### **Case Studies – Mansur**

*Mansur worked at a recycling facility sorting different types of plastics. He obtained his job through a job services agency. He did not have a written employment contract. Mansur was not paid for two weeks' work. He visited WEstjustice for help. WEstjustice obtained the Wage Subsidy Agreement between the jobactive provider and employer, and noticed that the agreed rate of pay did not comply with minimum standards under the applicable modern award.*

#### **Sam**

*Sam's jobactive provider found him a job as a butcher. Sam was paid half of the minimum wage. After some months, Sam's employer lost his wage subsidies because he was not providing proper records to the jobactive provider. Sam's boss didn't tell him what had happened – he let Sam continue working. Sam didn't get any pay at all for several weeks. When Sam asked why he wasn't being paid, the boss blamed the jobactive provider for failing to pay the wage subsidy.*

***Job providers must provide additional support to newly arrived migrants or refugees before they are placed with labour hire companies or in other insecure work. To promote secure work, providers should receive greater incentives for placing workers in secure positions.***

WEstjustice has observed clients working under labour hire arrangements in a range of industries including food processing, cleaning, distribution and construction. Workers are generally on low incomes

and do not understand their rights at work, let alone the complex arrangements between host and labour supply agencies governing their employment.

We have observed a correlation between labour hire and insecure work, with many labour hire workers expressing to us a keen desire to become “permanent”. We heard one story of a worker in a warehouse receiving a text message from a labour hire company confirming he had work each morning for seven years. This man longed for the stability and security of a permanent job, but was too scared to request this. Often, workers from labour hire agencies have fewer rights and worse entitlements than others in a workplace who are engaged directly by the host.<sup>10</sup> This desire to secure permanent employment could be leveraged by employers.

Given the findings of State inquiries in Queensland, Victoria and South Australia, WEstjustice recommends that newly arrived and refugee workers should be provided with additional support before being placed with labour hire companies until State / Federal labour licensing schemes have been enacted, or other forms of insecure employment.

Further, to promote secure work, the Government should investigate and implement incentive schemes for jobactive providers and employers when workers are placed in more secure forms of employment (for example, a permanent rather than a casual position).

Thank you for allowing WEstjustice the opportunity to make this submission.

Yours sincerely,

**Catherine Hemingway**  
**Policy Director (CALD & Employment)**  
**Employment Practice Manager**

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<sup>10</sup> [http://www.westjustice.org.au/cms\\_uploads/docs/westjustice-victorian-inquiry-labour-hire-insecure-work-submission.pdf](http://www.westjustice.org.au/cms_uploads/docs/westjustice-victorian-inquiry-labour-hire-insecure-work-submission.pdf)  
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