



By email: employmentwhitepaper@treasury.gov.au

30 November 2022

Dear Treasury,

TREASURY TASKFORCE - EMPLOYMENT WHITE PAPER

1. Youth Law Australia kindly seeks to contribute this submission to the Treasury Employment Taskforce on the Employment White Paper Terms of Reference.

About Youth Law Australia

2. Youth Law Australia (YLA) (formerly the National Children's and Youth Law Centre) is an accredited, national, community legal centre dedicated to helping children and young people under the age of 25 years and their supporters to understand their legal rights and find solutions to their legal problems.
3. In January 2021, Youth Law Australia was granted four-year funding by the Fair Work Ombudsman's Community Engagement Grants Program to provide a specific employment law service for young people under 25. This project is called the Young Workers' Rights Service (YWRS).
4. We have significant experience and expertise in advising children and young people and their advocates on issues including their experiences in employment, education and training. We acknowledge the disproportionate, ongoing and intergenerational harm experienced by First Nations children and young people. We also acknowledge the many young people who have been courageous in sharing their experiences with us.

Law Reform Agenda – *Decent work for young workers*

5. The YWRS has launched a campaign called *Decent work for young workers*. Its goal is to incentivise young people, workplaces, Fair Work regulators and governments to ensure that young workers experience decent work, equal pay for work of equal value, and economic inclusion. In doing so, the YWRS will assist in *substantially reducing the proportion of youth not in employment, education or training* in conformity with the **United Nations Sustainable Development Goal (SDG) Target 8.6**, thus enabling young Australians to have a brighter, more sustainable future today and for generations to come.



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6. If implemented, the legal reforms we have recommended in this submission will also work to support Australia's implementation of numerous other SDGs as they relate to young workers, including:

Decent Work and Economic Inclusion - SDG Target 8.5: By 2030, achieve *full and productive employment and decent work* for all women and men, including *for young people ... and equal pay for work of equal value*.

Reduced Inequalities - SDG Target 10.2: By 2030, empower and promote the social, economic and political *inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status*.

7. The YWRS believes that decent work for young workers must be work that also provides equal pay for work of equal value. We believe that the only way to ensure that young workers receive equal pay for work of equal value is to abolish junior rates of pay, and to continuously work to reduce the incidence of underpayment and wage theft.
8. We believe that young workers' experiences of junior rates, underpayments, wage theft, and expired Enterprise Agreements (also known as zombie agreements) represent the real floor of the national wages system, as the wages paid in those scenarios are generally below the Minimum Wage. The lifting of this floor will, therefore, create a structural reform that will also support the lifting of all wages.
9. For young workers, the impact of these reforms will be profound on a personal level, as the stories in this submission attest. These are reforms that will incentivise young workers and put more money in the hands of more young workers that they can subsequently spend building their lives, in the economy, reducing debt, and paying taxes. By way of example, many young workers have HECS debt that previous generations did not have to pay off, the same generations that created junior rates of pay and HECS debt in the first place. And all young workers are as affected by the high cost of living as everyone else in the workforce. By lifting young workers' wages we can, therefore, help young workers to reduce their debt, reduce their reliance on Social Security, defray the rise in the cost of living, and have a more reasonable quality of life.
10. The reforms recommended below will substantially address the inter-generational inequality that is the systemic wage exploitation of young workers. And they are economically sound: <https://mckellinstitute.org.au/research/articles/the-problem-with-junior-pay-rates-explained/>

Our recommendations

11. We note that the scope of our submission is primarily focussed on the experience of people under the age of 25 who have engaged with our service. In summary, we recommend that the following measures be taken to maximise employment and grow productivity, boost job security and wages, and deliver a high-quality labour force through skills and training, supporting industries of the future.

Recommendation 1: That the *Fair Work Act*¹ and Modern Awards be reformed to remove junior wages in order to boost job security and wages for young people.

12. In our submission, the concept of equal pay for work of equal value is central to a young person's exercise of their human and citizenship rights. The economic impacts of junior wages on a young person's individual quality of life extends to the broader community. Paying young workers equally is necessary to reflect the true value of their labour and enable them to establish solid financial foundations. As young people are facing increasing tertiary education debts and cost of living pressures, paying young workers equally broadens their opportunities to invest in their future and enables greater circulation within the wider economy. In our submission, junior wages and other forms of underpayments are systemic issues in need of structural reform.

Age discrimination

13. In our experience, junior wages sanction age discrimination, and have no justification as a reflection of a young worker's ability or skill.
14. Junior wages mean that a young person is paid significantly less than an older person performing an identical job, even where their skill, ability and experience is the same.
15. For example, the minimum wage for a 16-year-old working at a café as a casual Food and Beverage Attendant Grade 3 is \$14.04/hour. The minimum wage for a 20-year-old casual performing the identical job is \$28.08/hour.
16. The unfairness of junior wages derives from the fact that the productivity of workers of different ages is the same, or more similar, than the difference in wages.
17. A disproportionate number of younger workers are employed in unskilled and service roles, where the productivity gains from experience are minimal.² This negates any argument that gaining skills or experience is necessary to achieve organisational productivity and efficiency.³
18. For example, consider a pizza delivery driver, who performs the same job from the time of obtaining a drivers' license at the age of 17. The role and level of skill required for the job remains unchanged, despite the annual increase in wage with age.
19. It is submitted that junior wages simply perpetuate less favourable treatment on the grounds of age, rather than reflecting actual differences in productivity.

Sectors selectively subsidized by cheap labour

20. It is our submission that industries and businesses covered by Modern Awards with Junior Wage structures have an unfair economic advantage over other industries and businesses that do not. This inequity has fundamental flow-on effects to our community in terms of labour supply, availability of services, lifestyle "choices", and cost of living.
21. As an example, the minimum wage for a Level 1, 15-year-old part-time worker under the [Fast Food Industry Award 2020](#) is \$9.35/hour. The minimum wage for the same worker at the same

¹ 2009 (Cth) (*Fair Work Act*).

² Alysia Blackham, 'Young Workers and Age Discrimination: Tensions and Conflicts' (2019) 48(1) *Industrial Law Journal* 1, 28.

³ Malcolm Sargeant, 'The UK National Minimum Wage and Age Discrimination' (2010) 31(3) *Policy Studies* 351, 353.

level working in basic food services under the [Aged Care Award 2010](#) (which does not have Junior Wages) is \$22.67/hour.

22. Similarly, while an 18-year-old casual kitchen attendant covered by the [Hospitality Industry \(General\) Award 2020](#) earns \$19.23 per hour, an 18-year-old casual worker performing food service and cleaning under the [Social, Community, Home Care and Disability Services Industry Award 2010](#) (which does not have junior wages), earns \$28.95 per hour.
23. By way of further comparison, a 16-year-old casual working at a day-care centre under the [Children's Services Award 2010](#) will earn \$19.81 per hour on commencement. The same worker would earn \$28.99 per hour for an entry-level position at a family day care, which is covered by the [Social, Community, Home Care and Disability Services Industry Award 2010](#).

Hours of work – concerns with educational commitments

24. As junior wages make young workers attractive to employers, it is common for young workers to be asked to work hours that interfere with their ability to engage with their schooling commitments, including being well-rested and completing private study. We are concerned that young people, particularly those from financially disadvantaged backgrounds, are being induced into low-paid and low-skilled work at an early age, to the detriment of their further education and career potential. We believe that government must be accountable for continuing to enable employers to access cheap child labour through junior wages, with the risk of negative impacts to individuals and communities, in both the short and long term.
25. Junior wages risk compounding inequality in educational outcomes for young people. Regulation of the working hours of children is a matter for individual States/Territories. Generally, from the age of 15, there are very few restrictions on when a child can work, apart from not being permitted to work during their normal school hours. The following case-study demonstrates how the combination of junior wages and lack of regulation of working hours transposes onto school-aged workers:

26. Case study – Ashleigh

Ashleigh is 15 years old. She signed a part-time contract to work Friday nights and Saturdays at a retail pharmacy. After her first week, she was asked to work an additional shift on Thursday night, to which she agreed. Her manager then rostered her to work an extra day on the weekend, on top of her ordinary hours. Ashleigh explained that she could not work on Sunday as well as Saturday as she had to study for exams. Her manager said that the roster was already done and that she couldn't get out of it.

27. From 1 January 2021 to 28 November 2022, 68 young people and 38 parents/advocates contacted Youth Law Australia seeking information and advice about young peoples' hours of work.
28. In our experience, people are surprised to learn that state/territory regulations limiting working hours generally only apply to children under 15 years old. Young workers often express feeling pressured by an employer's expectation that they work unsociable shifts, while parents often express concern at the impact that this may have on their child's performance at school.

29. As a demonstration of the frequency of these types of concerns, in the space of a few weeks between October and November 2022, Youth Law Australia Young Workers' Rights Service received six separate enquiries de-identified as follows:

"How late can a 16 year old work? I feel my son is being used to work the late shifts because he may be cheaper than other staff and he doesn't say no. He starts at 4pm and sometimes doesn't finish until after midnight!"

"My daughter is working shifts at a big retailer until midnight four nights a week, which is impacting school. Are there any laws that can help now that she is 16?"

"My daughter has just turned 15 and is working at a pizza shop after school. What hours is she allowed to work?"

"My sister has been working at the supermarket for a while. She used to work only until 9pm but now that she has turned 15, she has been rostered to work until 10.30pm. I thought school students couldn't work past 9pm on school nights?"

"My 15-year-old son works at a burger restaurant. On Friday and Saturday nights he gets rostered to work until 1.30am, but sometimes he works until 6am or 7am. As a 15-year-old, he is the cheapest staff member to be rostered on, so there is pressure on him to work those times."

"My 13-year old daughter has been rostered to work until 11pm when she has to go to school the next day. Can you help me find the law that says this is not OK?"

30. As junior wages can apply up until the age of 21, this also affects large numbers of tertiary students who are experiencing significant pressure to work in conflict with their studies. The Universities Australia Survey, cited in the National Union of Students 2021-2022 pre-budget submissions, found that:

- More than one-quarter of full-time domestic undergraduates regularly miss classes because they have to work; 41% report that work has a negative impact on study.
- 36% of part-time domestic undergraduates regularly missed classes to work; 52% reported that work has a negative impact on study.
- Only 35% of students who work believe that their work/study balance is satisfactory; 39% of domestic students report that their work has little value to them apart from the money.⁴

Job insecurity and limitation of skills development

31. Junior wages also have the effect of reducing job security for young workers. It is a common story for young people, particularly in the Fast-Food industry, to have their employment terminated when they reach a certain age, with their job given to a younger worker. In this way, junior wages hinder investment in skills development, sustainable career progression, and the attainment of decent jobs.

⁴ National Union of Students Inc, Submission to Department of the Treasury, Parliament of Australia, *A Submission to the Australian Treasury for the Pre-Budget 2021-2022* (January 2021) 3.

32. **Case study – Mathilda**

Mathilda worked for a multi-national fast food restaurant. When she turned 17, she stopped getting shifts. She said this happened to all her friends when they turned 17 too.

33. **Case study – Edwina**

Edwina applied for a job at an ice cream shop. She was given a contract that paid below minimum wage for her age. When she questioned her employer about this, he said, “If you don’t want to work for the contracted rate then don’t bother working here at all. I could get any 17-year-old to work for that rate instead.”

34. **Case study – Brian**

Brian worked for a pizza shop as a delivery driver. He realised he was being paid below minimum wage and spoke to his employer about this. The employer agreed to backpay him but said, “I can’t afford to keep you on at that rate” and terminated his employment.

35. That young people are being dismissed when they get to a certain age shows that youth wages are not being set proportionately to productivity. Older workers are not being kept on because their productivity relative to wage is lower than for younger workers. The increase in wage according to age is greater than the increase in productivity. This reveals that junior wages are flawed in their purported rationale of reflecting differences of productivity. Even if productivity were affected by age, assessing the degree of variability and fitting this into a sliding scale of wages is extremely difficult. Conversely, a ‘one-size-fits-all’ approach is unlikely to be appropriate given the diverse range of jobs covered by most awards. The structure of junior wages therefore lacks economic basis.

UN Sustainable Development Goals

36. In our submission, junior wages are incompatible with the UN SGD Target 4.4 – to substantially increase the number of youth and adults who have relevant skills, including technical and vocational skills, for employment, decent jobs and entrepreneurship.
37. We are concerned that a lack of co-ordination between the federal and state/territory systems spanning employment and education policies is undermining the government’s goal of building a better-skilled workforce and increasing labour mobility.
38. In our submission, the sanctioning of junior wages comes at a cost to both individuals and the broader community in that it thwarts the long-term educational potential of young people, limits skills development and economic participation, and risks compounding inter-generational disadvantage.
39. The Productivity Commission Report on Youth Incomes found that youth incomes declined over a decade from 2008, which has partly been attributed to decreased wages.⁵ The abolition of junior wages would assist in redressing this situation.

⁵ Productivity Commission 2020, *Why did young people’s incomes decline?*, Commission Research Paper, Canberra.

Evidence and economic analysis

40. We understand that businesses will oppose the elimination of junior wages on the basis that lower labour costs provide an incentive to bring young people into the workforce and to invest in their training.
41. There is however little to no empirical basis for an argument that without junior wages, young people would miss out on entering the workforce.
42. On the contrary, international comparisons indicate that young people and the broader community will stand to benefit from reforming junior wages.
43. New Zealand labour laws underwent significant reform in the early 2000s, including a fundamental redesign of the junior wages regime. Prior to the reform, junior wage rates were 60% of the adult minimum⁶ – a figure comparable to the current status quo in Australia across many industries and Modern Awards.
44. Amongst the earliest of these reforms was the lowering of the eligible age to receive the adult minimum wage, from 20 to 18 years old.⁷ In effect this reform recognised that 18 year olds are subject to similar financial pressures as 20 year olds, and that there is no well-founded reason that an 18 year old should be paid less than a 20 year old for work of equal value. In recognising that the financial pressures felt by 18 and 20 year olds were equal, the junior wage rates were reformed to reflect such pressures.
45. The New Zealand reforms also raised the youth minimum wage over two annual increases from 60 to 80% of the adult minimum, until the junior wages were abolished in their entirety in 2008.⁸
46. Following the 2008 abolition of junior wages, New Zealand labour laws now include a ‘Starting Out wage’, which applies a sub-minimum rate to the first six months of work for 16-17 year olds with a new employer, and for 18-19 year olds entering employment after six months of receiving a social security benefit.⁹
47. The rationale that underpins the Starting Out wage in New Zealand is clear: it recognises and reflects the increased output, productivity and efficiency of a young person who has received training during their employment of at least 6 months. It recognises that there is no well-founded reason that an 18-year-old who has completed two years of part-time work should receive less remuneration than a 19 year old with no work experience whatsoever.
48. Various studies have considered the consequences of these New Zealand labour policies. Such studies test the argument often mooted by businesses that there would be greater youth unemployment if junior wages were abolished, as employers would no longer have a financial incentive to choose to employ a young person over an older person.

⁶ Dylan Hyslop and Steven Stillman, ‘Youth Minimum Wage Reform and the Labour Market’ (Discussion Paper No 1091, The Institute for the Study of Labor, March 2004) 1.

⁷ Ibid, 3.

⁸ Ibid.

⁹ Dean Hyslop and David Mare, ‘Minimum Wages in New Zealand: policy and practice in the 21st century’ (Working Paper No 3/2021, Motu Economic & Public Policy Research, March 2021) 3.

49. In one such study, the research design compared the employment rates of 18-19 year olds and 16-17 year olds separately to 20-24 year olds. If the above argument propounded by business were true, the results would be expected to reflect greater employment loss for the 18-19 year olds and 16-17 year olds relative to the 20-24 year old group. However, the study ultimately found evidence of no immediate employment loss for 18-19 year olds or 16-17 year olds. They also found evidence that 16-17 year olds actually increased their hours worked by 10-20%.¹⁰
50. While the study does report evidence of negative effects on employment where there were relatively large increases in wages, the critical economic finding of this study is that elasticity of labour demand to wages is very small (-0.1 to -0.2).¹¹ This means that a 10% increase in wages would cause only a 1 to 2% decrease in employment, which has great implications for youth earnings. If the wage increases by 10% but employment only decreases by 1 to 2% then total earnings of young people will increase by about 8 to 9%.
51. Beyond New Zealand, several other countries have enacted similar policies with regard to junior wages, including Canada, Belgium, and South Korea. The common thread between these jurisdictions is the legislated recognition that 18 year olds face equivalent financial pressures, and produce equivalent quality of work, as their 20 year old co-workers.¹²
52. If the argument that abolishing junior wages leads to greater youth unemployment were true, it would be expected that the youth unemployment rate in the jurisdictions above would be higher than in Australia. However, cross-jurisdictional data displays that the youth unemployment rates in each of these jurisdictions are comparable to Australia.¹³ Indeed, data published by the International Labour Organisation (ILO) demonstrates that reducing or removing junior wages is unlikely to have a significant positive impact on youth unemployment.¹⁴
53. Although similar arguments against these reforms were advanced by the business sector in New Zealand, the youth unemployment rate has not been higher in New Zealand than in Australia to a statistically significant degree.¹⁵
54. In addition to demonstrating that adverse outcomes, such as greater youth unemployment, were avoided in the aftermath of the reforms, studies have also found that a host of positive employment outcomes were reached. These include earnings and total income for teenagers relative to young adults.¹⁶
55. A youth advocacy group based in New Zealand, Make It 16, has been campaigning for the lowering of the legal age to vote, from 18 to 16 years old. The impetus of Make It 16's campaign includes the rationale that young people should be entitled to vote on issues such as climate change, which will disproportionately affect them and their futures. The group also recognises that 16-year-olds

¹⁰ Above n 9, 14.

¹¹ Above n 6, 5.

¹² Kyle Taylor, 'The problem with junior pay rates, explained.', *The Mckell Institute* (Web Page, February 2020) <https://mckellinstitute.org.au/research/articles/the-problem-with-junior-pay-rates-explained>

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Above n 6, 2.

are able to work full-time, are no longer the recipients of sub-minimum wages, and are subjected to equivalent tax obligations as 18 year olds.

56. Following hearings across New Zealand's court system, in July 2022 the Supreme Court ultimately found that the existing voting age of 18 was discriminatory and breached the human rights of young people.¹⁷ New Zealand's Prime Minister, Jacinda Ardern, has since stated that the New Zealand government will draft legislation to change the voting age to 16.
57. The New Zealand decision has relevance to the question of junior wages in demonstrating that limitations on rights based solely on age alone have been recognised by higher courts as being arbitrary and discriminatory.

Projecting the benefits of removing junior wages

58. Junior workers represent 4% of Australia's employees. The abolition of junior wages would therefore equate to a 0.5% increase in the overall wage costs borne by employers.¹⁸
59. In the fast food and retail sectors, junior employees comprise 15% of the total workforce. In these sectors, removal of junior wages would represent an increase in labour costs of between 2-5%.¹⁹
60. However, an overall increase in young peoples' income would lead to greater participation and circulation in the economy, a projection that has been supported by the ILO.²⁰
61. Data released by the International Monetary Fund projects that the abolition of junior pay rates would have the effect of boosting the Australian economy by \$500-900 million, and generate upwards of 5,000 full-time equivalent jobs.²¹
62. Analysis by the ILO projects that increases in the sub-minimum wage would not have a statistically significant impact on youth employment. Although the ILO forecasts a small fall in employment of young people following the removal of junior wages, it is projected that the net benefit promised to young people by an increase in their wages greatly outweighs any negative impact.²²

Recommendation 2: That the *Fair Work Act* be reformed to ensure transparency in employment terms, improve compliance with federal workplace laws, and increase access to justice by empowering the Fair Work Commission to deal with underpayment and entitlement claims, and legislating for one-way costs orders in successful underpayment court claims.

Rates of non-compliance

63. In our experience, it is very common for young workers to be underpaid, either intentionally or unintentionally, by their employers. Young workers are often vulnerable to underpayment for a

¹⁷ *Make It 16 Incorporated v Attorney-General* [2022] NZSC 134.

¹⁸ Above n 12.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

variety of reasons, including lack of skills, awareness of their rights, incidence of casual employment, and lower rates of union membership.²³

64. Young workers are often unaware that they have been underpaid until they seek legal advice, often about other issues, as demonstrated in the following case study:

65. **Case study – Albert**

Albert contacted Youth Law Australia for advice about an unfair dismissal. While assisting Albert and seeing his payslips, it was discovered that Albert had been underpaid for several months of his employment.

66. However, even when young workers are aware of their rights, or these rights are brought to their attention, most young workers are wary of querying an underpayment during their employment out of fear of creating conflict or putting their job at risk. It is usually not until after the employment relationship has already broken down that a young person will consider raising the issue. The awkwardness of young people in broaching pay issues with their employer is seen in the case study below:

67. **Case study – Nadezda**

Nadezda worked at an Aged Care facility doing secretarial work. She loved her job. She contacted Youth Law Australia for advice about her employment contract. While speaking with Nadezda, it became apparent that she had been significantly underpaid, because of a misclassification of her employment under the Clerks (Private Sector) Award 2020 instead of under the Aged Care Award 2010. She was however reluctant to raise this with her employer as she did not want to create confrontation or jeopardise her working relationship.

Access to justice – systemic barriers

68. Young workers are often deterred from taking action to remedy their unpaid wages or entitlements because of the lack of accessible avenues to justice. A Senate Committee Report dated March 2022 found that current avenues – including the ‘small claims’ jurisdiction under the *Fair Work Act* - were ‘intimidating, inaccessible, costly, complex, inefficient and ineffective’ in relation to vulnerable workers.²⁴

69. It is our experience that a person who wishes to make a claim against their employer for underpayment of wages is reluctant to embark on a small claims process at court.

70. In many cases, a young person may only have worked for a short period of time before they leave an exploitative employment situation. In such cases, the amount of underpayment may only be a few hundred dollars. There may not be any payslips or time sheet records. The formality of the court system, and the responsibility placed on the employee to substantiate their claim, is a significant deterrent to a young person in this situation. The fact that many young people will walk away without pursuing a claim enables continuation of wage theft and other underpayments.

²³ Senate Economics References Committee, Parliament of Australia, *Systemic, sustained and shameful – unlawful underpayment of employee’s remuneration* (Report, March 2022) 32.

²⁴ Above n 23, 107.

71. **Case study – Chang**

Chang worked as a casual in the advertising industry. He did not have a contract of employment and he did not get any payslips. His employer deducted \$300 from his first pay as a “bond” against him resigning without notice. Chang knew that his employer could not lawfully do this. He felt he was being exploited, and so he resigned. His employer refused to pay him for his hours worked until Youth Law Australia became involved in the matter as Chang’s legal representative and wrote a letter of demand.

Role of the Fair Work Ombudsman

72. The intersection between the role of the Fair Work Ombudsman as the regulator for monitoring and compliance with the *Fair Work Act*, and the provisions of the *Fair Work Act* that make underpayment of wages a civil remedy provision create a system that is difficult to navigate. In practice, it means that a person who makes a complaint to the Fair Work Ombudsman about underpayment of their legal entitlements has no direct right to be paid their claim through that process.
73. While the Fair Work Ombudsman is sometimes able to facilitate agreement from an employer to pay an employee’s outstanding entitlements directly, this is not always possible. Whether the matter will be referred within the Fair Work Ombudsman for further investigation or compliance involves an exercise of discretion in consideration of that agency’s priorities and resource constraints.
74. In situations where the Fair Work Ombudsman has not been able to resolve an underpayment complaint, the only option left for an employee seeking to be paid their outstanding entitlements is to make a court claim pursuant to section 539 of the *Fair Work Act*.

Recommended reforms

75. In our submission, legislative and procedural reform is required to ensure that young workers are not presented with such difficulties when simply seeking to be paid correctly in accordance with the law. In our submission, the following reforms are recommended to prevent and deter non-compliance, and to improve access to justice for young vulnerable workers.

A) Amend the *Fair Work Act* to ensure transparency of employment terms

76. Improvements are needed for young workers to more easily access information about their workplace rights and entitlements, and to take action to realise their rights. In our view, although the Fair Work Information Statement (**FWIS**) and the Casual Information Statement provide a reasonable level of general level information about employment rights and entitlements, the *Fair Work Act* should be amended to replace the FWIS with the Statement of Terms and Working Conditions, proposed by Iain Campbell and Sara Charlesworth as outlined in their study on National Employment Standards.²⁵ This Statement of Terms and Working Conditions would contain information concerning the specific job to be performed by the employee, including job

²⁵ Iain Campbell and Sara Charlesworth, ‘The National Employment Standards: An Assessment’ (2020) 33 *Australian Journal of Labour Law* 36.

title and classification, wage rates and working-time conditions arising from the relevant award, as well as information about the National Employment Standards.

B) Improve public awareness and tools to calculate wage entitlements

77. We also recommend that the Federal Government fund development of measures to improve the public availability of data and information on industries, locations and businesses where there is a high risk of underpayment based on previous contraventions. Ideally this would be channeled through media frequently used by young people, such as websites and applications. It might also include the development of new data science tools to assist with calculation of wage entitlements, and access to advice about next steps in cases of underpayment. This should be in addition to services offered by the Fair Work Ombudsman, and could be made available through non-state/territory intermediaries such as community legal centres, unions and migrant worker centres.

C) Empower the Fair Work Commission to arbitrate claims for underpaid wages and entitlements

78. We endorse Recommendation 5 of the Senate Economic References Committee Report on Unlawful Underpayment of Wages (March 2022) to establish a small claims tribunal, ideally co-located with the Fair Work Commission, to create a simple, affordable, accessible and efficient process for employees to pursue wage theft, including Superannuation Guarantee non-compliance. In our experience, the Fair Work Commission's procedures and case management within the unfair dismissal and general protections jurisdictions establishes a highly efficient and easily accessible mechanism of dispute resolution that could be expanded to deal with underpayment claims.

D) Amend the *Fair Work Act* to allow for 'one-way' adverse costs orders in favour of successful claimants.

79. Access to justice for young workers under the current system would be greatly improved, particularly in relation to larger claims, if legislation were introduced to allow 'one-way' legal cost recovery for applicants in successful underpayment cases. Currently under the *Fair Work Act*, each party bears their own costs in legal proceedings.
80. By amending the *Fair Work Act* to allow for 'loser pays' costs orders, the cost of litigation would no longer be such a disincentive to underpaid workers. More significantly, it would make it more feasible for private law firms, unions, community legal centres and other intermediaries to bring legal proceedings on behalf of young workers.
81. We recommend that these costs orders be 'one-way' - only in favour of claimants - in order to ensure that such orders do not increase the risk for young workers in making claims, except in cases of vexatious litigation.

Recommendation 3: That legal protections for young people with disabilities be strengthened to lift workplace participation and reduce barriers to employment. In particular, that section 65 of the *Fair Work Act* be amended to link consistently with the existing requirements under the *Disability*

***Discrimination Act*²⁶ for employers to make reasonable adjustments to accommodate a person's disability, irrespective of their length of service or employment classification.**

Prevalence of mental/physical health conditions in young workers

82. In our experience, many young people who contact our service about a dismissal or other negative workplace experience disclose some level of mental or physical disability.
83. From 1 January 2021 to 28 November 2022, 58 people under the age of 25 who contacted YLA for an employment law problem disclosed a mental or physical health condition.

Dismissals

84. It is extremely common for young people contacting our service to have been dismissed from their employment within a short period of time. These people are not eligible to make an application for unfair dismissal due to not having worked for the minimum employment period set out in section 383 of the *Fair Work Act*. In our experience, employers regularly use this “free fire zone” in the *Fair Work Act* to dismiss workers with a mental or physical disability without providing any reasons at all, thus making recourse for such action almost impossible.

General protections

85. In our submission, the general protection provisions in the *Fair Work Act* do not offer sufficient practical application for people with a disability.
86. The limitation of the protection under section 351(2)(b) of the *Fair Work Act* for adverse action “taken because of the inherent requirements of the particular position concerned” means that this protection cannot be invoked where the disability impacts a person's performance or presentation at work.
87. The classification of the general protections provisions as civil remedy provisions, where a person affected must apply to a Court if the matter is not resolved by conciliation or agreed arbitration at the Fair Work Commission has a further deterrent effect on potential applicants, particularly with the risk of costs.

Secure Jobs Better Pay Bill amendments

88. Youth Law Australia welcomes the proposed inclusion of section 65A under the *Fair Work Legislation Amendment (Secure Jobs Better Pay) Bill 2022* enhancing the right for a person with a disability to request flexible working arrangements under section 65 by empowering the Fair Work Commission to deal with disputes, including by arbitration where there is no agreement.
89. However, to meaningfully accommodate people with a disability in employment and to ensure consistency with the obligations of an employer/prospective employer to make reasonable adjustments to accommodate a person's disability under the DDA it is submitted that the *Fair Work Act* requires further amendment to remove length of service requirements and exceptions for non-regular casual employees under section 65(2).

²⁶ 1992 (Cth) (DDA).

90. It is submitted that while the DDA enshrines the right for reasonable adjustments, it does not set out any clear request mechanism. Young people are often confused about how to exercise this right, particularly when their condition presents unpredictably at work and they lack confidence or experience in how to raise issues in the workplace. It is therefore appropriate for the *Fair Work Act* to be amended to ensure that young people with disabilities are empowered and supported to exercise their rights to reasonable adjustments under the DDA by requesting flexible work arrangements under the *Fair Work Act*.
91. The following case studies reflect the prevalence of mental and physical disabilities among young people contacting our service:
92. **Case study – Richard**
- Richard worked as a casual counter-hand at a fast-food outlet. He suffers from a chronic health condition that intermittently requires him to be admitted to the hospital emergency department. Richard was being paid \$10/hour as a “trial wage”. The Award rate was \$19.54/hour. When he queried the legality of his “trial wage” with his employer, he was told his attendance was unreliable and he was dismissed.*
93. **Case study – Giovanni**
- Giovanni has epilepsy which is well managed by his doctor. He disclosed his condition to his employer and had been working for nearly two years as an apprentice tradesperson. Without any medical evidence or risk assessments, Giovanni’s employer became concerned about the potential safety risks of Giovanni having a seizure at work and dismissed him without warning.*
94. **Case study – Evelyn**
- Evelyn works as a casual in a club/hotel. She suffers from endometriosis and many other health conditions that she has disclosed to her employer. Evelyn asked not to work certain shifts that aggravated her condition, but the employer pressured her to work more as they were short-staffed. There were many occasions where she had to leave early due to aggravation of her symptoms. Her employer dismissed her saying that her unreliability was not good for their business.*
95. **Case study – Trudy**
- Trudy recently started a job in administration as a full-time employee. She became pregnant and suffered severe morning sickness. She was not able to predict when she would be too unwell to do her job and was having to leave work early and come in late unpredictably because of her illness. Her employer told her that she could not just take days off here and there and directed her to take whole weeks off at a time so that they could find somebody else to cover for her. They wanted her to tell them with some level of certainty when she would be well enough to work without disruption. Under such pressure from her employer, Trudy resigned.*
96. It is submitted that legislative reform is needed for young people with disabilities to feel protected in disclosing their condition/s to their employer/prospective employer and empowering them to exercise their right to reasonable adjustments. It is submitted that providing a mechanism under the *Fair Work Act* to request flexible work arrangements will have positive impacts on young

people with a disability, as well as the broader community, thus assisting the government to achieve the following goals identified in the 2022 Job Summit Report:

- Stronger protections of workers against adverse action, discrimination, and harassment.
- Improvement in the apprenticeship support system and drive up completion.
- Re-invigorate foundation skills programs to support workers and vulnerable Australians to gain secure employment choices.
- Achieving full employment.

97. To ensure consistent availability and protection of anti-discrimination laws, it is submitted that workers with a disability should not be restricted or deterred from exercising their existing right under the DDA to reasonable adjustments, by effectively being made to serve a 12-month waiting period before seeking flexible working arrangements under the *Fair Work Act*. As discussed, this limitation has a particularly negative impact on young workers as new entrants to the workforce and creates a contradiction with existing rights and access to justice.

Recommendation 4 – That a national legal service or national network of legal services be funded specifically to outreach and access international students to provide migration, employment and general legal advice

98. Given that the outcomes of the 2022 Job Summit include addressing skills shortages and strengthening the migration system, it will be necessary to provide greater support for migrant workers and international students.

99. Young migrant workers are extremely vulnerable to exploitation, as evidenced in the Migrant Worker’s Taskforce Report of 2019.²⁷

100. In our experience, the primary issue of concern for migrant workers is their visa status.

101. Youth Law Australia welcomes the relaxation of the working hours restrictions on visa holders, but would like to see this extended indefinitely, beyond the currently proposed date of 30 June 2023.

102. It is well known that placing restrictions on the working hours of student and training visa holders places migrant workers at significant risk of exploitation. While the development of the Assurance Protocol between the Fair Work Ombudsman and the Department of Home Affairs has been a positive development, it is unlikely, in our experience, to provide sufficient reassurance for migrant workers to disclose workplace exploitation where this may have uncertain implications for future (as opposed to current) visa applications.

103. It is submitted that more education, information and support should be provided to prevent exploitation of young migrant workers. As information is most likely to be accessible by migrant workers at services offering migration law advice, there is a need for a greater network of community legal services providing comprehensive advice and support to this vulnerable cohort.

²⁷ Department of Employment and Workplace Relations (Cth), *Report of the Migrant Workers’ Taskforce* (2019).

If you would like to discuss this submission, please contact Anastasia Coroneo on (02) 9067 6510 or via Anastasia.coroneo@yla.org.au.

Yours faithfully,



Matthew Keeley
Director

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Endorsements

This submission has received the endorsement of the following organisations:

