

# Ignorance is NOT bliss

The barriers to employment outcomes for young people in Melbourne's West and how to overcome them



**WEstjustice**

Report of the Youth Employment Justice Project  
September 2021

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WEstjustice provides free legal help to people in the Western suburbs of Melbourne. We can help with a broad range of everyday problems. Please call (03) 9749 7720 to find out more about our services or to make an appointment.

# WEstjustice

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This version has been published to correct an error in the infographic on page 14.

WEstjustice acknowledges the ancestors, Elders and families of the Kulin nations, who are the traditional owners of Western Melbourne, the country we are located on. As we work to achieve a just and fair society we pay our respects to the deep knowledge embedded within the Aboriginal community and Aboriginal custodianship of Country. We acknowledge this land as a place of age-old ceremonies of celebration, initiation and renewal, and that the Kulin peoples' living culture has a fundamental role in the life of this region.

## MESSAGES FROM OUR CLIENTS



### Abdul\*

**Abdul, a young worker who had just completed his apprenticeship, got into an argument with his employer about the amount he should be getting paid. As a result, he lost his job (it was unclear whether Abdul was fired, or he resigned). Abdul had received warnings in the past for being late to work and didn't have the strongest claim for unfair dismissal. However, WEstjustice represented Abdul in negotiations with his employer, and helped Abdul and his employer to overcome their frustrations with one another and reach an agreement for Abdul to return to work. Recently, Abdul resigned from this job because he found a new job where he was happier.**

I dropped out of school in year 11. At the time I felt like I needed a quick source of income in order to help my family financially, who were struggling at the time. I was pretty much the main person in my family who was in a position to earn money. This included family in Africa who kept asking my Mum for money. I wanted to do work and education at the same time so I did a cert I and cert II and then started my apprenticeship when I was 19.

In the first year, I didn't have my head screwed on and didn't always come to work on time. I had pretty much no idea about my work rights. I read a couple of pamphlets about my apprenticeship, but none of that impacted me as much as receiving legal advice from WEstjustice.

When I finished my apprenticeship with my boss, I started to ask some questions at work about what I was eligible for because I felt that there was a bit of mistreatment going. I had a social worker who referred me to WEstjustice, and I got advice about my work rights which gave me the confidence to ask more questions about my hours and my pay. At the time I was stressed about money because my Mum needed eye surgery, and it felt like my boss wasn't recognising that I was mature age and the ripple effect of not being paid enough. But my boss took it the wrong way and thought I was being ungrateful. There was an argument that got a little bit out of control. I felt my boss was using this to target me for asking about my rights. I ended up losing my job as a result of the argument.

Having the legal advice from WEstjustice helped me assess my options and know where I stand. My lawyer saw holes in my boss' story that I didn't. I couldn't argue with him anyway; he would always say demeaning things. Issues at work tend to cloud your mind and judgement. Especially, going through the apprenticeship had me thinking 'I'm stuck to this'. Then when you feel stuck, things pile on top of it – it's kind of that mental health thing. But my lawyer told it to my boss straight and put him back on track. She helped us put it all aside and we sorted it out how it was supposed to get sorted out, and I was able to go back to work

Before talking to my social worker, I didn't know that I could get free legal help. I don't think I would have coped as good as I did having my lawyer to help. It would have been too much for me to handle, I would have hit the quit button a whole lot easier. But having that help gave me a huge confidence boost; just knowing that someone was on my side gave me more motivation to right my wrongs and to get back to work and continue providing for my family.

My lawyer opened my eyes to a lot of things, my decision making and my awareness. It taught me a lot of things for later on in life. It was something good that happened.

My message to other young workers is: seek advice, it's the best way to go. It will help with decision making and will help with your future potential.

\*Names have been changed to protect our clients' identities.

## MESSAGES FROM OUR CLIENTS



### Olga\*

Olga, a young international student living in Melbourne's West, was a casual employee and one of the only females at her workplace. Throughout her employment she was repeatedly subjected to sexual harassment by some of her male colleagues. She was bullied and called sexist slurs such as 'dumb c\*\*\*' and 'lazy c\*\*\*' by others. When she finally made a formal complaint about this behavior, she was provided with no further work. WEstjustice assisted Olga to make a discrimination and sexual harassment complaint. At mediation, Olga received an apology, and her employer agreed to pay her a significant amount of compensation and provide compulsory training to all employees in the workplace.

Throughout my stay in Australia, as a backpacker and student, working in different industries and jobs it never occurred to me that I would actually have any rights in the country that I could exercise.

The widespread and frequently heard phrases went along the lines of 'you are not from here, you don't have any rights', 'you are on a visa, you can't exercise any rights when being on a visa' or 'you are not a citizen, so why would the Australian government care about you or your rights?'. This led me and many other visa holders to believe that every employer can treat us in any way they wanted to, as we weren't able to speak up anyway, because who would've cared? Especially as an international student there is a lot of misunderstanding and lack of knowledge.

Unfortunately, throughout my whole work experience I was subjected to almost daily sexual harassment, which mainly contained of unwanted compliments and comments about my body and my looks, which made me extremely uncomfortable.

When first contacting WEstJustice and discussing my overall options of this case with them, I was very hesitant at first to file a sexual harassment claim against this company, because I was worried that it would be emotionally very overwhelming. The reason why I have changed my mind was the ability for me to make an overall change and exercise my rights in a legal way to make amends with the company

Thanks to WEstJustice, I had the opportunity to be represented by a lawyer free of charge, which made a big difference in my case. Without actually having the sufficient funds to engage a lawyer in my matter, I wouldn't have been able to make the claim in the first place.

It is important for young people to know that community legal centres are here to help and are able to provide you with adequate legal representation. They want to help you and they want to make a change!

I would like to encourage young people to stand up for their rights at work or seek help from a community legal centre. Although I was very anxious and distressed at the time, standing up for myself and trying to resolve the issue at work was a big step for me. When contacting WEstJustice about the matter, I was immediately taken seriously and able to determine what next steps I was able to take. The overall outcome of the legal proceedings is a way bigger and more positive reward than sweeping the issues under the rug and trying to forget about them, which might never take the feeling of guilt and resentment away.

\*Names have been changed to protect our clients' identities.

## A MESSAGE FROM THE PROGRAM MANAGER

In this report, you will read about the many reasons that young workers are vulnerable to exploitation and other poor outcomes in the workplace, but as this report should make clear, this is the result of systematic and circumstantial problems that have little to do with the capacity of young people to stand up for themselves.

The young people that we had the pleasure of engaging with through this project were not lacking in motivation, strength, or resourcefulness. What was apparent was that they had been failed by a system in which:

- formal education systems focus more on academia and theory than on life skills and providing meaningful transitions into work;
- the most disadvantaged job-seekers facing the greatest barriers to employment are often deprioritised or overlooked by employment services programs; and
- the emphasis by governments with respect to supporting COVID-19 economic recovery appears to be on supporting businesses and employers, rather than appreciating the importance of building the strength of the workforce.

The strength and resilience of the young people involved in this project, particularly their capacity to navigate multiple obstacles in their lives, was inspirational. These individuals often faced intersectional disadvantage and were battling a multitude of complex issues both in their employment and outside of it. Yet they spoke honestly and bravely about extremely difficult experiences and showed significant initiative in self-advocating once provided with the necessary knowledge and information to do so.

In this report, you will follow the stories of a number of our clients through the entirety of their employment journeys, and in doing so you will hopefully gain an understanding of the multidimensional issues they have faced in a system that is poorly equipped to adequately recognise and respond to their needs.

It is imperative that we recognise youth unemployment and underemployment as the structural and systemic problem that it truly is, and arm young people with adequate tools and knowledge to succeed in employment. They have demonstrated to us that they have all the necessary characteristics to thrive in the workplace, their careers and make valuable contributions to our society. They have taught us so much throughout this project, and I hope they will do the same for you through this report.

- Frankie

## NOTES ON THIS REPORT

All quotes in this report have been taken directly from surveys, written correspondence, interviews and focus groups. All names used in case studies have been altered to protect the identities of our clients.

All photos and graphics used in this report have been included for design purposes only and are not depictions of our actual clients or research participants.

**Disclaimer:** any legal information provided in this publication is provided as information only and is not provided as professional legal advice.

This publication can be found in electronic format on the WEstjustice website at <https://www.westjustice.org.au/publications>.

## ACKNOWLEDGEMENTS

WEstjustice acknowledges the ancestors, elders and families of the people of the Kulin nation, who are the traditional custodians of Melbourne's western suburbs, the country on which we are located. As we work to achieve a just and fair society, we pay our respects to the deep knowledge embedded within the Aboriginal and Torres Strait Islander communities and custodianship of Country. We acknowledge this land as a place of age-old ceremonies of celebration, initiation and renewal, and that the Kulin peoples' living culture has a fundamental role in the life of this region.

We would like to thank and acknowledge the assistance of the many individuals and organisations below who provided support throughout this project, as well as in our research and preparation of this report.

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**This project has been endorsed by:**



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**EXECUTIVE SUMMARY**



## 1 EXECUTIVE SUMMARY

Employment is one of the most important factors in ensuring the physical, mental, social and financial wellbeing of a young person. Sadly, young workers face multiple barriers to finding work. When they do find work, they also find themselves in a precarious labour market, where they are most likely to be subject to workplace exploitation and least likely to be in a position to complain about it. The COVID-19 pandemic has exacerbated these issues and concerns.

In the multicultural and high-growth western suburbs of Melbourne, which comprises the cities of Brimbank, Hobsons Bay, Maribyrnong, Melton and Wyndham (collectively, **Melbourne's West**), young job-seekers and workers are particularly vulnerable to poor employment outcomes. For young people in these areas who have a disability or come from a culturally and linguistically diverse (**CALD**) background, the barriers to positive employment experiences and outcomes are even more significant.

The Youth Employment Justice Project (**YEP**) was developed by WEstjustice to address unmet work-related legal need and overcome key employment barriers faced by young people in Melbourne's West. The core components of this project are:

1. targeted legal services embedded in locations where young people go to learn, study and access youth and wellbeing services;
2. targeted community legal education (**CLE**) regarding work rights and responsibilities for young people, as well as the staff and teachers who work with them; and
3. strategic advocacy and reform for the improvement of employment laws and processes to overcome common issues facing young workers.

This report provides an insight into the working experiences of young people who live, work and study in Melbourne's West, along with young international students. It draws on surveys and consultation with young people, as well as data, trends and stories identified through our YEP legal service and education activities.

Our findings, key outcomes and evidenced-based recommendations are presented in relation to three different stages in the lifecycle of employment. These stages are:

1. looking for work;
2. at work; and
3. losing work.

Pervasive issues and themes, which cut across the entire employment journey, are also highlighted separately.

Through this research we were privileged to hear the voices of young people in Melbourne's West and better understand their experiences. In this report, you can follow the stories of YEP clients Olga, Harry, Priya, Tandin, Medhat, Mahalia, Shukri, Abdul and Jose\* through their employment journeys.

\*Names have been changed to protect our clients' identities.



## KEY OUTCOMES: WHAT WE DID THROUGH THE YEP

### Client Profile



### Client Problem Type



### Key Outcomes: Improving Understanding of Workplace Laws

Delivered 37 instances of CLE to approximately 1800 young people



### Key Outcomes: Improving Access to Legal Services

#### Through CLE



#### Through Embedded Legal Services



### Key Outcomes: Improving Access to Legal Entitlements



### Key Outcomes: Improving Longer-Term Employment Outcomes



## SUMMARY OF RECOMMENDATIONS

### Across the lifecycle of employment

#### Overarching recommendations to improve the employment journey for young people

##### Recommendation 1: Make work rights and responsibilities training available to young people at the earliest stage possible

Young people must be given every opportunity to learn about their work rights and responsibilities prior to entering the job market, including through the school education system and other training programs.

##### Recommendation 2: Government must enhance access to meaningful and secure work for young people

The federal and Victorian governments should create a Youth Employment Strategy with a specific focus on enhancing access to meaningful and secure work for young people. This should be informed by a cost-benefit analysis of ensuring that young people have access to secure work. Measures could include:

1. the appointment of a Victorian Employment Commissioner;
2. a youth jobs guarantee to ensure young people have access to meaningful and secure work; and
3. development and expansion of government-supported graduate programs.

#### Addressing precarious work

##### Recommendation 3: Conduct a review of the new casual provisions

The federal government should conduct a 12-month review of the new casual provisions in the Fair Work Act 2009 (Cth) (**FW Act**) – which includes further consultation with the CLC sector and employees – with a view to amending these provisions to ensure they do not entrench insecure work.

##### Recommendation 4: Improve laws to stop sham contracting and provide greater protections for dependent contractors

A statutory definition of 'employee' must be introduced into the FW Act. This definition must presume all workers are employees for the purposes of the FW Act unless they are genuinely running their own businesses or on vocational placements.

The FW Act should also be amended to limit the defence to sham contracting and ensure that employers are liable when they fail to take reasonable steps to determine the correct classification of workers.

#### Improving knowledge of work rights and responsibilities

##### Recommendation 5: Increase funding for CLCs to deliver targeted employment-related CLE

Funding for CLCs should be increased to enable continued delivery of targeted work rights and responsibilities education to young people, including:

1. education programs for young people;
2. education programs for youth workers; and
3. the rollout of other educational materials such as self-help factsheets and social media information campaigns.

##### Recommendation 6: Embed work rights and responsibilities training into educational institutions

The Victorian Government should embed work rights and responsibilities education into the secondary school curriculum to ensure that young people are ready for work.

The Victorian Government should introduce a mandatory work rights education module into orientation programs (at a minimum) for TAFE, university and other private tertiary education programs to ensure that all young people can understand and take action on the basis of their workplace rights and responsibilities including to secure their legal entitlements and stay in work.

### Looking for work

#### Improving employment services

##### Recommendation 7: Improve Fair Work Ombudsman support for employment services providers

The Fair Work Ombudsman (**FWO**) should establish a discrete portal for employment services providers to assist in the review of employer information. This portal should include direct phone and online access and guarantee minimum response times of no greater than one business day to ensure that job-seekers do not miss out on employment opportunities.

##### Recommendation 8: Fund strategic partnerships between CLCs and employment service providers to provide work rights training and post-placement support

Federal and Victorian governments should fund strategic partnerships between CLCs and employment services providers comprising:

1. targeted work rights training for job-seekers delivered by CLC lawyers as a key component of job-readiness;
2. professional development training regarding work rights and responsibilities for employment services staff delivered by CLC lawyers; and
3. direct referral pathways to CLCs for vulnerable young job-seekers for post-employment support, advice and/or ongoing assistance in relation to workplace disputes.

##### Recommendation 9: Improve Commonwealth employment services programs

The federal government should review and improve its Commonwealth employment services programs, with a greater focus on meaningful and secure employment.

Suggested improvements include:

1. establishing funding structures that promote client-centred, collaborative and non-competitive practices and don't result in perverse outcomes that benefit employment services providers over job-seekers;
2. directing additional funding towards holistic services to disadvantaged job-seekers to ensure sustainable employment outcomes;

3. ensuring work rights and responsibilities training is embedded into all Commonwealth employment services programs;
4. establishing wage subsidy agreements, which require employers to demonstrate proactive compliance with relevant employment laws;
5. establishing a licensing scheme for employment services providers (similar to the licensing scheme utilised by NDIS providers) to ensure quality assurance of employment services;
6. directing additional funding towards measures that ensure all employment service providers can provide: intensive and longer-term post-placement support (including accredited training and mentoring support); facilitated assistance to resolve workplace disputes; and dedicated resources for vulnerable young job-seekers at risk of disengagement; and
7. in the tender process, prioritising employment service providers that are embedded in and connected to the local community.

##### Recommendation 10: Improve Victorian employment services programs

The Victorian government should prioritise secure and meaningful employment for disadvantaged young job-seekers through the new Jobs Victoria Employment Services scheme. Suggestions include:

1. setting out a requirement in the new 'charter of service' for employment services providers to:
  - embed work-rights and responsibilities training and education as a key component of job-readiness;
  - provide ongoing post-placement support to young job-seekers (including accredited training and mentoring support); and
  - provide facilitated assistance to resolve workplace disputes.
2. designating young job-seekers from a CALD background and/or with disabilities in the Western metro region as priority groups for specialist services.

## At Work

### Legislative amendments to prevent exploitation and reduce disadvantage

#### Recommendation 11: Promote compliance with the FW Act by requiring employers to take positive steps to prevent exploitation

Federal government should amend section 550 of the FW Act to:

1. remove the requirement for actual knowledge and require directors and other accessories to take positive steps to ensure compliance within their business or undertaking; and
2. ensure that a failure to rectify a breach will also constitute involvement in a contravention.

#### Recommendation 12: Increase accountability in franchises to reduce exploitation and promote compliance with the FW Act

To promote compliance with the FW Act and ensure that franchisors cannot benefit from workplace exploitation, the FW Act should be amended to:

1. widen the definition of 'responsible franchisor entity' in s 558B of the FW Act by removing the requirement for having a significant degree of influence or control;
2. clarify the liability of franchisors and relevant third parties in s 558B of the FW Act, by providing that a responsible franchisor entity, holding company or other third party is taken to have contravened a provision of the FW Act in circumstances where their franchisee entity/subsidiary/indirectly controlled entity contravenes that provision of the FW Act, unless they can show reasonable steps have been taken to prevent that contravention (or a similar contravention) of the FW Act; and
3. clarify the 'reasonable steps' defence in s 558B of the FW Act to require franchisors to take proactive measures to monitor compliance, including by requiring independent monitoring of franchisees and financially viable contracts.

#### Recommendation 13: Guarantee minimum Award rates for workers covered by nominally expired enterprise agreement

The federal government must protect workers against legalised wage theft by amending the FW Act to include a provision to the effect that, upon the nominal expiry of an enterprise agreement, the wages payable to the employee under the agreement must not be less than the wages payable under the relevant modern award, which would otherwise apply. This provision could also provide an exemption for employers who have issued a notice of intention to negotiate a replacement enterprise agreement.

#### Recommendation 14: Provide an easier mechanism to terminate expired enterprise agreements

The federal government should amend the FW Act to provide an easier mechanism for terminating expired enterprise agreements in unorganised workplaces. This could include:

1. introducing a presumption of termination where the enterprise agreement fails to pass the 'BOOT test' at the time of the application for termination;
2. providing standing to Unions to make an application to terminate an enterprise agreement in circumstances where members of the workplace are eligible to be members, notwithstanding that there are no present members in the workplace;
3. introducing provisions to strengthen the good faith bargaining process and ensure that employees are not disadvantaged by an imbalance in bargaining power. This could include:
  - a requirement that the employer demonstrates that it has taken reasonable steps to ensure employees have genuinely understood the meaning and effect of the terms of the proposed agreement;
  - a requirement for employers to provide information to employees, which notifies them of their right to attend a free conciliation hosted by the Fair Work Commission (FWC); and/or
  - a requirement that a FWC conciliator facilitate negotiations where employees are unrepresented by qualified advocates such as unions.

#### Recommendation 15: Abolish junior pay rates

The FWC should abolish junior pay rates in minimum wage orders for workers above the age of 18. For workers under the age of 18, the junior wage rate should be amended to a flat rate of 80% of the adult minimum wage rate.

The FWC should abolish junior pay rates in all relevant modern awards beyond the introductory classification levels.

#### Recommendation 16: Ensure employer identities are kept transparent

To ensure that employees can continue to identify their employers irrespective of whether they receive lawful payslips the Australian Business Register should:

1. continue to publish historic trading names on the register, searchable via ABN lookup, to give certainty to employees about the identity of their employer; and
2. require all businesses conducted through unincorporated entities to publish an address for their principal place of business and registered office which is publicly searchable.

### Strengthening the role of the FWO

#### Recommendation 17: Improve the data collection policies of the FWO

The FWO should collect demographic data regarding key vulnerability criteria from all its customers, wherever possible, to ensure that its strategic priorities are well-informed and provide a better understanding of the employment-related legal issues of workers in Australia. To avoid customers feeling targeted by requests, this data could be collected with a question such as:

*'Please let us know if any of these apply to you (select all that apply):*

- *I am under the age of 25*
- *I am from a culturally or linguistically diverse background*
- *I am on a temporary visa*
- *I have a disability*
- *I identify as Aboriginal and/or Torres Strait Islander*
- *Etc.'*

#### Recommendation 18: The FWO should assist young workers to articulate requests for assistance

The FWO should ensure that workers, particularly young workers, are specifically asked whether they would like to make a request for assistance (either over the phone by CSOs or using a tick-box on the enquiry form) to ensure that workers are provided with the appropriate assistance when they are unable to properly articulate their requests or concerns.

#### Recommendation 19: Increase funding to and through the FWO to support vulnerable workers

The federal government should provide greater funding to the FWO to assist the most vulnerable workers to progress their claims to completion.

The FWO should also provide greater funding to CLCs through its community engagement grants program to ensure that vulnerable workers are able to progress their claims to completion.

### Better resourcing for free employment-related legal services

#### Recommendation 20: Increase funding for embedded and integrated employment law services for young people

The federal and Victorian governments should provide expanded and long-term funding for integrated and embedded employment law services for young people, comprising:

1. an holistic approach to legal services, which includes the capacity for multidisciplinary assistance where necessary;
2. targeted CLE for young people and their intermediaries to assist young people to identify and exercise their legal rights; and
3. advocacy and systemic impact, which draws on data collected through casework and education.

## Losing Work

### Improve access to FWC claims for unfair/unlawful dismissal

#### Recommendation 21: Extend the time limit for filing unfair and unlawful dismissal claims with the FWC

Amend the FW Act to extend the time for filing claims for unfair dismissal and unlawful dismissal (including general protections claims involving dismissal) to 12 months (which should be a discretionary limit similar to anti-discrimination legislation) **except** in cases where the applicant is seeking reinstatement. This is to ensure that dismissed employees have adequate time to seek appropriate legal advice, consider the most appropriate application and protect their legal interests.

## GLOSSARY

### Terms used in this report:

<b>AHRC</b>	Australian Human Rights Commission	<b>GFC</b>	Global Financial Crisis
<b>BSL</b>	Brotherhood of St Laurence	<b>ILO</b>	International Labour Organisation
<b>CALD</b>	Culturally and linguistically diverse	<b>ISEALS</b>	International Student Employment and Accommodation Legal Service – an initiative of the Study Melbourne Student Centre
<b>CLC</b>	Community Legal Centre	<b>JVES</b>	Jobs Victoria Employment Services
<b>CLE</b>	Community Legal Education	<b>LGA</b>	Local government authority
<b>CMY</b>	Centre for Multicultural Youth	<b>TtW</b>	Transition to Work
<b>CSO</b>	Customer Services Officer (engaged by the Fair Work Ombudsman)	<b>VCAT</b>	Victorian Civil and Administrative Tribunal
<b>EELP</b>	Employment and Equality Law Program	<b>VLA</b>	Victoria Legal Aid
<b>FW Act</b>	<i>Fair Work Act 2009</i> (Cth)	<b>WCEC</b>	Wyndham Community and Education Centre
<b>FWC</b>	Fair Work Commission	<b>YEP</b>	Youth Employment Project
<b>FWO</b>	Fair Work Ombudsman	<b>YRC</b>	Youth Resource Centre
		<b>YWC</b>	Young Workers Centre

### Key concepts used in this report:

#### Precarious work

Work characterised by lack of protective regulation, short or uncertain duration, lack of 'standard' employment benefits and ambiguous or unprotected legal status. Including casual work, contracting arrangements, fixed-term employment and labour hire arrangements

#### Wage theft

The underpayment, non-payment or withholding of wages and entitlements



## 2 BACKGROUND

### 2.1 About WEstjustice

WEstjustice understands the value and need for place-based approaches to service provision. We are a CLC providing free legal assistance, financial counselling and associated activities to people who live, work or study in Melbourne's West – specifically in the Cities of Maribyrnong, Wyndham, Hobsons Bay and Brimbank. We also provide assistance to individuals in the surrounding suburbs.

WEstjustice has extensive experience working with people from newly arrived communities, young people, people who have experienced gender-based violence and people who are experiencing economic vulnerability. We work in a range of practice areas including employment and equality law, fines, debts, infringements, consumer law, tenancy, family violence, family law, criminal law and youth law, as well as others.

WEstjustice's Employment and Equality Law Program (EELP) has a vision of better employment outcomes, improved community participation and reduced disadvantage for vulnerable workers. The EELP works towards this goal by providing high quality legal education, advice, casework and advocacy on employment law issues for vulnerable workers in Melbourne's West. We draw upon the evidence from this work to effect systemic policy and legislative change aimed at improving the lives of all workers.

### 2.2 History and context of the Youth Employment Justice Project

Over the past 7 years, WEstjustice has built a strong reputation as a leader in innovative youth legal services and effective integrated place-based multidisciplinary partnerships.

Through a generous grant from the Helen McPherson Smith Trust we developed the YEP in mid-2019 in response to unmet employment legal needs identified through the EELP and our Youth Law Programs, namely **increased**:

1. demand for employment law assistance by young workers;
2. requests for CLE regarding employment rights and responsibilities; and
3. awareness of particularly vulnerable cohorts who were largely unable or unaware of how to seek our assistance.

We identified that:

1. young people generally have a limited understanding of their work rights and responsibilities; and
2. our young clients were much more likely to be referred to the EELP through other service providers than to self-refer.

The YEP aims to improve employment outcomes for young people in Melbourne's West and young international students through:

1. targeted CLE for young people and the staff who work with them;
2. targeted legal services embedded in places where young people learn, work and/or access non-legal services; and
3. advocacy and systemic impact.

'Improved employment outcomes' in the context of this report refers to young people's increased satisfaction with their:

1. knowledge and understanding of their workplace rights and responsibilities;
2. ability to exercise their legal rights and entitlements in the workplace; and/or
3. ability to access equal opportunities and fair and safe treatment in the workplace.

The YEP was led in partnership with the following organisations and representatives from, which formed the YEP Steering Committee:

1. Victorian Equal Opportunity and Human Rights Commission;
2. Youth Affairs Council of Victoria;
3. WorkSafe;
4. YWC;
5. Victorian Council of Social Service;
6. Youth Now;
7. YLab; and
8. Westgate Community Initiatives Group.

### 2.3 Methods

Through our **action research** we conducted an:

1. **environmental scan** to understand the key barriers/enablers to achieving improved employment outcomes for young people in Melbourne's West and young international students ; and
2. **impact evaluation** of the YEP service delivery model to investigate the extent to which improved employment outcomes were achieved through targeted integrated legal services and/or tailored CLE for young people in Melbourne's West and young international students.

Our **findings** have been derived from:

1. a literature review of relevant materials;
2. surveys and focus groups with young people as well as community organisations, community workers, teachers, employment services providers and other staff that support young people (**intermediaries**); and
3. trends identified from our clients' stories and experiences.

The table below sets out each survey instrument used in this research, and an explanation of its intended purpose. Detailed results of each survey can be found in the relevant Appendix indicated, as in the table below.

The sample sizes for data collected through this research varied depending on the source of the data and the instruments used in its collection. For results that pertain to YEP legal services, the client database comprised **106** individuals.

APPENDIX	NAME	SURVEY DESCRIPTION	PURPOSE	PARTICIPANTS
2A	<b>General Youth Survey</b>	Online survey made available to young people who live, work or study in Melbourne's West.	To understand the extent of young people's knowledge and understanding of their workplace rights.  To identify the common experience of young people regarding their ability to:  1. access equal opportunities and fair and safe treatment in the workplace; and  2. exercise their legal rights and entitlements in the workplace.	52
2B	<b>General Intermediary Survey</b>	Online survey made available to intermediaries working with young people who live, work or study in Melbourne's West.	To understand the extent of young people's knowledge and understanding of their workplace rights.  To identify the common experience of young people regarding their ability to:  1. access equal opportunities and fair and safe treatment in the workplace; and  2. exercise their legal rights and entitlements in the workplace.	12

APPENDIX	NAME	SURVEY DESCRIPTION	PURPOSE	PARTICIPANTS
2C	<b>Post-advice Survey</b>	Phone survey provided to clients of the YEP legal service after attending an advice-only appointment.	To understand whether the YEP's targeted legal service: <ul style="list-style-type: none"> <li>1. improved young people's satisfaction with their knowledge and understanding of their workplace rights;</li> <li>2. assisted young people to feel confident in exercising their rights; and</li> <li>3. assisted young people to secure their legal rights and access legal opportunities in the workplace.</li> </ul>	14
2D	<b>Post-advice Survey</b>	Phone survey provided to clients of the YEP legal service who received ongoing legal assistance, after completion of their legal matter.	To understand whether the YEP's targeted legal service: <ul style="list-style-type: none"> <li>1. improved young people's satisfaction with their knowledge and understanding of their workplace rights;</li> <li>2. assisted young people to feel confident in exercising their rights; and</li> <li>3. assisted young people to secure their legal rights and access legal opportunities in the workplace.</li> </ul>	12
2E	<b>6-month Follow-up Survey</b>	Phone survey provided to clients of the YEP legal service, 6 months after attending an advice appointment or the completion of their legal matter.	To measure the longer-term impacts of the YEP's targeted legal service, and the extent to which it: <ul style="list-style-type: none"> <li>1. improved young people's satisfaction with their knowledge and understanding of their workplace rights;</li> <li>2. assisted young people to feel confident in exercising their rights; and</li> <li>3. assisted young people to secure their legal rights and access legal opportunities in the workplace.</li> </ul>	13

APPENDIX	NAME	SURVEY DESCRIPTION	PURPOSE	PARTICIPANTS
2F	<b>12-month Follow-up Survey</b>	Phone survey provided to clients of the YEP legal service, 12 months after attending an advice appointment or the completion of their legal matter.	To measure the longer-term impacts of the YEP's targeted legal service, and the extent to which it: <ul style="list-style-type: none"> <li>1. improved young people's satisfaction with their knowledge and understanding of their workplace rights;</li> <li>2. assisted young people to feel confident in exercising their rights; and</li> <li>3. assisted young people to secure their legal rights and access legal opportunities in the workplace.</li> </ul>	3
2G	<b>CLE Pre-poll</b>	Online/hard copy survey provided to young CLE participants after attending a CLE session.	To establish a baseline understanding of young people's understanding of their workplace rights prior to attending a CLE session.	233
2H	<b>CLE Feedback Survey</b>	Online/hard copy survey provided to young CLE participants after attending a CLE session.	To understand whether the YEP's targeted legal education programs directed at young people: <ul style="list-style-type: none"> <li>1. improved young people's satisfaction with their knowledge and understanding of their workplace rights;</li> <li>2. assisted young people to feel confident in exercising their rights; and</li> <li>3. assisted young people to secure their legal rights and access equal opportunities in the workplace.</li> </ul> <p>To understand barriers to young people accessing the YEP legal service.</p>	190
2I	<b>Intermediary CLE Survey</b>	Online/hard copy survey provided to intermediaries who attended a CLE for young people.	To understand whether the YEP's targeted CLE for young people could assist intermediaries to: <ul style="list-style-type: none"> <li>1. identify when young people have a work rights issue; and</li> <li>2. refer them for appropriate support.</li> </ul>	10

APPENDIX	NAME	SURVEY DESCRIPTION	PURPOSE	PARTICIPANTS
2J	<b>Intermediary PD Survey</b>	Online survey provided to intermediaries who attended a professional development session about supporting young people to understand and exercise their work rights	To understand whether the YEP's targeted professional development sessions could assist intermediaries to: <ol style="list-style-type: none"> <li>1. identify when young people have a work rights issue; and</li> <li>2. refer them for appropriate support.</li> </ol>	21

WEstjustice also conducted two focus groups with young people and two focus groups with intermediaries who work closely with young people. Details of these focus groups are outlined in the table below:

NAME	DELIVERY	PARTICIPANTS
School-aged focus group	Online	Three young men, two young women aged between 14 and 15, still in high school
Post-secondary focus group	Face to face	Two young men, two young women, aged between 19 and 23.
Intermediary focus group 1	Online	Six intermediaries, from various government and non-government organisations dedicated to assisting young people and one academic.
Intermediary focus group 2	Face to face	Four intermediaries from grassroots and community organisations.

In addition, where the experiences of our YEP legal service clients were particularly pertinent or reflective of systemic issues, we sought consent to share their deidentified stories. These case studies highlight common or significant issues.

For further details of our methodology, see Appendix 1.

## 2.4 Limitations

### Program limitations

The COVID-19 pandemic had a major impact on our ability to deliver legal and education services to young people. As a result of the transition to online service delivery, we encountered a low appetite for online CLE and reduced client appointments. In response, we explored a variety of alternatives and will build this learning into future programs. See page 54 for more details.

### Data limitations

YEP legal service data was captured by a number of different staff, interns and volunteers. This led to some variations in data recording. However, the research team have reviewed the data and sought to achieve uniformity in reporting wherever possible.

The cessation of face-to-face client appointments in March 2020, due to the pandemic, limited in our capacity to collect client surveys. The use of virtual appointments impacted the number of clients who participated in client surveys.

While the sample sizes for some of our surveys were smaller than originally anticipated, the data we have collected has enabled us to make key findings. Data from the surveys has also provided important insights into the working experiences of a vulnerable cohort in Melbourne's West and supports evidence-based recommendations on how to overcome key issues





**INTRODUCTION: WHY THIS PROJECT?**

### 3 INTRODUCTION: WHY THIS PROJECT?

#### 3.1 Youth employment is a global issue

Youth employment and equality have been important topics on the global agenda for more than two decades. In 2005, the ILO recognised the challenges facing young workers and the need to promote pathways to decent work for young people. In addition, due to the impact of the GFC and the large-scale unemployment that followed, the ILO highlighted the long-term 'scarring effect' on young people and adopted a resolution for targeted action to be taken to combat the 'youth employment crisis'.<sup>10</sup>

#### 3.2 The impact of COVID-19

The COVID-19 pandemic had a particularly devastating impact on young people, noting that young people were overrepresented in the hospitality, retail, tourism and arts industries, which were all particularly hard hit by the pandemic.<sup>11</sup> Studies showed that young people were not only twice as likely to lose work, but due to engagement in casual work, were also more likely to be ineligible for JobKeeper support.<sup>12</sup>

As demonstrated later in this report, this was certainly the case for clients of the YEP: **27%** of our clients lost their jobs; were stood down, or experienced a significant reduction in shifts due to COVID-19.

In fact, the impact of COVID-19 on young people in the workforce appears to have been much worse than the GFC.<sup>13</sup> With the added increase of underemployment (which was 17.9% for young people in December 2020) one in three young people in the labour force have been unable to find sufficient work to support themselves.<sup>14</sup>

#### 3.3 Youth employment is important

The importance of employment for young people is most easily understood by examining the detrimental impacts of unemployment on young people, as shown on the previous page.

##### 3.3.1 Not just any work will do, fair and decent work is key

It is not just the fact of being employed, but the quality of and satisfaction with employment, which is key to the mental wellbeing of young people.<sup>22</sup> Research suggests that young people may experience a decline in life satisfaction and wellbeing if they do not obtain jobs with high psychosocial qualities (the characteristic measures of which are job control, job demands and complexities, job security and fair pay).<sup>23</sup> In fact, the negative mental health outcomes for workers in jobs with low psychosocial qualities may be worse than for those who are not employed.<sup>24</sup>

It is therefore also suggested that promoting decent work for young workers also promotes wellbeing and protects against later mental health problems.<sup>25</sup>

This was reinforced through the YEP. As one young person in school told us:

 **'My friends who currently have a job hate it because they're labelled as casual workers so could get a call at any time and they have to go into work in because otherwise they could lose their job, and it takes a toll on their mental health.'**<sup>26</sup>

#### Detrimental impacts of youth unemployment

Impact on health and wellbeing	Interaction with the criminal justice system	Impact on prospects of future work
Numerous studies have shown that unemployment can have a significantly negative impact on the mental health and overall psychological wellbeing of young people. <sup>15</sup> This is particularly true for young people who were satisfied with their work prior to becoming unemployed. <sup>16</sup>	There is a cyclical relationship between youth unemployment and exposure to the criminal justice system. <sup>17</sup> Parliamentary research found that unemployment rates may be a factor accounting for the significant overrepresentation of young Indigenous people in the Victorian youth justice system. <sup>18</sup>	Youth unemployment has been linked to adverse economic and social outcomes later in life. <sup>19</sup> For example, many young people who experience unemployment, will experience unemployment again later in their lives. <sup>20</sup> The converse is true; experiences of employment during youth has been shown to have a discernible effect on the probability of finding employment later in life. <sup>21</sup>

<sup>9</sup> Resolutions adopted by the International Labour Conference at its 93rd Session, (15 June 2005) <<https://www.ilo.org/public/english/standards/reim/ilc93/pdf/resolutions.pdf>>. See also International Labour Conference (ed), *Report VI, Youth: Pathways to Decent Work: Promoting youth employment – tackling the challenge*, International Labour Conference, 93rd Session, 2005 <[https://www.ilo.org/employment/Whatwedo/Publications/WCMS\\_104147/lang-en/index.htm](https://www.ilo.org/employment/Whatwedo/Publications/WCMS_104147/lang-en/index.htm)>.

<sup>10</sup> International Labour Conference (ed), *The Youth Employment Crisis: Time for Action*; International Labour Conference, 101st Session, 2012; *Fifth Item on the Agenda* (International Labour Office, 1. ed, 2012) ('The Youth Employment Crisis').

<sup>11</sup> Youth Affairs Council Victoria, *A COVID-19 Recovery Plan for Young People* (23 October 2020) 4 <<https://www.yacvic.org.au/assets/Documents/COVID-19-Recovery-Plan-For-Young-People-Youth-Affairs-Council-Victoria-FINAL.pdf>>.

<sup>12</sup> Ibid.

<sup>13</sup> Brendan Churchill, 'COVID-19 and the Immediate Impact on Young People and Employment in Australia: A Gendered Analysis' (2021) 28(2) *Gender, Work & Organization* 783, 791.

<sup>14</sup> BSL, *Youth Unemployment Monitor December 2020* (December 2020) 1 <[http://library.bsl.org.au/jspui/bitstream/1/12338/1/BSL\\_COVID\\_the\\_great\\_disruptor\\_youth\\_unemployment\\_Dec2020.pdf](http://library.bsl.org.au/jspui/bitstream/1/12338/1/BSL_COVID_the_great_disruptor_youth_unemployment_Dec2020.pdf)>.

<sup>15</sup> BSL, *On the Treadmill: Young and Long-Term Unemployed in Australia* (Report, March 2014) 2 <<http://library.bsl.org.au/showitem.php?handle=1/6974>>; Humaira Maheen and Alison Milner, *Transition into Employment for Young People: A Qualitative Study* (Report, October 2019) 17 <[https://www.vichealth.vic.gov.au/-/media/ResourceCentre/PublicationsandResources/Mental-health/YPTtransition2employment\\_qualitative-study.pdf?la=en&hash=9826963C47D767399F5C24D0977A675208B8CF4C](https://www.vichealth.vic.gov.au/-/media/ResourceCentre/PublicationsandResources/Mental-health/YPTtransition2employment_qualitative-study.pdf?la=en&hash=9826963C47D767399F5C24D0977A675208B8CF4C)>.

<sup>16</sup> Nhi Nguyen and National Centre for Vocational Education Research (Australia), *Trends in Young People's Wellbeing and the Effects of the School-to-Work Transition* (Briefing Paper, National Centre for Vocational Education Research, 2011) 9 <<http://www.lsay.edu.au/publications/2435.html>>.

<sup>17</sup> Social Ventures Australia, *Fundamental Principles for Youth Employment* (Report, February 2016) 11.

<sup>18</sup> Caitlin Grover, *Youth Justice in Victoria* (No Research Paper No2/2017, Parliamentary Library & Information Service, Parliament of Victoria, April 2017) 29 <<https://apo.org.au/sites/default/files/resource-files/2017-04/apo-nid76417.pdf>>.

<sup>19</sup> BSL (n 15) 3.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid 2; Denise Doiron and Tue Gørgens, 'State Dependence in Youth Labor Market Experiences, and the Evaluation of Policy Interventions' (2008) 145(1-2) *Journal of Econometrics* 81, 81-82.

<sup>22</sup> AH Winefeld, M Tiggeman and RD Goldney, 'Psychological Concomitants of Satisfactory Employment and Unemployment in Young People' (1988) 23(3) *Social Psychiatry and Psychiatric Epidemiology* 149, 154.

<sup>23</sup> Allison Milner et al, *Entry into Work and Changes in Life Satisfaction among Young Workers: A VicHealth Scoping Study* (Report, VicHealth, 2019) 7, 18 <[https://www.vichealth.vic.gov.au/-/media/ResourceCentre/PublicationsandResources/Mental-health/Work\\_Life-Satisfaction\\_Scoping-Study](https://www.vichealth.vic.gov.au/-/media/ResourceCentre/PublicationsandResources/Mental-health/Work_Life-Satisfaction_Scoping-Study)>.

<sup>24</sup> Allison Milner, Lauren Krnjack and Anthony D LaMontagne, 'Psychosocial Job Quality and Mental Health among Young Workers: A Fixed-Effects Regression Analysis Using 13 Waves of Annual Data' (2017) 43(1) *Scandinavian Journal of Work, Environment & Health* 50, 55-56.

<sup>25</sup> Milner et al (n 23) 18.

<sup>26</sup> School-aged focus group participant.

Similarly, YEP clients who experienced more serious forms of exploitation in the workplace reported having developed significant mental health issues such as anxiety, depression and adjustment disorder.

The ILO has set four main objectives in achieving 'decent work' for young people to combat the global youth employment crisis, being:<sup>27</sup>

1. policies and programs to increase the creation of employment;
2. policies and programs to assist the transition from school into work;
3. labour market policies to improve the quality of youth employment; and
4. policies to strengthen compliance with labour standards, protect the rights of young workers and ensure the voices of young workers are heard.

### 3.3.2 Young people in Melbourne's West are a particularly vulnerable cohort

Melbourne's West (made up of six local government areas (LGAs) being the Cities of Brimbank, Hobsons Bay, Maribyrnong, Melton and Wyndham) is one of the fastest growing areas in Australia but has suffered from significant social and labour market disadvantage.<sup>28</sup>

Young people in Melbourne's West are particularly susceptible to experiencing poor employment outcomes including because this region:

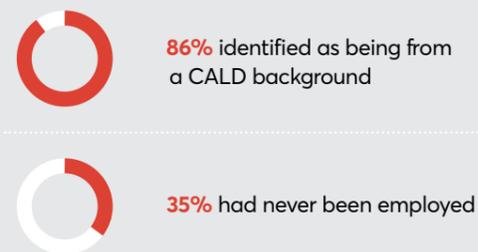
1. was particularly **hard-hit by the pandemic**.<sup>29</sup> This area includes many disadvantaged communities with high levels of casual and low-income workers. These factors increased risks associated with COVID-19, both in terms of infection and longevity of employment;<sup>30</sup>
2. is **highly multicultural**. Census data shows that 58% of the population were born in a country other than Australia and 43% of households speak a language other than English at home.<sup>31</sup> As demonstrated in more detail on pages 60 and 74, these cultural factors can impact on young people's ability to participate in the workforce and access equal opportunities;<sup>32</sup> and
3. Is home to young people who experience greater disengagement (that is, they are young people not currently studying or working). Specifically, in Melbourne's West, 14.2% of young people are disengaged compared with 11.2% for Victoria overall.<sup>33</sup>

This is reflected in the demographics of the young people we engaged with through the YEP.

#### For clients of our YEP legal service<sup>34</sup>



#### For participants of our General Youth Survey<sup>35</sup>



In addition, an analysis of employment-related legal need in Victoria indicates that the 'northern growth corridor', (including Brimbank and Hume LGAs), is one of the most high-needs areas for employment related legal assistance.<sup>36</sup>

## 3.4 A solution to improve employment outcomes for young people

The YEP model provides integrated and holistic employment law assistance and education to young people and uses this evidence to advocate for systemic change.

### 3.4.1. Targeted CLE and Engagement

The YEP delivers the following targeted education programs:

1. Face-to-face employment law workshops to young people to help them understand employment and discrimination laws, identify when they have a legal problem and understand what their options are to seek redress. Through CLE, the YEP seeks to engage in early intervention and prevention from workplace exploitation by building the capacity of young people to understand and act upon their workplace rights and responsibilities; and
2. CLE and professional development to intermediaries, to assist organisations and individuals who work with young people to understand employment and discrimination laws, identify legal issues and make appropriate referrals.

#### CLE for young people

In response to an increased demand for CLE sessions, WEstjustice developed and implemented a YEP-specific CLE program.

Initially, we prioritised in-person information sessions for young people (delivered to schools through our School Lawyer Program as well as through youth agencies and youth hubs). However, we also explored sharing information through other platforms during the COVID-19 lockdowns, including developing:

1. and trialling online learning modules using the rise: Articulate platform; and
2. a suite of information articles relevant to common issues raised by schoolteachers. These articles covered 'transitioning from work back into the classroom after COVID-19' and 'what you should know about summer holiday work'. They were distributed through the School Lawyer Program, as well as other youth organisations through partner programs and the Steering Committee.

The topics and content for each specific CLE session were developed in consultation with relevant intermediaries based on key issues, trends and learning priorities for the target audience. Presentations ranged from 30 to 120 minutes. The feedback we received from young people and intermediaries informed future development and improvements.<sup>37</sup>

Our presentations were designed to be interactive and practical with a specific focus on incorporating job-readiness. We used real-life deidentified case studies drawn from relevant client experiences where possible (and with consent) along with quiz questions and (occasionally) video content.

<sup>27</sup> International Labour Conference (ed), (n 10) 29.

<sup>28</sup> Local Jobs Plan Western Melbourne Victoria (October 2020) 4 <<https://www.dese.gov.au/download/8363/western-melbourne-local-jobs-plan/12528/western-melbourne-local-jobs-plan/pdf>>.

<sup>29</sup> Ibid 5.

<sup>30</sup> Ben Schneider, 'A City Divided - Covid-19 Finds a Weakness in Melbourne's Social Faultlines', The Age (online, 7 August 2020) <<https://www.theage.com.au/national/victoria/a-city-divided-covid-19-finds-a-weakness-in-melbourne-s-social-fault-lines-20200807-p55jj2.html>>.

<sup>31</sup> Australian Bureau of Statistics, '2016 Census QuickStats' (Web page, 23 October 2017) <[https://quickstats.censusdata.abs.gov.au/census\\_services/getproduct/census/2016/quickstat/SSC22743](https://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/SSC22743)>.

<sup>32</sup> Johanna Wyn, Rimi Khan and Babak Dadvand, Multicultural Youth Australia Census Status Report 2017/18 (Report, November 2018) <[https://education.unimelb.edu.au/\\_data/assets/pdf\\_file/0011/2972036/MY-Aust-Report-17-18.pdf](https://education.unimelb.edu.au/_data/assets/pdf_file/0011/2972036/MY-Aust-Report-17-18.pdf)>.

<sup>33</sup> Local Jobs Plan Western Melbourne Victoria (n 28) 5.

<sup>34</sup> See Appendix 3.

<sup>35</sup> See Appendix 2A.

<sup>36</sup> This analysis was conducted by VLA and provided to WEstjustice upon request. Data was drawn from Australian Bureau of Statistics (ABS) census data as well as service data from VLA's internal ATLAS database, CLC data from Community Legal Assistance Services system (CLASS) and data extracts from the JobWatch internal database.

<sup>37</sup> This data was collected from our CLE Pre-poll, CLE Feedback Survey and Intermediary CLE Survey (see Appendices 2G, 2H and 2I).

Common topics included:

1. dispelling myths about seeking legal help (including details about client confidentiality, acting on instructions and options to resolve legal problems out of court);
2. types of workers and their different associated rights, including employees (part-time, full-time, casual, trainees, apprentices), independent contractors and volunteers;
3. minimum pay and entitlements (including an overview of the National Employment Standards and how they interact with modern awards and enterprise agreements);
4. contracts of employment (including what constitutes a contract, and how contracts interact with employment laws);
5. tips for starting a new job (including things to ask your boss, red flags to watch out for);
6. health and safety;
7. unlawful workplace behaviour including discrimination, sexual harassment and bullying;
8. rights when your job ends (including notice, accrued entitlements, unfair dismissal and general protections); and
9. where to go for help.

#### Professional development for intermediaries

To complement our CLE activities, we also provided professional development for intermediaries, recognising that these organisations and individuals are key points of contact and trusted sources of information for young people. Participants at these sessions included schoolteachers, wellbeing staff, employment service providers, youth and community workers, generalist CLC youth lawyers and youth mentors.

These presentations were designed to educate intermediaries to:

1. identify when a young person might be experiencing a work-related legal problem; and
2. refer young people for appropriate support.

We developed a legal health check resource for intermediaries to use, which was designed to assist with identifying relevant legal issues. This resource covered a broad range of legal topics affecting young people in addition to employment law.

#### 3.4.2. Place-based legal services

The YEP provides holistic employment law services (i.e. advice, referrals and representation) to young clients in the places where they learn and access services, through the following integrated and 'in situ' channels:

1. WEstjustice Youth Law Programs, embedded in the following hubs/outreach locations:
  - Sunshine Visy Cares Hub. Run by Youth Junction Inc, the Visy Cares Hub houses youth services that target various needs, such as; mental health; drug and alcohol use; young people from CALD backgrounds; education, and employment. We have an integrated youth law service at this site.
  - Youth Resource Centre (YRC) in Hoppers Crossing. The YRC is an initiative of Wyndham City Council which is a multi-purpose youth facility providing access to a range of support services (similarly to the Visy Cares Hub) and youth programs.
  - the School Lawyer Program, which involves an onsite lawyer embedded in four secondary schools in Melbourne's West: Tarneit Senior College, The Grange, Wyndham Central and Wyndham Community and Education Centre.
  - Headspace Health Justice Partnership at Werribee, where we provide services to clients of headspace.
2. the International Students Employment and Accommodation Legal Service (ISEALS), which provides legal advice and assistance to international students out of the Study Melbourne Student Centre, which is a hub for international students to seek support and assistance.

Initial intake appointments are conducted by our youth lawyers who screen for all issues, including: debts; fines; family violence; criminal law; consumer law; children's law; tenancy issues, as well as employment-related legal problems. Our youth lawyers refer clients to the YEP legal service for detailed employment law advice and ongoing support.

By adopting this integrated service approach, the YEP seeks to increase accessibility to employment and equality law services for young people and empower them to exercise their workplace rights in future without the need for legal support

#### 3.4.3. Systemic impact

The YEP staff liaise with key stakeholders, networks, government agencies, regulators, academics and policymakers to tackle systemic problems identified through the YEP activities.

This systemic impact work was guided by the Steering Committee, whose role was to:

1. assist in informing the YEP about pressing legal and social issues that are facing young people in the Melbourne's West;
2. provide high level feedback on the YEP model, to ensure that delivery is as effective as possible in improving employment outcomes for young people;
3. facilitate relationships with potential partners and other stakeholders, which may assist in optimising the activities and outcomes of the YEP; and
4. provide advice and support on systemic issues, including on effective implementation of recommendations.



## 4 ACROSS THE LIFECYCLE OF EMPLOYMENT

### SNAPSHOT

There are **two issues** that infect the entire employment journey and can lead to poor employment outcomes and experiences for young people, being that young people are often:

1. **unaware of their rights**, which not only makes them unprepared for work, but also leaves them vulnerable to exploitation and prevents them from exercising their rights and accessing workplace entitlements; and
2. engaged in **precarious work**, which prevents them from accessing important rights, entitlements and equal opportunities.

Our research and activities demonstrated that **targeted legal education** can help both young people and the staff who work right them to better understand and access workplace rights. However, the appetite for attending work rights and responsibilities CLEs is low when it is not embedded into existing programs.

In order to **improve** young people's overall **experiences** at work we must:

1. **embed** work rights and responsibilities **training** into education programs; and
2. **increase** access to **secure jobs** for young people.

### 4.1 The problems

#### 4.1.1. Ill-equipped to understand work rights and responsibilities

Numerous studies indicate that young people have a limited understanding of their work rights and responsibilities.<sup>38</sup> This is not surprising given the shortcomings of our Australian education system, which prioritises academia over meaningful pathways to employment,<sup>40</sup> and misses critical opportunities to teach young people about workplace laws and processes.

A study conducted by Paula McDonald, Robin Price and Janis Bailey in 2013 sought to understand what school students know about their rights and obligations in employment.<sup>40</sup> They surveyed 892 students in Queensland high schools and found that:

1. students were generally not well informed about their work-related entitlements or other relevant regulatory constraints;<sup>41</sup>
2. 83% of students who were employed were unable to identify their applicable industrial instrument;<sup>42</sup> and
3. levels of knowledge were determined by the fact of being employed rather than the hours worked.<sup>43</sup>

#### Knowledge of work rights and responsibilities comes from dubious sources

 **'You're not really taught the rights you have at work...you just have to learn by yourself and you and you don't realise what rights you have in the workplace.'**<sup>44</sup>

There appears to be limited information in the literature regarding the most common or prevalent sources of information for young people, from which they derive knowledge of their work rights.

However, our research demonstrated that, due to a lack of opportunities to learn about work rights in formal settings (such as in school or transition-to-work programs) many young people gain this knowledge in an ad-hoc fashion and from questionable sources.

#### School-aged youth tended to learn about their work rights on the job

During our focus groups, our school-aged participants cited 'learning on the job', including information received from managers, as the key source of information for their work rights and responsibilities. Participants commented:

*I learnt most of it when I actually got my job... my manager went through all my rights in the workplace and that's where I got all my information from. I'm not sure how else [young people would learn about their rights]"*

We consider this is a significant problem, noting that the majority of our clients who worked in industries with a high concentration of young workers (particularly in the hospitality and fast food industries) were cheated of their minimum entitlements by their employers (see page 76).

#### Older youth tended to find information about work rights online

Older focus group participants (over 18 years old) reported that their main sources of work rights information came from google (and other internet) searches. They acknowledged that this too comes with its problems:

*Sometimes online can be a bit funny. And it's not like direct. We have to search through thousands of written words.*<sup>45</sup>

This was a sentiment expressed by one of our YEP clients:

*There are not many avenues that provide sufficient and helpful information. I have dealt with the Fair Work Ombudsman a few times during my stay and I must say that it was a very disappointing experiences every time. Trying to find information about rights on your own on the internet/google is just as hard, as there is no such website with such concrete information.*<sup>46</sup>

In general, the young people we spoke to stated that they did not think that word-of-mouth was a common or useful way to learn about work rights because of the variety of different jobs held by their peers.<sup>47</sup> As one participant noted:



**'Me and my friends...have different roles, so I can't necessarily discuss with them about legal rights because it might not be the same.'**<sup>48</sup>

#### High confidence but low actual awareness of work rights

We found that young people generally lacked a detailed understanding of their work rights and had limited opportunities to build this knowledge. Many of the young people we surveyed prior to our CLE presentations were confident that they understood their rights and responsibilities prior to our CLEs. However, our studies showed that this was not the case and their actual knowledge was often incorrect.

<sup>38</sup> Sarah Bright, Keelia Fitzpatrick and Amy Fitzgerald, *Young Workers Snapshot: The Great Wage Rip-Off* (Report, Young Workers Centre, May 2017) 5 <[https://d3n8a8pro7vhmx.cloudfront.net/victorianunions/pages/1411/attachments/original/1493954358/Young\\_Workers\\_Snapshot\\_The\\_Great\\_Wage\\_Ripoff\\_final.pdf?1493954358](https://d3n8a8pro7vhmx.cloudfront.net/victorianunions/pages/1411/attachments/original/1493954358/Young_Workers_Snapshot_The_Great_Wage_Ripoff_final.pdf?1493954358)>; Maheen and Milner (n 15) 15.

<sup>39</sup> Peter Shergold et al. *Looking to the Future: Report of the Review of Senior Secondary Pathways into Work, Further Education and Training* (Report, Education Council, June 2020) 35.

<sup>40</sup> Paula McDonald, Robin Price and Janis Bailey, 'Knowledge Is Not Power, but It's a Start' (2013) 32(2) *Youth Studies Australia* 49.

<sup>41</sup> Ibid 52.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> School-aged focus group participant.

<sup>45</sup> Post-secondary focus group participant.

<sup>46</sup> Written feedback provided by a client of the YEP legal service at the conclusion of their matter.

<sup>47</sup> Participants in both our school-aged focus group and post-secondary focus group agreed that word-of-mouth was not a useful or reliable source of information for them or their peers.

<sup>48</sup> Post-secondary focus group participant.



82% of young people we surveyed agreed (and 21% strongly agreed) that prior to our CLEs they felt confident they understood their rights and responsibilities;<sup>49</sup> **however**



Only 69% of respondents agreed they knew what their options are if they had been treated unfairly or unlawfully at work.



Only 53% of respondents agreed that they knew how to find out their correct rate of pay.

#### In contrast:



43% of young people surveyed said they or someone they knew didn't know what their work rights were, and a further 11% said they were 'not sure' (if they knew their work rights).<sup>50</sup>



73% of intermediaries surveyed felt that it was a 'common' issue that young people did not know their work rights (based on their experience in working with young people).<sup>51</sup>

The experiences gathered from our focus groups suggests that this may be because young people have a *good general* understanding of their work rights but lack knowledge about their specific rights and entitlements. For example, they understood the need to be paid for their work and the right to be free from sexual harassment, bullying and discrimination, but did not understand how much you should be paid, regulations regarding deductions or the exact kind of behaviour that constitutes sexual harassment.

Some of our research participants identified that young people might have a generic understanding of what is 'right and wrong' but not a detailed understanding of how employment laws operate in practice. They felt that young people's understanding of work rights centred more around being treated correctly rather than digging into the details of getting paid correctly. As two participants noted:



'When they perceive those rights, it's black and white...because of that, [the question] "do you know your rights?" is a yes or no'.<sup>52</sup>



'I don't think many of my friends know their rights. They think "I should be respected, and I should respect others", and that's about it. But they don't know the specifics'.<sup>53</sup>

Similarly, on many occasions, our YEP clients presented with complaints relating to poor treatment in the workplace, such as bullying, harassment or workplace injuries and it was not until we made further enquiries regarding their pay rates and hours of work that we uncovered that they had underpaid/unpaid wages and entitlements that they were unaware of.

#### CALD youth face additional barriers to understanding

Communities from newly arrived migrant or refugee backgrounds have a particularly limited understanding of Australian employment laws and related services. As a result, many are often unable to identify employment law issues, or where to go for assistance.<sup>54</sup> This can lead to additional layers of disadvantage in the workplace, as set out on page 74.

Consistent with the literature, our survey results indicated a high correlation between a poor understanding of workplace rights and being from a CALD background.<sup>55</sup>



For respondents who reported that they didn't know their work rights, 85% were born in a country other than Australia and 93% identified as being from a CALD background.<sup>56</sup>



For respondents who reported not knowing the minimum pay rates for their job, 80% were born in a country other than Australia and 90% identified as being from CALD background.<sup>57</sup>

Similarly, a number of intermediaries highlighted that in their experience, CALD youth tended to have a poorer understanding of their work rights.<sup>58</sup> As one respondent noted:



'CALD communities/ young people from CALD backgrounds that I have supported have advised of not knowing about their work rights or where to get help'.

#### Knowledge of employment laws and processes is necessary for positive employment experiences

Through our research, we found that if we do not equip young people with the necessary tools and information to understand their workplace rights and responsibilities before they enter into the labour market they will:

1. face barriers to entering the labour market, noting that knowledge of workplace laws and processes is a key component of job-readiness (see page 58); and
2. be more susceptible to workplace exploitation, and less able to access their employment entitlements (see page 68).

#### Recommendation 1: Make work rights and responsibilities training available to young people at the earliest stage possible

Young people must be given every opportunity to learn about their work rights and responsibilities *prior* to entering the job market, including through the school education system and other training programs.

#### 4.1.2. Precarious and insecure work

Precarious work is said to be work that is characterised by 'lack of protective regulation, short or uncertain duration, lack of 'standard' employment benefits and ambiguous or unprotected legal status'.<sup>59</sup> This can include casual work, contracting arrangements, fixed-term employment and labour hire arrangements.<sup>60</sup>

Concerningly, this type of work is increasingly becoming the 'norm' for young workers.<sup>61</sup> Due to a disappearance of entry-level jobs and an increase in casual jobs, young people struggle to find secure, full-time work. Accordingly, almost one in five young people work multiple jobs in order to achieve full-time hours.<sup>62</sup>

The vast majority of our YEP clients were precariously employed.



71% were engaged in insecure work.



54% were engaged in casual employment.



13% were engaged as contractors.



4% were engaged in labour hire arrangements.

<sup>49</sup> This was the first question we asked respondents: CLE Pre-poll (see Appendix 3G).

<sup>50</sup> General Youth Survey (see Appendix 2A).

<sup>51</sup> General Intermediary Survey (see Appendix 2B).

<sup>52</sup> A school teacher we interviewed.

<sup>53</sup> School-aged focus group participant.

<sup>54</sup> Catherine Hemingway, *Not Just Work: Ending the Exploitation of Refugee and Migrant Workers* (Report, WEstjustice, 2016) 89.

<sup>55</sup> General Youth Survey (see Appendix 2A).

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> General Intermediary Survey (see Appendix 2B).

<sup>59</sup> John Burgess and Iain Campbell, 'The Nature and Dimensions of Precarious Employment in Australia' (1998) 8(3) *Labour & Industry: a journal of the social and economic relations of work* 5, 8.

<sup>60</sup> Michael Rawling, 'Regulating Precarious Work in Australia: Michael Rawling' (2015) 40(4) *Alternative Law Journal* 252, 252.

<sup>61</sup> Productivity Commission, *Why Did Young People's Incomes Decline?* (Research Paper, 2020) 1-2 <<https://www.pc.gov.au/research/completed/youth-income-decline/youth-income-decline.pdf>>.

<sup>62</sup> Annette Cairnduff, Kelly Fawcett and Nina Roxburgh, 'Young Australians and the Disrupted Economy' in Andrew Stewart, Jim Stanford and Tess Hardy (eds), *The Wages Crisis in Australia* (University of Adelaide Press, 2018) 251, 254 <<https://www.jstor.org/stable/j.ctvb4bt9f.22>>.

Interestingly, only **34%** of young people we surveyed were employed on a casual basis.<sup>63</sup> The majority of respondents (42%) reported being engaged on a part-time basis.<sup>64</sup> However of those in casual employment, many (45%) reported working between 2 – 10 hours per week. 45% of these workers reported not getting paid extra to come to work early or stay back late.

As shown below, precarious work can lead to 'poor outcomes' for workers including because:

1. these workers have low job certainty and high risk of job loss. This means they lack control over the key terms and conditions of employment. Typically, this also means fewer rights and protections and a struggle to maintain a decent standard of living;<sup>65</sup> and
2. precarious work has negative flow-on effects for a young person's psychosocial wellbeing. It not only impacts work, but also other important factors such as school attendance and mental health.

**Recommendation 2: Government must enhance access to meaningful and secure work for young people**

The federal and Victorian governments should create a Youth Employment Strategy with a specific focus on enhancing access to meaningful and secure work for young people. This should be informed by a cost-benefit analysis of ensuring that young people have access to secure work. Measures could include:

1. the appointment of a Victorian Employment Commissioner;
2. a youth jobs guarantee to ensure young people have access to meaningful and secure work;
3. development and expansion of government-supported graduate programs.

**1. Poor outcomes at work**

Precarious work impedes access to young people's work rights and entitlements at both a:

1. regulatory level (i.e. there are less entrenched rights and protections for these workers); and
2. practical level (i.e. it is also difficult for these young workers to exercise the rights they do have).

**Limited rights and entitlements**

**Casual employees**

Casual workers have no expectation of ongoing work, nor do they receive the same minimum standards as ongoing employees such as annual leave, paid sick leave, notice of termination and redundancy pay.<sup>66</sup>

The casual YEP clients who were employed at the time of seeking our assistance were low-income earners.



For those clients not living with family, this amount indicates that they were living below the poverty line.<sup>67</sup>

In addition, several of our clients were employed in long-term casual arrangements in excess of a year. Despite receiving a 25% casual loading, they often ended up losing out over the longer term, particularly in respect of entitlements such as paid parental leave, annual leave and redundancy pay.

**CASE STUDY: SONJA**

Sonja worked for 5 years as a casual operations officer. She started off working full time hours for her employer however, around 2.5 years into her employment she became pregnant and had to take unpaid maternity leave. As a result of COVID-19 Sonja's role was made a redundant. However, because Sonja was a long-term casual she was not entitled to any redundancy pay. We calculated that Sonja would have been entitled to more than \$18,500 in annual leave, notice of termination, redundancy and payment for public holidays, which far outweighs the quantum of the casual loading she had earned during her period of employment.

Casual employees also have limited protections when something goes wrong. Several of our casual clients were dismissed for making complaints about their employment and, on a number of occasions, the employers attempted to use their casual status as a means to thwart any claims for unfair or unlawful dismissal.

**CASE STUDY: OLGA**

Olga worked as a casual labourer. After working for more than a year in her role, she was dismissed after making a complaint of discrimination and sexual harassment. Up until the conclusion of negotiations for her legal claim (more than a year after her last day of work), her employer maintained the argument that she continued to be an employee of the company and had not been dismissed, claiming instead that there was merely no work for her at the present time.

The new casual provisions in the FW Act make things worse

The *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (Cth) introduced several key amendments to the FW Act, which affect casual workers (the **new casual provisions**). These changes include the introduction of a new definition of 'casual employee' and a pathway for long-term casual employees to transition to permanent employment.

Under the definition provided in the new casual provisions, a person is a casual employee if, at the time they were offered the job, their employer made 'no firm advance commitment to continuing and indefinite work according to an agreed pattern of work'.<sup>68</sup>

In certain circumstances casual employees – who have been engaged by their employer for more than 12 months and have had a regular pattern of work for at least the last 6 months – must be offered the opportunity to convert to either full-time or part-time employment (depending on the number of hours they worked in the preceding 6 months).<sup>69</sup> There are some exceptions to this rule.<sup>70</sup>

These new casual provisions have received significant criticism, including on the following bases:

1. the new casual provisions will allow employers to classify employees as casuals even when this doesn't reflect the actual working arrangements. This may incentivise employers to engage workers as casual rather than permanent employees and therefore increase the prevalence of insecure employment;<sup>71</sup>
2. on the other hand, casual conversion opportunities are unlikely to be helpful to employees given a lack of any clear enforceable right to transition to permanent employment;<sup>72</sup> and
3. the new casual provisions operate retrospectively, extending to offers of casual employment made before March 2021.<sup>73</sup> This not only removes the entitlements of employees who had previously been misclassified as casuals, but it also creates a 'shield' for those employers who have knowingly misclassified those employees.<sup>74</sup>

The new casual provisions are significantly prejudicial to young people; at the time of entering into employment, many of them are unaware of the difference between casual and permanent employment, and the associated differences in entitlements.

For the majority of our long-term casual employees (see for example Sonja and Olga above), at the offer/acceptance stage of employment, there was 'no firm advance commitment to continuing work' within the meaning of the FW Act. However, over the course of their employment, they worked regular shifts according to an agreed pattern of work, and there was a practical (albeit implicit) understanding of ongoing employment.

**Recommendation 3: Conduct a review of the new casual provisions**

The federal government should conduct a 12-month review of the new casual provisions in the FW Act – which includes further consultation with the CLC sector and employees – with a view to amending these provisions to ensure they do not entrench insecure work.

<sup>63</sup> General Youth Survey (see Appendix 2A).

<sup>64</sup> It is possible that a number of these respondents may have mis-reported their status as part-time employees, noting that a significant proportion of part-time employees reported not receiving entitlements such as annual leave and sick leave (see page 69); Appendix 2A.

<sup>65</sup> Rawling (n 60) 252.

<sup>66</sup> FW Act pt 2-2; Rawling (n 60) 8.

<sup>67</sup> Melbourne Institute of Applied Economic and Social Research, *Poverty Lines, Australia* (March 2020) 1 <<http://nla.gov.au/nla.obj-411925151>>.

<sup>68</sup> FW Act (n 66) s 15A.

<sup>69</sup> Ibid s 66B.

<sup>70</sup> This does not apply where the employer is a small business,<sup>70</sup> or where there are 'reasonable grounds' for the employer not making the offer for conversion: Ibid s 66C.

<sup>71</sup> Australian Council of Trade Unions, Submission No 98 to Senate Select Committee on Job Security, Parliament of Australia (30 April 2021) 34–35; Unions NSW, Submission No 78 to Senate Select Committee on Job Security, Parliament of Australia (9 April 2021) 31–35; Australian Institute of Employment Rights, Submission No 6 to Senate Select Committee on Job Security, Parliament of Australia (29 March 2021) 17.

<sup>72</sup> Australian Institute of Employment Rights (n 71) 17.

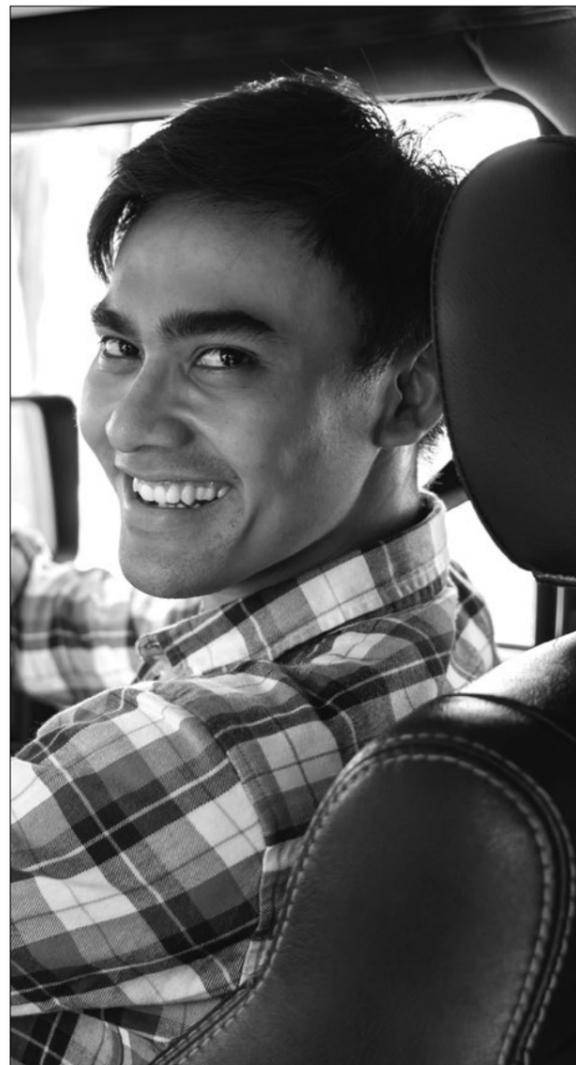
<sup>73</sup> FW Act (n 66) sch 1 cl 46.

<sup>74</sup> Andrew Stewart et al, Submission No 56 to Senate Education and Employment Legislation Committee, *Inquiry into the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020* (5 February 2021) 17–18.

## Contractors

Contractors enjoy even fewer benefits than casual employees; they are largely excluded from the benefit of workplace regulations and protections, with some exceptions under anti-discrimination and occupational health and safety laws. Contractors have no entitlement to minimum employment standards (such as minimum wages and paid leave) and are expected to negotiate their own working conditions, despite the fact that many of them are 'dependent' contractors who have very little control over the work they do and/or are reliant on a single client for work.<sup>75</sup>

This was a significant problem for many of our clients. Firstly, those engaged as contractors rarely had legal options for recourse in the face of poor treatment at work, particularly those who worked in the gig-economy, such as Uber and food delivery drivers.



### CASE STUDY – PAVNEET

Pavneet, an international student, had been working as an Uber driver for three years. Within the period of a fortnight, he was the victim of racial discrimination and abuse on two occasions. On the first occasion, due to an issue with the app, Pavneet was directed to the wrong pickup location. Once the issue was corrected, the passenger, an intoxicated young man, verbally abused him and his family members with racial slurs and told him to 'go back to his country'. Pavneet declined to take the passenger and reported the issue to Uber the next morning but they did not take any action to assist, or disclose the identity of the passenger to Pavneet. Pavneet later learned that the passenger made a complaint to Uber about him.

The following weekend, Pavneet gave a lift to a woman late at night, who screamed at him for driving too slow in a 40km/h zone and accused him of trying to steal more money from her. In response to this behaviour, Pavneet pulled over and asked her to book another ride. She responded with racial slurs. Pavneet lodged a complaint with Uber the next morning, but hours later his account was deactivated, as the passenger also lodged a complaint against him. Once his account was deactivated, he found it extremely difficult to contact Uber. He was not able to ascertain the identity of his female passenger.

We advised Pavneet about the limited recourse against Uber, and he told us he didn't want to explore other options for recourse due to hopelessness about the outcomes.

In all these cases, our clients were, in reality, 'dependent contractors', meaning that they were reliant on their bosses for ongoing work, and could not be said to be genuinely carrying on their own business.

In addition, a number of these contractors were engaged in 'sham arrangements' – where employment relationships were disguised as contracting arrangements to avoid paying employee entitlements. As a result, these clients often unknowingly missed out on employment entitlements.

Under the law, it is prohibited for employers to knowingly or recklessly engage employees in sham arrangements.<sup>76</sup> However, the question of whether or not a worker is truly an employee or a contractor is complex, and must be determined by applying a multi-factor test to assess whether the worker is genuinely running their own business.<sup>77</sup>

Factors include inter alia: whether the worker has control over when/where/how the work is performed, whether they have to wear a uniform, whether they are paid on the basis of results or time and whether they supply their own tools and equipment. In particular, the agreement between the worker and the boss (i.e. the 'label' given to the relationship, and the contract of engagement) is not determinative.

80% of the YEP legal service clients who were working as contractors were engaged in sham contracting arrangements and/or misclassified as employees and therefore deprived of minimum employee entitlements and superannuation. However due to the complex nature of sham contracting laws, these clients' complaints were often met with flat out denials, aggression and threats.

### CASE STUDY: AJOK

Ajok was engaged in a sham contracting arrangement providing holiday booking services for Airbnb properties. Her employer set her hours of work and gave her a detailed list of the tasks to complete during every shift and how to do them. WEstjustice gave Ajok detailed advice and assisted her to draft a letter to her employer in her own name seeking her outstanding entitlements.

In its response, Ajok's employer's accused Ajok of being opportunistic and made baseless claims that she had caused damages to the business, threatening to sue her for unspecified losses.

Negotiations between Ajok and her employer are ongoing.

The issue of sham contracting and employee misclassification was also raised by an intermediary from a local community organisation who noted:

*I've been hearing a lot [that] young people, when they're getting employed, are actually getting employed on ABNs...to run peer programs...[the employer] sat down with a young person who was 19 at that point...and just filled out the ABN application for her, and they were doing that with a group of them. But young people don't realise...you've got no workcover, there's no insurance, there's no coverage, forget about super'.<sup>78</sup>*

WEstjustice supports the the recommended outcomes of the Inquiry into the Victorian On-Demand Workforce, to:<sup>79</sup>

1. Clarify and codify work status to reduce doubt about work status and, therefore, the application of entitlements, protections and obligations for workers and business, and align legislative definitions across the statute books.
2. Streamline advice and support for workers whose work status is borderline.
3. Provide fast-track resolution of work status so workers and business do not operate with prolonged doubt about the rules.
4. Provide for fair conduct for platform workers who are not employees through establishing Fair Conduct and Accountability Standards that are principles based and developed through a consultative process with relevant stakeholders.
5. Improve remedies for non-employee workers to address deficiencies and anomalies in the existing approach.
6. Enhance enforcement to ensure compliance, including where sham contracting has occurred.

It is imperative that any incentive for employers to engage employees in sham contracting is removed and that basic minimum work entitlements and protections are afforded to workers who are not genuinely running their own businesses. The current provisions of the FW Act, offering defences based on lack of knowledge or reckless disregard,<sup>80</sup> are all-too-easily relied upon and absolve employers of responsibility to ensure that workers are correctly classified.

#### Recommendation 4: Improve laws to stop sham contracting and provide greater protections for dependent contractors

A statutory definition of 'employee' should be introduced into the FW Act. This definition must presume all workers are employees for the purposes of the FW Act unless they are genuinely running their own businesses or on vocational placements.

The FW Act should also be amended to limit the defence to sham contracting and ensure that employers are liable when they fail to take reasonable steps to determine the correct classification of workers.

<sup>77</sup> See *Hollis v Vabu Pty Ltd* (2001) 207 CLR 21.

<sup>78</sup> Intermediary focus group 2.

<sup>79</sup> Report of the Inquiry into the Victorian On-Demand Workforce (Report, June 2020).

<sup>80</sup> FW Act (n 66) pt 3-2 div 6.

## Scared to refuse shifts or complain about workplace rights

Unsurprisingly, precariously employed workers often feel like they can't refuse shifts or complain about their working conditions.

The majority of our YEP clients who opted not to pursue their legal claims were precariously employed (53%). All of them cited wanting to keep their jobs as the key reason for not pursuing their claims despite our advice about the legal protections afforded to workers who exercise a workplace right.<sup>81</sup>

There is often very little a worker can do to prevent an employer from terminating their role in response to a complaint. For casual workers or independent contractors, in particular, it is difficult to prove the employer's intent when there is no legal obligation on the employer to offer work, despite legal mechanisms available to address the evidentiary burden with respect to experiences of victimisation under the FW Act.<sup>82</sup>

## Higher instances of workplace exploitation

Due to the lack of job security and regulation, precariously-engaged workers are also particularly susceptible to workplace exploitation and poor working conditions.<sup>83</sup>

Indeed, those of our clients who were engaged in precarious employment tended to suffer poorer outcomes at work. They accounted for more than half of all wage theft, unfair dismissal, general protections and discrimination claim types.



## CASE STUDY: HARRY

Harry was engaged as a casual café worker for two years and was paid the same flat rate with no penalties or overtime. In addition to the underpayment, Harry was constantly subject to discrimination and verbal taunts from his employer on the basis of his sexual orientation. Harry was dismissed unlawfully after he questioned his employer about his minimum entitlements and asked for a pay rise.

WEstjustice assisted Harry by writing a letter to his employer seeking repayment of \$20,000 in underpaid wages. The claim has not yet been resolved.

## 2. Poor outcomes for wellbeing

Precarious work not only impacts young people's rights and entitlements at work, but can be detrimental to other aspects of their lives. Indeed, of the adversities that young workers may experience in the workplace, job insecurity has been shown to cause the greatest decline in young people's mental health.<sup>84</sup>

For example, two participants in our school-aged focus group reported that it was common for their peers to be asked to work casual shifts at times that made it difficult to attend school – such as late at night, or at times that caused them to miss school.

One school-aged participant noted that the precariousness of casual work, combined with the feeling of being unable to refuse a shift, really '[took] a toll' on the mental health of her peers.

A correlation between poor mental health outcomes and precarious work was somewhat evident from our YEP legal service; **58%** of our clients suffering from mental health issues were precariously employed.

Given the multitude of adversities faced by employees engaged in precarious work, and the long-term detrimental effects of these experiences (see page 32-33), it is imperative that federal, State and Territory governments take action to increase access to secure work for young workers (see recommendation 2 above).

## 4.2 Current approaches

### 4.2.1. Community legal education to increase knowledge of work rights

A number of studies support the use of face-to-face CLE as an effective tool to: raise community legal awareness; increase the ability of communities to use the law and the legal system, and improve outcomes,<sup>85</sup> particularly for low-capability individuals. WEstjustice's own Not Just Work Report found that face-to-face CLE sessions can simultaneously:<sup>86</sup>

1. assist workers to understand and act upon their rights;
2. build trust in an awareness of free legal services; and
3. play a key role for service providers in helping clients to identify legal issues at work and referring them for legal assistance.

The Not Just Work Report found that key best-practice features for effective CLE include the following:<sup>87</sup>

1. information provided face-to-face and verbally (as well as written);
2. use of visual materials and multimedia;
3. delivering CLE via classes and pre-arranged community meetings;
4. using clear language and outlining key concepts only;
5. delivering sessions in a convenient location;

6. providing practical information that is 'linked to outcomes'; and
7. developing education in consultation with community members and workers.

Specific to youth, an evaluation of a VLA Fines module for high school teachers found a statistically significant improvement in knowledge of the relevant laws for school children with a mild intellectual disability and recommended further targeted research in this area.<sup>88</sup>

Unfortunately, there is insufficient funding for community organisations to meet the demand for CLE, let alone deliver regular face-to-face CLE.<sup>89</sup> In addition, research has shown that individuals can face barriers to transforming legal information into action, and may need assistance from services in order to use and apply the information that they have learned.<sup>90</sup> Therefore, CLE will often need to be delivered in tandem with legal service delivery to ensure the best outcomes.<sup>91</sup>

<sup>81</sup> Pursuant to section 340 of the FW Act a person (in most cases, an employer), must not take 'adverse action' against another person because that person has exercised a workplace right. Compensation and financial penalties are payable if this occurs. This section has the effect of prohibiting an employer from reducing shifts because an employee has made, or intends to make, a complaint.

<sup>82</sup> See FW Act s 361.

<sup>83</sup> Edward Cavanough and Lachlan Blain, *Ending Wage Theft* (Report, McKell Institute Victoria, March 2019) 21 <<https://mckellinstitute.org.au/wp-content/uploads/McKell-Ending-Wage-Theft.pdf>>; Sarah Bright, Keelia Fitzpatrick and Amy Fitzgerald, *Young Workers Health & Safety Snapshot* (Report, Young Workers Centre, October 2016) 9 <[https://d3n8a8pro7vnm.cloudfront.net/victorianunions/pages/1411/attachments/original/1475818335/Young\\_Workers\\_Health\\_Safety\\_Snapshot.pdf?1475818335](https://d3n8a8pro7vnm.cloudfront.net/victorianunions/pages/1411/attachments/original/1475818335/Young_Workers_Health_Safety_Snapshot.pdf?1475818335)>.

<sup>84</sup> Milner, Krnjack and LaMontagne (n 24) 54.

<sup>85</sup> Ania Wilczynski, Maria Karras and Suzie Forell, 'The Outcomes of Community Legal Education: A Systematic Review' [2014] (18) Justice Issues <[https://www.researchgate.net/profile/Suzie-Forell/publication/277558601\\_](https://www.researchgate.net/profile/Suzie-Forell/publication/277558601_)

[The\\_outcomes\\_of\\_community\\_legal\\_education\\_a\\_systematic\\_review/links/557e644808a8ec87640dc660a/The-outcomes-of-community-legal-education-a-systematic-review.pdf](https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-resource-does-cle-work-research-report.pdf)>; Hemingway (n 54) 109-111; Allyson Hose, Monica Ferrari and James Baglin, *Does Community Legal Education Work: Researching the Impact of the Learning the Law Education Kit for Young People with a Mild Intellectual Disability* (Report, Victoria Legal Aid, June 2018) <<https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-resource-does-cle-work-research-report.pdf>>.

<sup>86</sup> Hemingway (n 54) 113.

<sup>87</sup> Ibid 123.

<sup>88</sup> Hose, Ferrari and Baglin (n 85) 15.

<sup>89</sup> Hemingway (n 54) 123.

<sup>90</sup> Sarah Randall, Victoria Legal Aid: Information Services Literature Scan (Report, Law and Justice Foundation of NSW, November 2018) 10 <[http://www.lawfoundation.net.au/ljf/site/articleIDs/A6CFAC06CE380F6B8525834000028F11/\\$file/VLA\\_info\\_serv\\_lit\\_scan.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/A6CFAC06CE380F6B8525834000028F11/$file/VLA_info_serv_lit_scan.pdf)>.

<sup>91</sup> See generally Hemingway (n 54).

## Making CLE accessible for young people

The young people we surveyed told us that the following mediums would be 'very helpful' for them to better understand their work rights and responsibilities:<sup>92</sup>

1. information sessions provided during transition-to-work programs (83%);
2. fact sheets in English (78%);
3. information sessions during school/university/TAFE classes (78%);
4. information using social (e.g. Facebook, Instagram, Twitter) (65%).

Similarly, in our focus groups, all young participants agreed that information sessions during education and transition-to-work programs would be extremely useful and emphasised the utility of social media in disseminating important information.

Intermediaries also agreed that information provided during school/TAFE/university, and during transition-to-work programs, would be very useful in helping young people to understand their work rights and responsibilities.<sup>93</sup> Other mediums that intermediaries thought would be 'very helpful' for young people to better understand their work rights and responsibilities included:<sup>94</sup>

1. fact sheets in another language (90%);
2. fact sheets in English (80%);
3. information sessions with lawyers and community workers who speak the young person's language (80%);
4. in-person information sessions/workshops with a lawyer (70%);
5. an information service with someone who is not a lawyer (70%).

## 4.3 What we did

### 4.3.1. Building the capacity of young people and intermediaries

#### Building the capacity of young people

Between July 2019 and May 2021, WEstjustice delivered a total of **37** CLE sessions to young people about their work rights and responsibilities. This included **25** in person CLE presentations (2 virtual and 23 in-person), **8** information articles and **3** e-modules - delivered to approximately **1800** young people.

The feedback from our CLE presentations was overwhelmingly positive. When asked what was the most useful thing about the presentation, consistent feedback included: learning about work rights; learning about pay rates, and understanding where to get help.

What was the most useful thing about the presentation? <sup>95</sup>	%
Learning about work rights (generally)	35%
Learning about pay rates/how much I should be paid	22%
Where to get help	10%
Rights around unlawful treatment	6%
Rights relating to dismissal	6%
Not sure	5%
The interactive elements	5%
Learning about health and safety	4%
Learning about cash in hand payments	3%
Options for making claims	2%
Information was easy to understand	2%
Rights relating to super	1%
Information relating to contracts	1%

#### IN THEIR OWN WORDS:

*"no improvement needed"*

*"nothing would make this session better"*

*"It was perfect"*

Common feedback regarding what would have made the session better included: more interaction; more examples and case studies; longer sessions, and the use of more visual aids – videos in particular. However, a large portion (**35%**) of respondents said that 'nothing' would have made the presentation better, or that no improvements were needed:

What would have made the session better? <sup>96</sup>	%
Nothing	35%
More interactive activities and games	19%
More visual aids/videos	14%
More details/longer session	12%
Other	8%
Less disruption from other participants	5%
More examples and case studies	3%
Funnier/more interesting content	3%
Less tech Issues	3%
A shorter presentation	2%

Common topics that CLE participants reported wanting to know more about included: pay and entitlements; unlawful treatment in the workplace, and detailed information about specific industries. However, **21%** of respondents indicated that they felt there were no workplace rights they wanted to know about after our presentation:

#### IN THEIR OWN WORDS:

*"I learned everything"*

*"nothing really. today's session was enlightening"*

*"None. I feel like the presentation was informative enough."*

*"None. That is all the info I need."*

What would young people like to know more about?	%
Nothing/I learned a lot today	21%
Wages	19%
Not sure	14%
Unlawful treatment	8%
Specific industries/jobs	7%
Other	6%
Safety	4%
Contracts	3%
Termination	3%
Superannuation	3%
General work rights	3%
Payslips/cash in hand	2%
Starting a job/changing jobs	2%
Award coverage/EBAs	1%
Workplace conflict/conversations	1%
Lawyers/law firms	1%

We also received positive feedback from the intermediaries in attendance at our CLE sessions for young people (school teachers in particular), many of whom reported finding the presentations informative. When asked what was the best thing about our presentation, respondents noted:<sup>97</sup>

#### IN THEIR OWN WORDS:

*"All inform [sic] today was definitely useful for the students. Even though some topics were quite abstract to students (NEP [sic], awards and agreements), student engagement was still good."*

*"Giving students ideas about employment law."*

<sup>92</sup> General Youth Survey (see Appendix 2A).

<sup>93</sup> 100% of respondents thought information provided in school/university/TAFE classes would be very helpful and 90% of respondents through that information provided during transition-to-work programs would be very helpful.

<sup>94</sup> General Intermediary Survey (see Appendix 2B).

<sup>95</sup> CLE Feedback Survey (see Appendix 2H).

<sup>96</sup> Ibid.

<sup>97</sup> Intermediary CLE Survey (see Appendix 2I).

### Increased confidence in understanding work rights and responsibilities

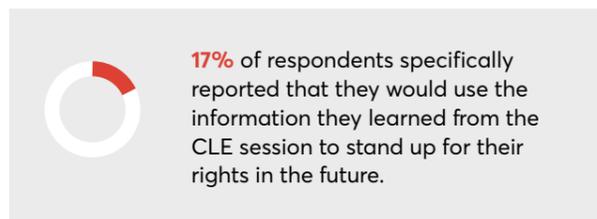
On average, we saw an increase in participants' understanding of their work rights and responsibilities as a result of our CLE presentations.<sup>98</sup>



### Increased confidence and preparedness to stand up for work rights

*'I will make sure i pursue my rights at work, stand up for myself and others and contact [sic] westjustice when as a first option [sic] when work problems arise'.<sup>99</sup>*

The young people we surveyed indicated that our CLE presentations assisted their confidence and preparedness to exercise their rights.<sup>100</sup>



### Understanding where to go for help

Our CLE presentations also assisted young people to identify where to go for help if they encounter legal issues at work.<sup>101</sup>



### Building the capacity of intermediaries

*'Really like the professional support. It will be good to be able to refer students to Westjustice'.<sup>102</sup>*

We delivered **21** professional development sessions to approximately **210** intermediaries. This also included **4** legal health check training sessions to a total of approximately **75** intermediaries.

When we asked intermediaries what the best thing about our presentation was, the common feedback included:<sup>103</sup>

1. that the information was presented in a way that was easy to understand: *Very clear and informative*
2. learning about young people's work rights: *[the best thing was] Gain[ing] more knowledge and awareness about young people's work rights;*
3. the amount of information covered: *lots of info - learnt lots.*

Participants felt that the presentation could have been improved by allowing more time in the session (including to allow more interaction and group discussion) and more examples and case studies. However, 24% of respondents felt that nothing about the presentation needed to be improved.<sup>104</sup>

We also created **8** factsheets for teachers and wellbeing staff within our school lawyer schools regarding specific employment topics and we received general feedback that the factsheets were well received.

### Supporting young people with their work rights

*'[The presentation was] easy to understand and very helpful for a newer mentor about to embark on assisting my mentee in finding work'.<sup>105</sup>*

Both the intermediaries who attended CLE for young people and those who attended a professional development session reported feeling better equipped to identify workplace issues experienced by young people and provide assistance.

Intermediaries who attended a CLE presentation for young people <sup>106</sup>	Intermediaries who attended a professional development presentation <sup>107</sup>
100% of respondents agreed ( <b>50%</b> strongly agreed) that following a CLE session for young people, they felt more equipped to notice legal issues experienced by the young people they work with.	100% of respondents agreed ( <b>57%</b> strongly agreed) that following the professional development session, they felt more equipped to notice legal issues experienced by the young people they work with.
100% of respondents also agreed ( <b>50%</b> strongly agreed) that after the session they felt more confident in assisting young people who are having work related issues.	100% of respondents also agreed ( <b>60%</b> strongly agreed) that after the session they felt more confident in assisting young people who are having work related issues.

### Understanding where to go for help

100% of the intermediaries we surveyed who attended one of our presentations agreed that after our presentation they felt more confident in referring young people with work rights issues to the appropriate legal service.<sup>108</sup> For example, some participants stated:

*[The best thing about the session was] Understanding the types of services WestJustices provided and level support they can assist clients with [sic].<sup>109</sup>*

*[The best thing about the presentation was] Able to refer young people for any employment law questions.<sup>110</sup>*

### Recommendation 5: Increase funding for CLCs to deliver targeted employment-related CLE

Funding for CLCs should be increased to enable continued delivery of targeted work rights and responsibilities education to young people, including:

1. education programs for young people;
2. education programs for youth workers; and
3. the rollout of other educational materials such as self-help factsheets and social media information campaigns.

<sup>98</sup> CLE Feedback Survey (See Appendix 2H).

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Intermediary PD Survey; see Appendix 2J.

<sup>103</sup> See Appendix 2J.

<sup>104</sup> See Appendix 2J.

<sup>105</sup> Intermediary PD Survey (see Appendix 2J).

<sup>106</sup> Intermediary CLE Survey (see Appendix 2I).

<sup>107</sup> Intermediary PD Survey (see Appendix 2J).

<sup>108</sup> Intermediary CLE Survey (see Appendix 2I); Intermediary PD Survey (see Appendix 2J).

<sup>109</sup> Intermediary CLE Survey; see Appendix 2I.

<sup>110</sup> Intermediary PD Survey; see Appendix 2J.

### Limitations of the YEP CLE programs: work rights training must be embedded into existing programs

#### Low appetite for virtual service delivery during COVID-19

The COVID-19 lockdown measures, including the transition to virtual service delivery, and home-learning for school students, resulted in a number of obstacles for CLE delivery.

For the better part of 2020, although we were able to transition to online CLE delivery, there was a low appetite for these types of sessions. Consultation with intermediaries (specifically, school teachers and staff at youth organisations) highlighted the existence of 'Zoom fatigue'.

#### Low appetite for work rights and responsibilities training outside of existing programs

While we heard from intermediaries that there was a need for our CLE; overall interest and attendance was not high when our presentations were offered in an extra-curricular context. A total of 9 participants attended our optional work rights sessions.<sup>111</sup> This was consistent with evidence collected through our focus groups. One intermediary commented:<sup>112</sup>

 **'Most people are telling us they don't want more training to get a job opportunity...young people aren't going to go along to a workers rights seminar, and it's something that needs to be embedded in the curriculum.'**

### Work rights and responsibilities should be embedded into schools and other educational institutions

All our young focus group participants agreed that it would be extremely helpful to learn about work rights and responsibilities at school.

*Definitely, if it was taught at school, everyone would have to listen. One of the topics we should do is work rights.*<sup>113</sup>

This idea was readily supported in both of our consultations with intermediaries. One community organiser emphasised the need for work rights and responsibilities training to be embedded at a tertiary level as well:

*A lot of university courses have work-readiness courses, or placement stuff for their students. A fundamental part of that should be teaching people what their work rights are.*<sup>114</sup>

The young people we spoke to confirmed this sentiment. In particular, **73%** reported that they would find information sessions during school, university or TAFE classes 'very helpful' to better understand their work rights and responsibilities.<sup>115</sup>

#### Recommendation 6: Embed work rights and responsibilities training into educational institutions

The Victorian Government should embed work rights and responsibilities education into the secondary school curriculum, to ensure that young people are ready for work.

The Victorian Government should introduce a mandatory work rights education module into orientation programs (at a minimum) for TAFE, university and other private tertiary education programs, to ensure that all young people can understand and take action on the basis of their workplace rights and responsibilities including to secure their legal entitlements and stay in work.

### 4.3.2. Building sector capacity and advocating for systemic change

Through our YEP steering committee, we facilitated and built upon cross-sector relationships between the following organisations: Victorian Equal Opportunity and Human Rights Commission; Youth Affairs Council of Victoria; WorkSafe; YWC; Victorian Council of Social Service; Youth Now, YLab, and Westgate Community Initiatives Group.

In addition, drawing on the themes and trends identified through the YEP legal service, and data collected from our CLE activities, WEstjustice has advocated for systemic change for young workers by:

1. leading a coalition of 17 CLCs to seek to influence the federal government's industrial relations reform agenda; and
2. making the following law reform submissions, which draw on data and case studies collected from the YEP:
  - *Submission to the Senate Select Committee on Job Security, March 2021*
  - *Submission to the Senate Standing Committee on Education and Employment 'Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2021', WEstjustice and coalition of CLCs, January 2021*
  - *Submission to the Victorian Government Youth Strategy, January 2021*
  - *Further Submission: Report of the Inquiry into the Victorian On-Demand Workforce, Joint Submission by WEstjustice, Springvale Monash Legal Service and Jobwatch, October 2020*
  - *Submission to the Senate Select Committee Inquiry into Temporary Migration, Joint Submission by WEstjustice, Springvale Monash Legal Service and Jobwatch, July 2020*

Key recommendations in these submissions include the following:

1. protecting precariously engaged young workers by:
  - introducing fair definitions of 'employee' and 'casual employee' into the FW Act; and
  - limiting existing defences to sham contracting.
2. reducing exploitation through:
  - legislative amendments to increase accountability and improve compliance in supply chains and in franchise arrangements; and
  - increasing the use of procurement policies, proactive compliance deeds and industry codes.
3. increasing funding for community-based legal assistance and education, including a comprehensive worker rights education plan.

<sup>111</sup> However, these were all virtual presentations which were offered during COVID-19.

<sup>112</sup> Participant of Intermediary focus group 1.

<sup>113</sup> School-aged focus group participant.

<sup>114</sup> Intermediary focus group 2 participant.

<sup>115</sup> General Youth Survey (see Appendix 2A).



## 5 LOOKING FOR WORK

### SNAPSHOT

- As a starting point, it is difficult for young people to commence their employment journeys. Unemployment is a significant issue for young people, due to:
  1. a lack of understanding of workplace laws and processes;
  2. a lack of experience to get a foot in the door to the labour market;
  3. a lack of available work; and
  4. discriminatory practices by employers.
- Our research and activities found that education on workplace laws and processes can help young people feel prepared for work.
- Although employment services providers exist to help disadvantaged young job-seekers to find work, improvements are required to make sure that their specific needs are met, and to protect against exploitative work arrangements. These improvements include:
  1. embedding work rights and responsibilities training (for job-seekers and job officers) into all employment services programs; and
  2. providing extensive post-placement support to job-seekers, including facilitated assistance to resolve workplace disputes.

### 5.1 The problems

#### 5.1.1. Unaware and unprepared



**'I have previously found difficulties in finding a job. For some places, I didn't have enough experience, they saw my age a limitation, my cultural identity played a role in some application processes as well- in a negative way.'**<sup>116</sup>

Young people are disproportionately affected by unemployment as compared to other age groups.<sup>117</sup> Youth unemployment has been a persistent problem for more than a decade, being one of many impacts of the GFC.<sup>118</sup>

Even prior to COVID-19, the youth unemployment rate for young people was 11.8%, compared to a general unemployment rate of 5.2%.<sup>119</sup> However, COVID-19 took this to a new level with unemployment rates reaching as high as 16.4% in June 2020 (the highest it has been in 23 years).<sup>120</sup>

As at December 2020, youth unemployment remained concerningly high at 15.6% – higher than unemployment rates following the GFC. Population data shows that younger people, and people residing in the Melbourne's West are (and will continue to be) disproportionately affected by unemployment.<sup>121</sup>

Enquiries conducted through our surveys, focus groups and casework trends highlighted unemployment as a key issue for young people in Melbourne's West.



**68%** of respondents who attended a CLE did not have a job at the time of attending our presentation.<sup>122</sup>



**35%** of young people we surveyed said they had never had a job.<sup>123</sup>



**42%** of YEP clients were unemployed at the time of coming to seek our assistance.

Key barriers to young people obtaining work include the following:

1. lack of understanding of employment laws, processes and skills;
2. lack of experience;
3. lack of available work; and
4. discrimination.

#### Lack of understanding of workplace laws, processes and skills



**'We don't even know how to do our taxes, because school doesn't teach us that.'**<sup>124</sup>

There is a common sentiment among young people that school fails to adequately prepare them for work.<sup>125</sup> Secondary school curriculums around Australia focus heavily on academic disciplines rather than teaching essential skills relevant to employment.<sup>126</sup> This includes proficiencies relevant to applying for jobs, such as writing resumes, cover letters and interview techniques,<sup>127</sup> as well as soft skills for employment, such as self-management, planning and organisational skills.<sup>128</sup>

In addition, our research found that a lack of understanding of key workplace laws and processes – which is also not a formal part of the school curriculum – leaves young people unprepared to successfully enter the workforce.

One employment services provider told us: 'a lot of young people looking for a job don't understand the full commitment of what is expected of them',<sup>129</sup> noting many young people lack even a basic understanding about the extent to which they need to engage with the job-seeking process.

This is particularly the case for children of immigrant families. As one intermediary told us:<sup>130</sup>

*For people who come from immigrant backgrounds. A lot of us didn't have parents that worked. You don't have those networks, you don't have those people in your immediate community. A lot of other people, you've got parents, aunts and uncles that worked 30-40 years in this country and you at least have that information. Whereas a lot of young people we work with, don't have those networks in their community. Especially if they're from public housing for example, where unemployment is at 60 or 70%....A lot of them didn't grow up in a household where their parents woke up and went to work in the morning...so one thing I see, and I work with much younger people...is if someone makes an appointment at 9 o'clock in the morning, that's the most ridiculous thing to them...[they don't understand] that's how the rest of the world works.*

In this context, knowledge of employment laws is also a key aspect of job-readiness. As another intermediary pointed out:

*One of the key issues from the young people that we work with is the work-readiness part of the employment law. Not understanding things like coming to work on time or their responsibilities in the workplace. That is one of the key things when potentially you don't have the social or family networks to get that information in the home and you're not provided it in a school or education setting.<sup>131</sup>*

<sup>116</sup> General Youth Survey participant; see Appendix 2A.

<sup>117</sup> Cairnduff, Fawcett and Roxburgh (n 62) 251–255.

<sup>118</sup> See e.g. Social Ventures Australia (n 17) 3.

<sup>119</sup> Report of the Inquiry into the Victorian On-Demand Workforce (n 79) 42.

<sup>120</sup> BSL (n 14) 1.

<sup>121</sup> Local Jobs Plan Western Melbourne Victoria (n 28).

<sup>122</sup> CLE Pre-poll (see Appendix 2G).

<sup>123</sup> General Youth Survey (see Appendix 2A).

<sup>124</sup> Post-secondary focus group participant, male, 19.

<sup>125</sup> Maheen and Milner (n 15) 7; Shergold et al (n 39) 35.

<sup>126</sup> Shergold et al (n 39) 35.

<sup>127</sup> Maheen and Milner (n 15) 9.

<sup>128</sup> Shergold et al (n 39) 35.

<sup>129</sup> This comment was made during a semi-structured interview.

<sup>130</sup> Intermediary focus group 2.

<sup>131</sup> Intermediary focus group 1.

## Lack of experience

Insufficient experience can make it difficult for young people to get a 'foot in the door' to the labour market.<sup>132</sup>

This was a common issue discussed in our focus groups with young people, particularly the older job-seekers, who noted:<sup>133</sup>

*They just want someone with experience and I don't have any.*

*You can't really have experience if they don't hire you.*

*We have a lot of time and health, but we don't have the experience.*

*It's pretty hard, because most businesses already have a team and they're looking for people with years of experience.*

## Lack of available work

As a result of COVID-19, and the consequential rise in unemployment rates among young people, a lack of available work has prevented many young people from accessing employment.<sup>134</sup>

22% of respondents who attended a CLE reported experiencing particular difficulties finding work as a result of COVID-19.<sup>135</sup>

A number of young people we surveyed also reported difficulties in finding work as a result of COVID-19.<sup>136</sup> As one participant stated:

*[I have] Found it more difficult to find work as many people are unemployed so there's a lot of competition"*<sup>137</sup>

## Discrimination

 **'One kid said to me... "I would never get a job – look at the way I look"'**<sup>138</sup>

Age discrimination in employment is a common problem for young workers under the age of 30 years old, but is particularly prevalent at the recruitment stage for workers under the age of 22.<sup>139</sup> This disadvantage can be compounded by other inequalities leading to exclusion from the labour market, particularly for young people from CALD backgrounds and young people with disabilities.

## Young people from CALD backgrounds

Young people from migrant and refugee backgrounds face higher rates of unemployment and underemployment than other Victorian young people.<sup>140</sup>

Similarly, a recent study of young people from CALD backgrounds in Melbourne's West highlighted English language and communication skills as key challenge for these young job-seekers in finding work.<sup>141</sup> This was evident in our consultations with intermediaries. One intermediary noted that for African Australian young people: *'one of the common issues that people bring up in conversations is communication skills [in the job selection process].'*<sup>142</sup>

Racial prejudice and racial discrimination have also been identified as barriers for young job-seekers from CALD backgrounds in obtaining work.<sup>143</sup> As intermediaries told us:<sup>144</sup>

*A lot of the reason that [young people we work with] feel like they can't get entry into the workplace is because of the colour of their skin and because of their African heritage....this is the most common one we get across the board.*

*On top of that is not having the confidence of approaching situations that anglo young people just do...because those young people don't see people in [workplaces] that they relate to...they don't feel comfortable walking in there and giving a resume because it's not that welcoming an environment.*

## Young people with disabilities

Young people with disabilities experience particularly high rates of unemployment, often struggling to find work, particularly due employers lacking awareness and pro-active disability action plans.<sup>145</sup>

A number of intermediaries we surveyed highlighted disability discrimination as being a key barrier to finding work for the young people they worked with:<sup>146</sup>

*Due to the very inflexible and toxic culture of many entry-level positions, as well as discrimination, young people with disabilities do not get the support they need at work. They struggle to find any work at all.*

*Some young people with disabilities that I have supported have advised they may not disclose their disability when applying for jobs as they worry about being discriminated.*

## 5.2 Current approaches

### 5.2.1. Assisted pathways to employment

In recognition of the need to support young people into employment, particularly in the COVID-19 recovery phase, there are a plethora of employment services programs for young people who are living in the Melbourne's West. These include:

1. formal government-supported programs, which offer financial incentives to employers, such as at the:
  - federal level: jobactive;<sup>147</sup> Youth Transition Support services,<sup>148</sup> and TtW;<sup>149</sup> and
  - State level: the Jobs Victoria Employment Network (JVEN)<sup>150</sup> (which has now become JVES); and
2. additional community-based programs, which service targeted young cohorts who live in particular areas and/or are from particular cultural or ethnic backgrounds.

Common features of these programs include: assisting job-seekers to develop practical job-seeking skills (such as resume writing and interview techniques); connecting job-seekers to occupation or industry-specific education or training, and liaising directly with employers or connecting job-seekers with employment opportunities.

However, while most programs provide extensive training on job skills, there is no uniform work rights and responsibilities education component built into these programs. In addition:

1. there is little uniformity across services providers, some of which are limited in their effectiveness; and
2. employment services providers are limited in their ability to protect young people against exploitation.

### Varied offerings and effectiveness

While employment services providers perform a vital function, it is recognised that a number of the programs have limited effectiveness for the most vulnerable cohorts.

<sup>133</sup> Post-secondary focus group participants.

<sup>134</sup> Youth Affairs Council Victoria (n 11) 8.

<sup>135</sup> CLE Pre-poll (see Appendix 2G).

<sup>136</sup> General Youth Survey (see Appendix 2A).

<sup>137</sup> Ibid.

<sup>138</sup> Intermediary focus group 2.

<sup>139</sup> Alysia Blackham, 'Young Workers and Age Discrimination: Tensions and Conflicts' (2019) 48(1) *Industrial Law Journal* 1, 5.

<sup>140</sup> Centre for Multicultural Youth, *Locked down and Locked out: The Impact of COVID-19 on Employment for Young People from Refugee and Migrant Backgrounds in Victoria* (Report, 2020) <<https://www.cmy.net.au/wp-content/uploads/2020/06/Locked-Down-and-Locked-Out-Infographic-June-2020-final.pdf>>; Wyn, Khan and Dadvand (n 32) 37–38.

<sup>141</sup> HealthWest Partnership (n 132) 15–16.

<sup>142</sup> Intermediary focus group 2 participant.

<sup>143</sup> HealthWest Partnership (n 132) 25; Centre for Multicultural Youth, *Everyday Reality: Racism and Young People* (Report, December 2014) 12–13 <[https://www.cmy.net.au/wp-content/uploads/2020/06/EverydayReality\\_Report.pdf](https://www.cmy.net.au/wp-content/uploads/2020/06/EverydayReality_Report.pdf)>; Wyn, Khan and Dadvand (n 32) 36.

<sup>144</sup> Intermediary focus group 2 participant.

<sup>145</sup> Lisa Stafford et al, 'Why One Size Fits All Approach to Transition in Disability Employment Services Hinders Employability of Young People with Physical and Neurological Disabilities in Australia' (2017) 59(5) *Journal of Industrial Relations* 631, 637.

<sup>146</sup> General Intermediary Survey (see Appendix 2B).

<sup>147</sup> jobactive is Australia's mainstream employment service: Miranda Cross, *Who Gets What Where: Review of Government-Funded Youth Employment Programs across Australia* (Brotherhood of St Laurance, 2020) 16 <[http://library.bsl.org.au/jspui/bitstream/1/11882/1/Cross\\_Who\\_gets\\_what\\_where\\_youth\\_employment\\_programs\\_Australia\\_2020.pdf](http://library.bsl.org.au/jspui/bitstream/1/11882/1/Cross_Who_gets_what_where_youth_employment_programs_Australia_2020.pdf)>.

<sup>148</sup> Youth Transition Support services is a federal program available to support young refugees and vulnerable migrants in education and employment: 'Youth Transition Support Services', *Department of Home Affairs* (Web page) <<https://immi.homeaffairs.gov.au/settling-in-australia/support-for-young-refugees/youth-transition-support-services>>.

<sup>149</sup> TtW is a Commonwealth-funded 12 month program for young people aged 15 – 21 years who are early school leavers, have not been engaged in employment or education for 3 months and not eligible for income support, or who are participating in stream C of jobactive: *Transition to Work Interim Evaluation Report* (8 November 2019) 17–18 <<https://www.dese.gov.au/transition-work/resources/transition-work-interim-evaluation-report>>.

<sup>150</sup> JVEN assists disadvantaged job-seekers who are either long term unemployment (more than 6 months) and ineligible for Commonwealth support, or who have complex barriers to employment. Its key goal is 'sustainable employment outcomes' (defined as being at least 30 hours per week for a minimum of 26 weeks): 'Jobs Victoria Employment Network: Stage 2 Guidelines', *Business Victoria* (Web page) <[https://business.vic.gov.au/\\_data/assets/pdf\\_file/0004/1458121/JVEN-Stage-2-Program-Guidelines.pdf](https://business.vic.gov.au/_data/assets/pdf_file/0004/1458121/JVEN-Stage-2-Program-Guidelines.pdf)>.

## Commonwealth programs

A review of Commonwealth employment services programs conducted by Melbourne University found that they had limited effectiveness for disadvantaged job-seekers with complex barriers to employment.<sup>151</sup> In particular, the:

1. jobactive program adopts a 'work first' approach, which prioritises placement in the labour market rather than the quality of the work.<sup>152</sup> The result is: high caseloads (that can overlook the needs of disadvantaged job-seekers) and post-placement support, which is largely motivated by receiving outcome-payments rather than ensuring ongoing employment for the young job-seeker;<sup>153</sup> and
2. TtW provides for more targeted pre-employment support for young people and seeks to connect young job-seekers with local community services. However, this program still frames youth unemployment as an individual problem, rather than explicitly acknowledging the structural factors causing youth unemployment, which can exacerbate existing inequalities.<sup>154</sup>

The TtW is in the process of being renewed and revised. Proposed amendments include: the extension of service duration from 18 months to a possible 24 months for job-seekers with complex non-vocational barriers; increased eligibility for young people who have complex non-vocational barriers to work, and a performance framework which will seek to foster continuous improvement rather than being linked to 12 week outcome targets.<sup>155</sup>

## Victorian Programs

An evaluation of the JVEN program found that its ability to place job-seekers in sustained employment beyond 26 weeks 'has been on par with, or exceeding, that of comparable Commonwealth and State programs.'<sup>156</sup> Limitations to the program included structural issues (such as block training) and personal issues (such as health conditions) preventing job-seekers from meeting the 26-week employment outcomes after placement.<sup>157</sup>

The JVEN has recently been upgraded to JVES. Key changes include the:

1. introduction of 'specialist' services (in addition to generalised 'core' services) in each region to meet the needs of specific groups of job-seekers who face barriers to employment. Apart from Aboriginal and Torres Strait Islander communities, priority groups for specialist services have not yet been identified for each region;<sup>158</sup>

2. the creation of a 'charter of service,' designed at achieving more consistent service standards across employment service providers;<sup>159</sup> and
3. 'flexible pathways funding' to support job-seekers with complex and/or significant barriers to employment, which includes additional funding of up to \$3,000 per person for up to 10% of job-seekers requiring additional support.<sup>160</sup>

## Limited protections against exploitation

 **'There is a challenge between ensuring the employer is doing the right thing and getting the job done to get employees placed in work.'**<sup>161</sup>

While a key criterion of eligibility for various wage subsidy arrangements and rebates is that the employer meets all relevant employment standards and pay rates, there are limitations on the extent to which their compliance can be monitored and enforced.

We interviewed a number of staff within employment services providers in Melbourne's West, who acknowledged that modern awards and enterprise agreements are often complex and it can be difficult for job officers (who are not legally trained) to identify the appropriate classification and corresponding pay rates for young job-seekers. This is compounded by a lack of sufficient resourcing and high caseloads. As one job officer noted:

*It can be quite arduous to go through Fair Work to get correct advice... there have been occasions where I have sent email to the Fair Work Ombudsman and haven't had a response for 5 days. Often on the phone lines they say they are experiencing a high volume of calls, and we don't have time to sit on the phone for hours.*

Indeed, the conditions on wage subsidy agreements do not always prevent employers from breaching their legal requirements to pay relevant legal minimum wages and entitlements. One job officer noted:

*I've seen clients who have been underpaid for over 9 years...it still happens even though there are protections in place.*

Through the YEP we identified a number of instances of employers receiving benefits from wage subsidy agreements but not meeting minimum pay rates, or not paying any entitlements at all.

## CASE STUDY: HARRY AND PRIYA

Harry and Priya were placed into jobs in a café through an employment services provider. The provider engaged in monthly 'check ins' with both the employees and the employer for the first 6 months, however, the employer issued defective payslips which didn't show the hours Harry and Priya worked on weekends, and they weren't aware of their minimum wage entitlements under the relevant Award. Harry and Priya both worked for two years on the same flat rate and did not receive penalty rates or overtime. They also weren't paid superannuation (despite superannuation being recorded on their payslips), or given a pay rise when they were promoted to managing positions. Collectively Harry and Priya are owed \$50,000 in underpaid wages and unpaid entitlements. We assisted Harry and Priya to write letters of demand to their employer, however the claim has not yet been resolved.

## CASE STUDY: MIN

Min, a young refugee, was placed by his employment services provider in casual food processing job at a vegetable wholesaler. Min was given irregular shifts over a period of two months, and was not paid at all for the work that he performed. He made multiple attempts to recover his unpaid wages from his employer, but received no response. He also contacted the employment services provider for assistance. The provider sent a single email to the employer about the outstanding pay, but then told Min they could do nothing further to assist him.

WEstjustice assisted Min by sending a letter of demand to the employer and was able to negotiate to have the employer backpay all of Min's outstanding wages and entitlements.

## Recommendation 7: Improve Fair Work Ombudsman support for employment services providers

The FWO should establish a discrete portal for employment services providers to assist in the review of employer information. This portal should include direct phone and online access and guarantee minimum response times of no greater than one business day to ensure that job-seekers do not miss out on employment opportunities.

## Recommendation 8: Fund strategic partnerships between CLCs and employment service providers to provide work rights training and post-placement support

The federal and Victorian governments should fund strategic partnerships between CLCs and employment services providers comprising;

1. targeted work rights training for job-seekers delivered by CLC lawyers as a key component of job-readiness;
2. professional development training regarding work rights and responsibilities for employment services staff delivered by CLC lawyers; and
3. direct referral pathways to CLCs for vulnerable young job-seekers who require post-employment support, advice and/or ongoing assistance in relation to workplace disputes.

<sup>151</sup> 'Jobs Victoria Employment Network Frequently Asked Questions', *Business Victoria* (Web page) <[https://business.vic.gov.au/\\_\\_data/assets/pdf\\_file/0008/1297610/JVEN-FAQS-VERSION-1.PDF](https://business.vic.gov.au/__data/assets/pdf_file/0008/1297610/JVEN-FAQS-VERSION-1.PDF)>.

<sup>152</sup> Cross (n 147) 13, 16–19.

<sup>153</sup> Katherine Moore, 'Jobactive and Young Job Seekers: Strengths, Limitations, and Suggested Improvements to Current Practices' (2019) 78(4) *Australian Journal of Public Administration* 530, 536–538.

<sup>154</sup> Cross (n 147) 31–32.

<sup>155</sup> 'Transition to Work Consultation Paper: Enhancements to TtW', *Transition to Work* (Web page) <<https://www.dese.gov.au/transition-work/resources/transition-work-consultation-paper-enhancements>>.

<sup>156</sup> The South Australian Centre for Economic Studies, *Review and Evaluation: Jobs Victoria Employment Network (JVEN) (Final Report, September 2019)* 13 <[https://jobs.vic.gov.au/\\_\\_data/assets/pdf\\_file/0006/496482/Jobs-Victoria-Employment-Network-Final-Evaluation-Report.pdf](https://jobs.vic.gov.au/__data/assets/pdf_file/0006/496482/Jobs-Victoria-Employment-Network-Final-Evaluation-Report.pdf)>.

<sup>157</sup> Ibid 33.

<sup>158</sup> Jobs Victoria, 'Jobs Victoria Employment Services: Frequently Asked Questions (FAQ)' (Web page) 4–5 <[https://jobs.vic.gov.au/\\_\\_data/assets/pdf\\_file/0009/493425/Jobs-Victoria-Employment-Services-FAQs-22-January-2021.pdf](https://jobs.vic.gov.au/__data/assets/pdf_file/0009/493425/Jobs-Victoria-Employment-Services-FAQs-22-January-2021.pdf)>.

<sup>159</sup> Ibid 4.

<sup>160</sup> Ibid 13.

<sup>161</sup> Employment services provider in one of our interviews.

## Embedding work rights and responsibilities can assist

As examples of best practice, some of the agencies we worked with over the course of the YEP have been building work rights and responsibilities into their training programs, with great success.

For example, the **Fresh Start program**, established by the WCEC has been developed in consultation with local businesses in the Wyndham area to understand key job-readiness gaps for new job starters from the perspective of employers.<sup>162</sup>

The Fresh Start program is targeted at high school students and offers a 5-day workshop during the school holidays where participants learn about key workplace expectations (such as arriving on time and appropriate and professional workplace behaviours) and learn practical skills such as communication skills, teamwork, self-care and stress management, and how to market one's skills to prospective employers. Relevantly, participants are also: educated about key employment laws relating to minimum wages, entitlements and employment contracts, and provided with overviews of common workplace policies and procedures (safety, harassment etc.). Participants then transition into WCEC's Jobs Victoria program where they are provided with support into employment. This encompasses post-employment support of generally up to 6 months after placement. One of the program staff members that we interviewed told us:

*Participants have reported feeling that they didn't just learn about work, they learned about life skills. It gave them confidence and motivation to try looking for jobs and feel like they could succeed.*

In addition, across its various employment programs, **YouthNow** directly employs young job-seekers to complete on-the-job training for periods of between 3 to 5 weeks. During that time, YouthNow is able to explain concepts such as payslips, minimum wages and associated entitlements in context and assists young people to set up superannuation funds. As one of its staff noted to us:

*It clicks. They're not sitting in a classroom, this is actually on the job and it's relevant to them...they have had enough of training, but they are more than happy to do on the job training when they're getting paid for it.<sup>163</sup>*

## 5.3 What we did

### 5.3.1. Helping young people feel job-ready



**'I will use this info for my career, This [sic] is the most important concept or skill as an employee that we need to understand'.**

The majority of our CLE participants (**39%**) said they would use the information from our presentation to assist with future jobs opportunities.<sup>165</sup> They told us they would use the information they learned:<sup>166</sup>

*To find another viable job for work elsewhere, using what I've learnt to get by.*

*To take a smart approach to getting a job.*

*When I get a job and attend an interview for a job.*

*I will further try to seek and apply for a job using the knowledge i learnt [sic] from to today's [sic] session.*

*Use it when i apply for jobs and when i get jobs.*

### Recommendation 9: Improve Commonwealth employment services programs

The federal government should review and improve its Commonwealth employment services programs, with a greater focus on meaningful and secure employment.

Suggested improvements include:

1. establishing funding structures that promote client-centred, collaborative and non-competitive practices and don't result in perverse outcomes that benefit employment services providers over job-seekers;
2. directing additional funding towards holistic services for disadvantaged job-seekers to ensure sustainable employment outcomes;
3. ensuring work rights and responsibilities training is embedded into all Commonwealth employment services programs;
4. establishing wage subsidy agreements which require employers to demonstrate pro-active compliance with relevant employment laws;
5. establishing a licensing scheme for employment services providers (similar to the licensing scheme utilised by NDIS providers) to ensure quality assurance of employment services;
6. directing additional funding towards measures that ensure all employment service providers can provide: intensive and longer-term post-placement support (including accredited training and mentoring support); facilitated assistance to resolve workplace disputes, and dedicated resources for vulnerable young job-seekers at risk of disengagement; and
7. in the tender process, prioritising employment service providers that are embedded in and connected to the local community.

### Recommendation 10: Improve Victorian employment services programs

The Victorian government should prioritise secure and meaningful employment for disadvantaged young job-seekers through the new Jobs Victoria Employment Services scheme. Suggestions include:

1. setting out a requirement in the new 'charter of service' for employment services providers to:
  - embed work-rights and responsibilities training and education as a key component of job readiness;
  - provide ongoing post-placement support to young job-seekers (including accredited training and mentoring support); and
  - provide facilitated assistance to resolve workplace disputes;
2. designating young jobs seekers from a CALD background and/or young job-seekers with disabilities in Melbourne's West as priority groups for specialist services.

<sup>163</sup> Intermediary focus group 1.

<sup>164</sup> CLE Feedback Survey (see Appendix 2H).

<sup>165</sup> Ibid.

<sup>166</sup> Ibid.



## 6. AT WORK

### SNAPSHOT

- Upon entering the labour market, young people face further multi-faceted issues. Young workers:
  1. are commonly subject to one or more forms of **workplace exploitation**. This includes non compliant conduct by employers as well as legally permissible exploitation which is perpetuated through expired enterprise agreements and junior pay rates; and
  2. encounter **multiple barriers to exercising their legal rights** and/or **accessing their legal entitlements** at work. These barriers include a fear of being punished for complaining and lack of knowledge of the rights and options available to them to respond to poor treatment.
- Legislative reform and enhancements of the FWO's function as regulator are needed to protect against the exploitation of young workers.
- Although there are several youth-focussed community legal services available to help young workers exercise their rights, these can sometimes be limited in their reach and accessibility.
- Additional barriers exist to young people seeking legal help, including because they are unaware of the existence of free legal advice and do not trust lawyers and/or are unaware of legal processes (e.g. often wrongly assuming that all legal claims will end up in court).
- Our research and activities demonstrated that embedded and integrated legal services and targeted CLE can help break down the barriers to young people accessing legal services. Recurrent funding for these programs should be provided by the federal and Victorian governments to ensure young people can access their legal rights and equal opportunity in the workplace.

### 6.1 The problems

#### 6.1.1. Exploited and undervalued

 '[M]y manager tried to make me do unpaid work. and kept on blaming every order on me. and yelling [sic]'.<sup>167</sup>

##### Exploitation

There is ample evidence regarding the vulnerability of young Australian workers, who are statistically more likely to be exploited in the workplace due to such factors: as a lack of awareness of workplace rights; the prevalence of casualised work, and high rates of unemployment.<sup>168</sup> Some of the most prevalent issues include the following:

- Wage theft.
- Unpaid work.
- Health and safety issues.
- Sexual harassment.
- Discrimination.

##### Wage theft (underpayment of wages and entitlements)

Wage theft is a common occurrence for young workers.<sup>169</sup> Research conducted by the YWC identified that almost 1 in 5 young workers were not paid the statutory minimum wage and less than half of workers were paid the penalty rates to which they were entitled.<sup>170</sup>

Wage theft was by far the most significant issue facing clients of the YEP.



## \$230,000

A conservative estimate indicates that YEP clients were collectively owed more than **\$230,000** in unpaid wages and entitlements.

Consistent with this, our survey of young people also found that:<sup>171</sup>



##### Unpaid work

Participation in unpaid work is on the rise and is increasingly being used as a means for young job-seekers to compete for work; individuals are therefore feeling pressured to participate in unpaid work more frequently and for longer periods of time.<sup>174</sup> This has been evident in the overrepresentation of young people in unpaid trials, internships and work experience.<sup>175</sup> In addition, it is common for young people to work unpaid training shifts or other periods of unpaid work.<sup>176</sup>

Our research confirmed that unpaid work is a prevalent issue for young workers in Melbourne's West:<sup>177</sup>



In addition, some of our YEP clients were asked to undertake significant periods of unpaid training, ranging from multiple shifts up to months.

### CASE STUDY: DILUSHI

Dilushi found a job working as a sales agent in real estate. Upon starting she was told that she would first have to undergo 'training' before she could go on the payroll. When Dilushi came to see WEstjustice for assistance, she had done 2 months of 'training' with no payment at all and had been living off Centrelink. WEstjustice provided Dilushi with advice on her rights to payment and her options for recourse, however Dilushi opted not to take any further action because she was worried about losing her job and damaging her career prospects if she complained.

<sup>167</sup> General Youth Survey participant, see Appendix 2A.

<sup>168</sup> Cavanough and Blain (n 83) 20; Bright, Fitzpatrick and Fitzgerald (n 83).

<sup>169</sup> Keelia Fitzpatrick, 'Wage Theft and Young Workers' in Andrew Stewart (ed), *The Wages Crisis in Australia: What It Is and What to Do about It* (University of Adelaide Press, 2018) 174 <<https://www.adelaide.edu.au/press/titles/wages-crisis/>>.

<sup>170</sup> Bright, Fitzpatrick and Fitzgerald (n 38) 5.

<sup>171</sup> General Youth Survey (see Appendix 2A).

<sup>172</sup> Respondents were asked 'how much are you paid per hour?' in relation to their current or most recent job. 32 young people responded to this question. We compared their hourly pay rate with the 2020 minimum wage order, including (where relevant) junior pay rates and casual loading.

<sup>173</sup> We note that it is possible that this high number may be because some respondents mistakenly reported being engaged on a part-time basis, rather than on a casual basis: see page 44.

<sup>174</sup> QUT Business School, *Submission No 7 to Senate Select Committee on the Future of Work and Workers*, Parliament of Australia (January 2018) 7.

<sup>175</sup> See generally Andrew Stewart and Rosemary Owens, *Experience or Exploitation: The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods in Australia* (Report for the Fair Work Ombudsman, January 2013).

<sup>176</sup> YWC, 'Young Workers Snapshot: The Great Wage Rip-Off,' Melbourne, 2017, 17.

<sup>177</sup> General Youth Survey (see Appendix 2A).

## Health and safety issues

Young people are often asked to do things at work that make them feel unsafe, but are also likely to underreport safety issues at work.<sup>178</sup> A recent social experiment conducted by Worksafe with a group of young people age 18-25 years found that 91% of participants said they would be willing to work in unsafe working conditions.<sup>179</sup>

Young workers are especially vulnerable to workplace injury. Statistics released by Worksafe showed that 49 young people aged 15-24 were injured every week in Victoria between April 2015 to March 2016.<sup>180</sup>

Young people reported concerns about health and safety in our survey.<sup>181</sup>

 **33%** of respondents said that they or someone they knew had been injured at work.

 **23%** of respondents said they or someone they knew had been forced to do unsafe work.

 **19%** of respondents reported that they had been bullied at work.

Young people in our focus groups also raised safety concerns as a key issue.

For the **school-aged participants**, a common safety issue in the workplace concerned verbal harassment from customers in the service industry:<sup>182</sup>

*I know quite a couple of kids say they get annoyed at customers yelling at them for stuff they didn't really do, or like something they can't help.*

*They kind of take it out on you when it's not your fault...you're just a junior, you're just a casual, you don't run it...and the customers just take it out on you because you're the person that they're seeing.*

The **older participants** cited a lack of sufficient safety training and the provision of inadequate PPE as key safety concerns:<sup>183</sup>

*'I didn't really have any training. They just left me to do [the job] by myself. The first day, I had someone showing me around, and then the next day, there was nobody there.'*

*'He made me work heights without the proper ppe first of all. Second, he doesn't make me wear the safety things. So there were safety rules but he didn't give me the gear'.... I wasn't too scared, I didn't know....I was a bit suspicious but I didn't know the rights.*

Health and safety issues were not as common for clients of the YEP.

 Only **2%** of clients complained of occupational health and safety issues, and we assisted **6%** of clients with WorkCover claims.

 Only **9%** of clients reported having been bullied at work.

However, a number of YEP clients experienced significant injury at work as a result of insufficient (or non-existent) safety training, policies or procedures, and their injuries were handled extremely poorly by their employers.

## CASE STUDY: JOSE

Jose was working as a kitchen hand in a restaurant in the CBD. He was paid \$15 per hour in cash. He badly sliced open his hand when taking out a bag of rubbish that had been filled with broken glass. Because he was not being paid 'on the books', the head chef took him to hospital and paid \$500 in cash for Jose to be admitted. However, Jose ended up needing surgery and incurred a hospital bill of \$2000. Jose gave the hospital his employer's details, however the restaurant closed down and Jose's employer refused to pay. When Jose came to see WEstjustice, the hospital was seeking to recover the cost of the hospital bills from Jose directly. We assisted Jose to make a Workcover claim and provided a referral to a personal injury lawyer to speak to the hospital on Jose's behalf to confirm that Jose shouldn't be liable for the hospital bill.

## CASE STUDY: CECILIA

Cecilia was asked to do a lot of heavy lifting as part of her casual hospitality job, however she was not provided with appropriate training on how to do this safely. As a result, Cecilia injured her wrist and required time off. Cecilia obtained a certificate of capacity from her doctor stating that she should be moved to light duties to not aggravate the injury further. Cecilia's employer did not accommodate these adjustments and Cecilia's injury worsened requiring her to take more time off as a result.

Eventually Cecilia was dismissed; her employer told Cecilia she needed to 'concentrate on getting better', and took her off the roster indefinitely.

We assisted Cecilia to file a WorkCover claim for her injury and seek reimbursement of her medical expenses and weekly payments for time spent off work.



<sup>178</sup> L Clarkson et al, 'Young, Vulnerable and Uncertain: Young Workers' Perceptions of Work Health and Safety' (2018) 61(1) Work 113, 114 ('Young, Vulnerable and Uncertain'); Bright, Fitzpatrick and Fitzgerald (n 83).

<sup>179</sup> 'Unsafe Is Always Unacceptable', WorkSafe Victoria (Web page, 20 May 2021) <<https://www.worksafe.vic.gov.au/unsafe-always-unacceptable>>.

<sup>180</sup> 'Young Workers Vulnerable to Workplace Injuries', WorkSafe Victoria (Web page, 21 September 2016) <<https://www.worksafe.vic.gov.au/news/2016-09/young-workers-vulnerable-workplace-injuries>>.

<sup>181</sup> General Youth Survey (See Appendix 2A).

<sup>182</sup> School-aged focus group.

<sup>183</sup> Post-secondary focus group.

<sup>184</sup> AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 29 January 2020) 167-169 <[https://humanrights.gov.au/sites/default/files/document/publication/ahrc\\_wsh\\_report\\_2020.pdf](https://humanrights.gov.au/sites/default/files/document/publication/ahrc_wsh_report_2020.pdf)>.

<sup>185</sup> Ibid 69, 92.

<sup>186</sup> This is because of reasons including a low awareness of rights and access to support and engagement in casual employment: Ibid 167-168.

<sup>187</sup> Ibid 92.

<sup>188</sup> Ibid.

<sup>189</sup> General Youth Survey (see Appendix 2A).

## Sexual harassment

The AHRC's 2018 national survey on sexual harassment in Australian workplaces found that children and young adults are inherently vulnerable to sexual harassment due to factors such as age, sex and unequal power in employment relationships.<sup>184</sup> Relevantly, the National Inquiry into Sexual Harassment in the Workplace found that:

1. young people between 18 and 29 were more likely than those in other age groups to have experienced workplace sexual harassment in the last five years;<sup>185</sup>
2. young people are less likely to report experiences of sexual harassment in the workplace;<sup>186</sup>
3. women experience higher rates of sexual harassment than men;<sup>187</sup> and
4. intersecting forms of discrimination (such as for LGBTIQ-identifying people and people of CALD backgrounds) can increase the risk of experiencing sexual harassment.<sup>188</sup>

**25%** of the young people we surveyed reported that they or someone they knew had experienced sexual harassment at work.<sup>189</sup>

On the other hand, consistent with research regarding the low formal reporting rates of sexual harassment, these claims made up only **3%** of our client casework. Noting that our survey was anonymous, it is possible that respondents felt more comfortable disclosing experiences of sexual harassment in an anonymous setting than our clients did in an appointment setting.

In addition, sexual harassment was never a standalone issue for our clients; all claims incorporated additional components of exploitation, including sham contracting, discrimination, unfair dismissal and underpayments. In the majority of cases, it was these other issues that were the basis for our clients seeking legal assistance; we did not learn about the sexual harassment until later. These experiences of sexual harassment often had a significant impact on the mental health of our clients.

## CASE STUDY: OLGA

Olga was one of the only females in her workplace. Throughout her period of employment, she was subject to repeated sexual harassment, including unwelcome comments about her looks, unwelcome sexual advances from her male colleagues and invasive questions about her sex life. She was also bullied by a male colleague who called her 'dumb c\*\*\*' and 'lazy c\*\*\*' and treated her differently to her male counterparts. When Olga finally complained to management, she was interrogated about her allegations, and then after three shifts, she was provided with no further work. However, when Olga came to WEstjustice for assistance, her complaint was one of bullying and termination. We did not learn about the sexual harassment until days after her first appointment. Olga was hesitant to make a sexual harassment complaint for fear of not being believed or having her experiences minimised.

## CASE STUDY: TANDIN

Tandin worked as a casual kitchen hand. He was forced by one of his colleagues to come out as gay in front of the rest of the kitchen staff. His colleague then made a number of sexual gestures towards Tandin and throughout the rest of the shift, repeatedly asked Tandin invasive questions about his sex life. Tandin refused to answer these questions and told his colleague to leave him alone.

At the end of Tandin's shift, he received a message cancelling his shift for the next day. He then had the rest of his shifts cancelled and was offered no further shifts by his employer. Prior to disclosing his sexuality in the workplace, Tandin had been praised for his performance. His employer also failed to pay him his outstanding wages. Tandin was forced to attend the workplace and demand to be paid; but was then paid in cash in an amount that was significantly less than his legal entitlements.

When Tandin sought WEstjustice's assistance, his initial complaints were about being fired for a discriminatory reason and being underpaid. We also helped Tandin understand that his colleague's conduct constituted sexual harassment and assisted him make a formal complaint about it.

## Discrimination

In a recent CMY study, young people in Melbourne's West discussed experiences of unfair discrimination at work.<sup>190</sup> All participants from a CALD background recounted a story of unfair treatment or discrimination; examples included being assigned difficult and/or undesirable tasks and being treated less favourably by management.<sup>191</sup>

**11%** of young people we surveyed reported experiencing some form of discrimination in the workplace.<sup>192</sup>

Similarly, **11%** of YEP clients were subject to various forms of discrimination in the workplace including:

1. colleagues and managers using offensive slurs regarding our clients' sex, sexuality and/or race;
2. employers failing to make reasonable adjustments to accommodate our clients' illness or injury; and/or
3. clients being dismissed because of injury or disability.

## CASE STUDY: HARRY AND PRIYA

Harry and Priya were subject to regular discriminatory remarks and verbal harassment from their boss. Their boss accused Priya of 'attracting the wrong type of customer' due to her ethnicity, called her the n-word in front of other employees and made comments to the effect that she smelled like curry. Priya didn't feel comfortable making a discrimination complaint because she was too worried about her boss denying the discriminatory treatment and the effect this might have on her.

Harry is gay, and their boss also regularly made comments in front of customers and other employees about Harry's sexuality, and just laughed at Harry whenever he complained about this behaviour. Harry opted not to pursue a discrimination complaint because the conduct was subtle and he thought it would be difficult to prove. However, Harry continues to suffer from anxiety and depression as a result of his boss' behaviour.

## Recommendation 11: Promote compliance with the FW Act by requiring employers to take positive steps to prevent exploitation

The federal government should amend section 550 of the FW Act to:

1. remove the requirement for actual knowledge and require directors and other accessories to take positive steps to ensure compliance within their business or undertaking; and
2. ensure that a failure to rectify a breach will also constitute involvement in a contravention.

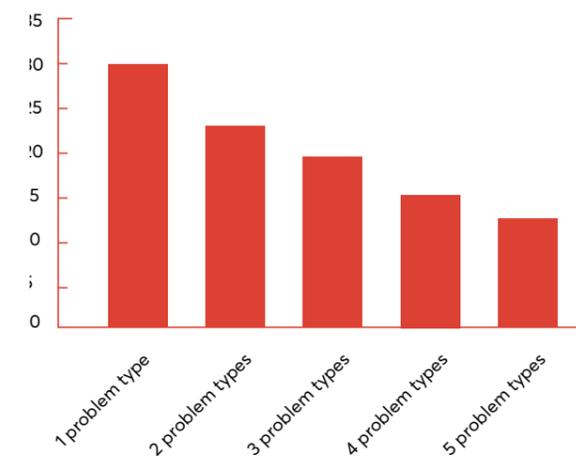
## Multiple legal issues requiring holistic services

Not only is workplace exploitation prevalent, but through our investigations we also found that it was often multi-dimensional, involving a number of interrelated legal and non-legal issues. As one intermediary noted:<sup>193</sup>

*'They've got really complex issues, it's never really just one thing. It's usually wage theft, bullying and harassment, unpaid TAFE fees, not being let off the job to go to TAFE. It's often a whole range of issues that need sorting out.'*

This was certainly a common theme for our YEP clients, the majority of whom presented with more than one different legal problem types:

## Number of employment-related legal problems



<sup>190</sup> Healthwest Partnership (n 115) 25-29.

<sup>191</sup> Ibid, 25-26.

<sup>192</sup> General Youth Survey (see Appendix 2A).

<sup>193</sup> Intermediary focus group 1.

In addition, a number of clients presented with complex multidisciplinary issues, including problem types in other areas of the law which required holistic support. **14%** of our clients had other non-employment related legal matters, with **6%** of our clients already in the criminal justice system at the time of attending an appointment.

On a number of occasions, we provided wraparound services to our clients through the YEP, to assist with non-employment issues, including debt and consumer issues and criminal charges.

## CASE STUDY: MEDHAT

Shortly after arriving in Australia, Medhat, a young international student, found a job for work as a 'personal services assistant' advertised in a social Facebook group. Soon after contacting the poster of the advertisement, he was told he had 'got the job' and was asked by his employer to 'process invoices' by accepting money into his bank account and then transferring the money elsewhere. His employer didn't pay him properly for this work, so he quit after only a few weeks. However, 18 months later Medhat was charged with a theft offence by police and learned that this 'job' was a scam was part of a money laundering scheme.

WEstjustice advised Medhat of his employment rights and entitlements, but also assisted him in defending the criminal charges. Unfortunately, the police refused to drop the charges, so we assisted Medhat to obtain a diversion, because he would shortly be applying for graduate jobs and did not want the charges to show up on a police check.

Upon receiving advice from us about his minimum entitlements, Medhat was also able to identify that he had been underpaid wages and annual leave in his role as a car detailer. We assisted Medhat to calculate what he was owed as he had not received any penalty rates or overtime during the course of his employment as a car detailer. We then wrote a letter of demand to his employer, and managed to negotiate an outcome that Medhat was happy with.

We also provided a number of warm referrals to other specialised services such as private injury firms for complex WorkCover claims and other community legal centres for complex social security law advice.

## Key affected cohorts

While young people are more likely than their older counterparts to be exploited in the workplace, there are number of cohorts who are particularly vulnerable to poor treatment in the workplace and are less likely to have access their lawful work entitlements. They include:

1. young CALD workers;
2. young women;
3. employees in the hospitality, retail and cleaning industries; and
4. employees in franchise arrangements.

## Young CALD workers

Young workers from CALD backgrounds, particularly young international students, face high levels of exploitation.<sup>194</sup>

Indeed, CALD youth were overrepresented in the YEP legal service. **53%** of our clients were born in a country other than Australia and **57%** of our clients spoke a language other than English at home. Overall, our clients spoke a total of **34** different languages and come from **24** different countries.

Our young CALD clients were much more likely to be the subject of poor treatment in the workplace.



In addition, our CALD clients were much more likely to have complex and multiple (employment-related) legal problems – **81%** of our CALD clients presented with more than one legal problem.

In a majority of cases, our clients had a very limited understanding of their workplace rights, were employed by recalcitrant employers and were owed large amounts of money. By way of example, the most significant underpayment claims tended to occur when our clients were employed in cash-in-hand arrangements. Although only **13%** of our YEP clients were employed in cash-in-hand arrangements, in **93%** of these cases our client was from a CALD background.

This was particularly so for international student clients. Temporary visas with restricted working conditions made them particularly vulnerable to exploitation. In many cases our clients reported struggling to find work and having no choice but to accept jobs paying below the minimum rates. International students accounted for the majority of cash-in-hand payment arrangements (**71%**), and sham contracting claims (**80%**).

## CASE STUDY: SIMONA

Simona is an international student living in Melbourne's West. She was casually employed at a fast food restaurant and paid \$15 per hour. Under significant pressure from her employer, she often found herself working 40-50 hours per week, and was only permitted to take time off to attend school. Simona was also given no safety training to perform her role and was asked to do work she considered unsafe, including cleaning in precarious areas on ladders, and dealing with boiling oil in the fryer. As a result of her lack of health and safety training, Simona acquired a hip injury and needed to attend regular medical appointments at her own expense. She informed us that she was one of many employees to acquire an injury at work. Simona eventually resigned because she could no longer sustain the long hours as a result of her injury.

WEstjustice helped Simona to calculate that she is more than \$55,000 in unpaid wages and superannuation. However, while Simona told us she wants to be paid her outstanding entitlements, and to seek compensation for medical expenses, she was too scared to make an underpayment or Workcover claim for fear of retribution from her employer.

This was consistent with our survey findings.<sup>195</sup>



Similarly, several intermediaries reported that workplace exploitation was more prevalent for CALD youth.<sup>197</sup> As a number of them noted:<sup>198</sup>

*In CALD communities, underpayment and apparent sham contracting are particularly common.*

*CALD communities (especially international students) in particular seem to have these issues more prevalently – for example, many international students work "cash on hand" jobs.*

<sup>194</sup> Hemingway (n 54) 234.

<sup>195</sup> General Youth Survey (see Appendix 2A).

<sup>196</sup> One respondent whom we identified as having been underpaid did not disclose their cultural identity, so it is possible that this figure may be higher.

<sup>197</sup> General Intermediary Survey (see Appendix 2B).

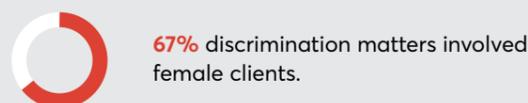
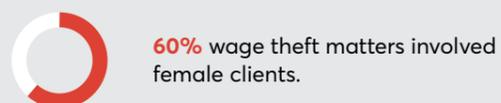
<sup>198</sup> Ibid.

<sup>199</sup> UnionsACT, Disposable: The War on Young Workers: Report into Young Workers' Experiences in ACT Workplaces (Report, August 2017) 12–13.

## Young women

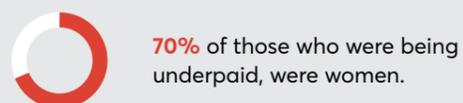
Studies have shown that young women also have poorer experiences at work, including overrepresentation in lower-paid industries and higher rates of bullying and harassment.<sup>199</sup>

Women were generally overrepresented in our YEP legal service (**60%** of our clients identified as female).



**3 out of 4** of sexual harassment matters involved female clients.

More female than male young survey respondents reported being underpaid or sexually harassed.<sup>200</sup>



**3 out of 4** of those who reported being sexually harassed were women.

## Young people at the intersections

As demonstrated throughout this report, young workers experiencing multiple forms of inequality (in particular, young women from CALD backgrounds) can face compounded disadvantage, exploitation and poor treatment at work.

## CASE STUDY: OLGA

After being subject to severe and ongoing sexual harassment at work Olga was bullied for being one of the only women in the workplace, Olga made a formal complaint about the behaviour and was asked to attend a meeting with the HR manager and the perpetrator of the bullying. However, during the meeting, the perpetrator mocked Olga's command of the English language and used the fact she was a non-native speaker to discredit Olga's allegation based on the choice of words she used. Shortly after the meeting, Olga was given no further shifts. Olga developed serious anxiety and insomnia as a result of her experiences.

### The hospitality, retail and cleaning industries

There are certain industries in which the exploitation of young people is particularly rife. In particular:

1. the hospitality industry is notorious for non-compliance with workplace laws, particularly when it comes to wage theft. A number of FWO audit and investigations have uncovered extensive underpayments in fast foods stores, restaurants, cafes and catering businesses;<sup>201</sup>
2. the YWC's research found that one third of young retail workers surveyed were not paid the minimum wage;<sup>202</sup>
3. workers in the cleaning industry are particularly susceptible to exploitation.<sup>203</sup> This is because the industry employs a high concentration of young and migrant workers, and often uses of 'fractured employment relationships,' designed to shield responsibility for wage theft, sham contracting and other exploitation.<sup>204</sup>

This was consistent with the data collected through the YEP. **39%** of YEP clients were employed in the hospitality and food services industry (e.g. fast food outlets, restaurants, cafes, pubs and hotels), **13%** were employed in the retail industry (e.g. shops and supermarkets etc.) and **8%** were engaged in the cleaning industry. These three industries were overrepresented in our clients' issues.

**Underpayments** were a significant problem in the hospitality and food services industry, accounting for **52%** of all wage recovery claims. The cleaning and retail industries each individually accounted for **13%** of wage recovery claims.

**Discrimination** was also most prevalent in the hospitality and food services industry, accounting for **26%** of all claims. The cleaning and retail industries each individually accounted for **6%** of discrimination claims.

**Bullying** was most prevalent in the hospitality and services industry (accounting for **40%** of claims)<sup>205</sup> and the cleaning industry (accounting for **20%** of claims).<sup>206</sup>

Similarly, the majority of young people we surveyed (**36%**) were employed in the hospitality and food services or retail industries (**11%**).<sup>207</sup> On the other hand, only **4%** of respondents were employed in the cleaning industry.<sup>208</sup>

### Employees in franchise arrangements

Wage theft has been a key issue in franchise arrangements for years, but it was brought to the fore in 2015 when the systematic exploitation of vulnerable workers was uncovered in the 7-eleven franchise.<sup>209</sup>

Although legislative amendments were introduced in 2017 to specifically address exploitation in franchise arrangements,<sup>210</sup> wage theft remains an issue for employees of franchise businesses.

### Direct underpayments

Direct underpayments continue to be an issue for young workers in large franchises. In October 2019, the FWO recovered \$81,638.82 in unpaid wages for 167 Subway employees, a large number of whom were young workers.<sup>211</sup> At the conclusion of its investigations, the FWO determined that 18 out of the 22 Subway franchisees involved were non-compliant with relevant workplace laws.<sup>212</sup>

Indeed, a significant proportion of our YEP clients (**37%**) were employed by franchisee stores, and of these clients, **64%** were not paid in accordance with their relevant industrial instruments.

In many of these cases, the provisions of the FW Act that are designed to hold franchisor entities accountable for the actions of their franchisees were ineffective. With a limited understanding of their work rights, our clients would rarely, if ever, be able to demonstrate that the relevant franchisor had a 'significant degree of control' over their employer within the meaning of the FW Act if they did not have our assistance. In addition, where we have assisted clients with such claims, they have seldom had access to the documents or information which could help us make out the case on their behalf.

## CASE STUDY: SHUKRI

Shukri was a casual employee in a restaurant chain. During her three years of employment, she was not paid penalty rates or overtime. We assisted Shukri to calculate what she was owed and write a letter of demand to her employer seeking to recover \$10,000 in underpaid wages. Shortly after receiving this letter, Shukri's employer went into liquidation. We contacted the head franchisor who refused to assume responsibility for the underpayment, though it was clear they exercised significant control over their franchisee stores.

WEstjustice was able to assist Shukri to make a Fair Entitlements Guarantee claim, which was accepted, and negotiated with the director of the insolvent franchisee to repay the majority of her outstanding entitlements

## CASE STUDY: HONORA

Honora, a high school student, was employed at a café franchise store. Honora was paid a flat rate with no penalty rates for weekend work. We assisted Honora by writing a letter of demand, but unfortunately, the franchise outlet where she worked went into liquidation. We contacted the franchisor, who refused to admit liability for the underpayment. Instead, the franchisor agreed to give Honora a \$300 voucher as a gesture of goodwill. Honora did not want to take court action to pursue her outstanding entitlements, so she chose to accept the voucher.

<sup>200</sup> General Youth Survey (see Appendix 2A).

<sup>201</sup> Fitzpatrick (n 169) 178.

<sup>202</sup> Bright, Fitzpatrick and Fitzgerald (n 38) 9.

<sup>203</sup> The Senate Education and Employment References Committee, *Wage Theft? What Wage Theft?! The Exploitation of General and Specialist Cleaners Working in Retail Chains for Contracting or Subcontracting Cleaning Companies* (Report, November 2018) 3.

<sup>204</sup> Ibid 3-4.

<sup>205</sup> This comprised 4 clients.

<sup>206</sup> This comprised 2 clients.

<sup>207</sup> General Youth Survey (see Appendix 2A).

<sup>208</sup> Ibid.

<sup>209</sup> Dr Tess Hardy, 'Working for the Brand: The Regulation of Employment in Franchise Systems in Australia' (2020) 48(3) *Australian Business Law Review* 234, 234.

<sup>210</sup> Division 4A was inserted into the FW Act, which provides franchisor entities liable for the contraventions of their franchisees, where the franchisor has a 'significant degree of influence or control over the franchisee entity's affairs (s 558A(2)(b)) and where the franchisor knew or could be reasonably expected to know that the contravention (or a substantially similar contravention) of the franchisee entity would occur (s 558B(1)(d)).

<sup>211</sup> FWO, *Unpaid Wages Recovered for Subway Employees* (Media release, 1 October 2019).

<sup>212</sup> Ibid.

### Recommendation 12: Increase accountability in franchises to reduce exploitation and promote compliance with the FW Act

To promote compliance with the FW Act and ensure that franchisors cannot benefit from the workplace exploitation, the FW Act should be amended to:

1. widen the definition of 'responsible franchisor entity' in s 558B of the FW Act by removing the requirement for having a significant degree of influence or control;
2. clarify the liability of franchisors and relevant third parties in s 558B of the FW Act, by providing that a responsible franchisor entity, holding company or other third party is taken to have contravened a provision of the FW Act in circumstances where their franchisee entity/subsidiary/indirectly controlled entity contravenes that provision of the FW Act, unless they can show reasonable steps have been taken to prevent that contravention (or a similar contravention) of the FW Act; and
3. clarify the 'reasonable steps' defence in s 558B FW Act to require franchisors to take proactive measures to monitor compliance, including by requiring independent monitoring of franchisees and financially viable contracts.

### Legalised wage theft through enterprise agreements

Over the last few years, a number of cases have highlighted that legalised wage theft has been occurring through (often old and nominally expired) enterprise agreements,<sup>213</sup> which permit employers to pay their employees wages that are less than the applicable modern award.<sup>214</sup> For example, an expired enterprise agreement for the Guzman Y Gomez franchise (which employs many young workers) permitted employees to be paid a flat rate with no weekend penalty rates (which would have been payable under the modern award) and only an additional \$5 per-hour-rate on public holidays (compared a rate of almost double under the relevant Award).<sup>215</sup>

This is a significant issue, noting that the Explanatory Memorandum to the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 highlighted that:

*'[a] large number of employees have their pay and conditions set by nominally expired agreements which have not been replaced...This is particularly the case for small enterprises, where over 74 per cent of agreements that nominally expired in 2018 were not replaced.'*<sup>216</sup>

WEstjustice assisted two young clients who were the victims of 'sanctioned' wage theft by virtue of being covered by nominally expired enterprise agreements.<sup>217</sup>

### CASE STUDY: LIN

Lin worked part time at a fast food franchise for two years. Her employment was subject to an enterprise agreement dating back to 2015, which had a nominal expiry date of January 2019. The enterprise agreement provided for marginally higher base rates of pay over the lifetime of the enterprise agreement, but excluded shift penalties, weekend penalties and annual leave loading. When Lin came to see us, the enterprise agreement had nominally expired and she was receiving the same base rate as the relevant modern award. However, because Lin commonly worked on Saturdays and Sundays and after 10pm on weeknights, as a result of the enterprise agreement which was still in force (and which excluded penalties), she was earning significantly less than she would have in another fast food job.

### CASE STUDY: ELIANA

Eliana, a young international student, worked casually at a barista for a chain coffee store. She was paid a flat rate which represented the base rate of pay under the relevant modern award at the time. She worked solely on weekends, often until midnight, but did not receive any extra pay for doing so. Her employment was subject to a 'zombie' agreement (made under the predecessor to the FW Act), which was approved in 2006, and expired in 2010 but was still in force because no one had applied to terminate the agreement. Eliana informed us that all her workmates were either international students or otherwise from migrant backgrounds. She was unwilling to go through the arduous process of applying to the FWC to terminate the agreement (noting that WEstjustice also did not have the resources to assist her with this process) and opted instead to quit her job and find alternative work at a higher rate of pay.

### Recommendation 13: Guarantee minimum Award rates for workers covered by nominally expired enterprise agreement

The federal government must protect workers against legalised wage theft by amending the FW Act to include a provision to the effect that, upon the nominal expiry of an enterprise agreement, the wages payable to the employee under the agreement must not be less than the wages payable under the relevant modern award, which would otherwise apply. This provision could also provide an exemption for employers who have issued a notice of intention to negotiate a replacement enterprise agreement.



### Recommendation 14: Provide an easier mechanism to terminate expired enterprise agreements

The federal government should amend the FW Act to provide an easier mechanism for terminating expired enterprise agreements in unorganised workplaces. This could include:

1. introducing a presumption of termination where the enterprise agreement fails to pass the 'BOOT test' at the time of the application for termination;
2. providing standing to unions to make an application to terminate an enterprise agreement in circumstances where members of the workplace are eligible to be members, notwithstanding that there are no present members in the workplace;
3. introducing provisions to strengthen the good faith bargaining process and ensure that employees are not disadvantaged by an imbalance in bargaining power. This could include requirements:
  - that the employer demonstrates that it has taken reasonable steps to ensure employees have genuinely understood the meaning and effect of the terms of the proposed agreement;
  - for employers to provide information to employees which notifies them of their right to attend a free conciliation hosted by the FWC; and/or
  - a requirement that a FWC conciliator facilitate negotiations where employees are unrepresented by qualified advocates such as unions.

<sup>213</sup> Enterprise agreements are agreements negotiated between employers and their employees (often with the involvement of a union) which set out minimum pay rates and entitlements for a particular business, or in many cases, a franchise. Enterprise agreements are approved by the FWC and continue to operate until they are terminated in accordance with the FW Act. Enterprise agreements supersede the terms of any applicable modern award.

<sup>214</sup> Hardy (n 209) 242. Note that s 206 of the FW Act provides that the base rate of pay under an enterprise agreement cannot be less than the base rate of pay under the modern award (if the award were to apply), however this protection does not extend to other rates of pay such as penalty rates or overtime.

<sup>215</sup> Daniel Marin-Guzman, 'Guzman y Gomez Lashed over "below-Award" Pay Deal', *Financial Review* (Melbourne, online, 7 November 2018) <<https://www.afr.com/policy/economy/guzman-y-gomez-lashed-over-belowaward-pay-deal-20181107-h17lqj>>.

<sup>216</sup> Explanatory Memorandum, *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery)* Bill 2020 (Cth) Xliv.

<sup>217</sup> This includes one client we assisted through the YEP as well as one other young client who we assisted one month prior to the commencement of the YEP.



### Youth wages perpetuate disadvantage

In addition to workplace exploitation, young people can be doubly disadvantaged by lower rates of pay. The minimum wage orders of the FWC, as well as most modern awards, set out junior pay rates for employees under the age of 21.

The rationale for junior pay rates is to assist young job-seekers to enter the labour market by providing an incentive for employers to hire young people with relatively low levels of experience.<sup>218</sup> However, it should be noted that:

1. the foundations for junior pay rates lack empirical evidence and rely on anecdotal evidence from the business community;<sup>219</sup>
2. given that junior pay rates do not reflect the level of competency or experience of individuals, they can create inequality at work;<sup>220</sup> and
3. junior pay rates fail to acknowledge that young people may also be financially responsible for supporting their families.<sup>221</sup>

In these circumstances, junior rates of pay should be abolished.<sup>222</sup>

It is counter-intuitive that while other Australian laws dictate that 18 is the age of adulthood, employment laws effectively delay 'financial adulthood' until the age of 21. Junior pay rates can be particularly detrimental for young workers who leave school before the completion of year 12 to pursue full time employment, which was the case for a number of our clients.

Indeed, many of our young clients who were subject to junior rates of pay were financially independent; were working in positions with some degree of responsibility or autonomy, and/or had several years' experience in their roles. In these cases, the unjust and prejudicial nature of junior pay rates was particularly apparent.

### CASE STUDY: MEDHAT

Medhat, who was 20 years old, worked as a car detailer for a car wash business, having had previous experience in this field. Because of his age, and despite his previous experience, his rate of pay was more than \$4 per hour less than the rate of pay he would have received if he were over the age of 21. When Medhat came to see us, he was struggling to make ends meet; as an international student, he was ineligible for government benefits and solely reliant on earned wages to cover tuition fees and living expenses.

### CASE STUDY: SHUKRI

Shukri started in her casual restaurant job at the age of 16. She was employed in this role for 3 years, and by the age of 19 she had been promoted to manager and was responsible for supervising other employees, closing the restaurant and balancing the till. However, notwithstanding her extensive experience at the restaurant, because of her age, her pay rate was \$4 per hour less than her older peers performing the same role.

### Recommendation 15: Abolish junior pay rates

The FWC should abolish junior pay rates in minimum wage orders for workers above the age of 18. For workers under the age of 18, the junior wage rate should be amended to a flat rate of 80% of the adult minimum wage rate.

The FWC should abolish junior pay rates in all relevant modern awards beyond the introductory classification levels.

### 6.1.2. Unable or unwilling to complain



**'Sometimes it's not that easy. From a Pacific Islander background, we have a duty to help our family through financial stability. So to keep our families well and looked after we cannot afford to make complaints that may result in reducing our hours or even getting fired/let go. We have to brush those issues off, and harden our hearts. Our families lively hoods [sic] are heavily relied on us, we will never jeopardise that. Workplaces are also bias and have favouritism, so you already know the issues wont [sic] be resolved. There is no point in wasting your breath and energy!'**<sup>223</sup>

Much of the literature shows young people are generally unlikely to make a formal complaint in relation to workplace exploitation.<sup>224</sup>

Consistent with this, we found that young people were often unable or unwilling to exercise their workplace rights.

When we asked young people if they would make a complaint to a manager or external body if they had an issue at work (such as discrimination, safety, harassment etc):<sup>225</sup>

- 45% of respondents reported said they would not make a complaint; and
- 14% said they were 'not sure' if they would make a complaint.

When we asked our CLE participants if there was anything stopping them from standing up for their rights:<sup>226</sup>

- only 54% of respondents said nothing was stopping them from standing up for their rights; and
- 36% of respondents cited various issues preventing them from making a complaint.

Similarly, in our focus groups with young people, participants indicated that in most circumstances they would choose not to complain if a work rights issue arose at work. One participant stated:

*'I don't think I would say anything. I think I would just go with it...'*<sup>227</sup>

The key barriers to young people making complaints include:

1. a lack of awareness of employment laws and processes;
2. fear of retribution from employers;
3. a belief that complaining is hopeless;
4. cultural barriers;
5. additional vulnerabilities which make complaining difficult; and/or
6. other administrative obstacles such as being able to legally identify the employer.

<sup>218</sup> Kyle Taylor, *The Problem with Junior Pay Rates, Explained* (Article, McKell Institute Victoria, February 2020) <<https://mckellinstitute.org.au/research/articles/the-problem-with-junior-pay-rates-explained>>.

<sup>219</sup> Ibid.

<sup>220</sup> Lauren Cavanna, *Young People at Work* (Policy Paper, Youth Action, May 2013) 14 <[https://www.youthaction.org.au/at\\_work2013](https://www.youthaction.org.au/at_work2013)>.

<sup>221</sup> Ibid.

<sup>222</sup> Ibid 21–22; Taylor (n 218).

<sup>223</sup> General Youth Survey participant (see Appendix A).

<sup>224</sup> See e.g. Cavanough and Blain (n 83) 21; Bright, Fitzpatrick and Fitzgerald (n 38).

<sup>225</sup> General Youth Survey (see Appendix 2A).

<sup>226</sup> CLE Feedback Survey (see Appendix 2H).

<sup>227</sup> Post-secondary focus group participant.

## Lack of awareness of employment laws and processes

A lack of awareness of legal rights and entitlements not only prevents young people from exercising their workplace rights but is a key contributing factor to workplace exploitation (wage theft in particular).<sup>228</sup> A survey conducted by the YWC found that more than 50% of the workers who had been underpaid believed they were being paid the right amount.<sup>229</sup> Studies have also shown that even young workers who are aware that their rights have not been met, might not enforce their rights because they are unaware of the remedies or dispute procedures available to them.<sup>230</sup>

A number of young survey participants reported that not fully understanding their rights impacted on their confidence in speaking up about an issue:

*What if I overreacted and it wasn't assault or harassment?<sup>231</sup>*

*No [I wouldn't complain if there was an issue], simply because I wouldn't be sure if these were normal problems that everyone goes through, or something that needs to be addressed, since this is my first job.<sup>232</sup>*

Another young participant recounted an early employment experience where his employer asked him to perform unsafe work without providing the required personal protective equipment. When we asked him if he raised any concerns about this, he said:

 **'I didn't know...so that even makes it worse. I was worried I might be doing something wrong, even though I was doing everything right.'**<sup>233</sup>

## Fear of retribution from employers

Many young workers fear speaking up about work-related issues due to concerns that their hours may be cut,<sup>234</sup> or that they may be 'targeted as troublemakers and lose shifts or the jobs entirely'.<sup>235</sup>

Young workers' fears of being punished by employers for complaining were a common theme in our surveys and focus groups.

**30%** of young people we surveyed expressed fear of the repercussions as a key reason for not complaining, with comments including the following:<sup>236</sup>

*No, as a casual [I] would be worried about losing my job if I complained.*

*I also struggle with anxiety so I don't deal well with confrontation.*

*No. Fearing that I would lose [sic] the job. This is the real situation with most of the international students.*

**13%** of CLE participants we surveyed said that the fear of losing their job was stopping them from standing up for their rights at work.<sup>237</sup> One young person cited the following specific reasons:

*[A]nxiety, scared of losing my job, scared of judgement in the workplace, scared of being targeted by my boss because [I] complained, scared of being unable to find future work because [I] complained about my previous one.<sup>238</sup>*

As one young focus group participant noted:

*If your manager finds out that you went to a lawyer, and they realise they're not paying you enough.... they might be giving you less shifts.<sup>239</sup>*

Connected to this issue was a sentiment expressed by a number of young people that having a job and an income stream was more important than being paid the correct wage. In itself, this seemed to carry a general assumption that complaining about work rights might lead to job loss. As one young person explained:

*When you're a teenager, money is like precious for a lot of people. So they think if they try [to] reach out about that kind of thing...they don't want to lose...getting those opportunities to get money, so like reaching out would make them lose their job and they don't want to, or something like that...so it's really tricky. ...people are just like 'well getting paid is getting 'paid', even if it's not the right amount.'<sup>240</sup>*

Similarly, a number of CLE participants we surveyed (4%) cited 'need(ing) the money' as the key thing that was stopping them from standing up for their rights at work.<sup>241</sup>

Consequently, young people are unlikely to complain about their entitlements or about poor treatment unless they perceive the matter to be sufficiently serious. As one focus group participant noted:

*If you don't have a backup you gotta somehow suck it up because life's a bit tricky. But then you would want to find another route, another company...meanwhile, if you don't have that, then you just have to suck it up, unless there is immediate danger to your life, then yeah.<sup>242</sup>*

## Belief that complaining is hopeless

While it wasn't a key theme in the literature; a common concern shared by the young participants in our research was that raising a complaint about a work rights issue would not achieve anything or wouldn't be 'worth it'.

**38%** of young survey respondents, who said they would not complain to their employer or external employer about a work rights issue, cited reasons relating to hopelessness about the outcome.<sup>243</sup>

*No, because it was just retail and it wasn't something that my manager could control.*

*No, Because they don't care.*

*No, i don't think people would listen.*

*No, Senior management at my workplace was part of the problem in providing a systemically toxic environment. I felt like if I reported it to a senior manager they'd side against whatever I said.*

This sentiment was shared among our older focus group participants who felt that the outcome would often not be worth the effort required in complaining.<sup>244</sup> One participant noted:

*It feels like it's more of an expense than a reward you'll get out of it...[in terms of] time and effort as well as money'.*

Intermediaries we spoke to highlighted that this sentiment was most common for CALD youth, who in many cases had been 'conditioned' to accept racist and unfair treatment:<sup>245</sup>

*It's the status quo...[they have] been conditioned to accept these things*

*I think there is a sense of: 'What's the point? When you're going against a big corporation...what's the point of lodging a complaint?' This is something I hear a lot from young people. It's this idea of: 'well, it's just sometimes everyone against us'.*

## Cultural barriers to complaining

A number of our focus group participants indicated some CALD youth face specific cultural barriers to complaining.

Two young participants identified that speaking up to people in positions in authority, such as employers, was frowned upon in their culture:

*They're like the 'big people', so whatever they (the managers) say, you do basically.<sup>246</sup>*

*In here you guys show respect (to employees) when you're talking one on one, but in there (back home), they just hit you with a stick.<sup>247</sup>*

Some intermediaries also reported that the migration history of young workers can affect their ability to self-advocate and/or speak up to persons in authority or management.<sup>248</sup> One intermediary stated:

*There's a lot of the time a level of 'just don't speak up'. A lot of the things your parents may have taught you, or your migration history, may have contributed to [you] speaking up to, or advocating for yourself up against, a person of authority or management.<sup>249</sup>*

These intermediaries indicated that previous experiences of discrimination or other poor treatment might also have a significant impact on CALD youth choosing not to complain about issues at work. They described it as a 'it is what it is' mentality among many of the young people they worked with, who in many cases accepted poor treatment as the 'status quo'. One participant noted:

*If they have experienced negative behaviour in the workplace that in the past that has a serious effect on their physical or psycho-social wellbeing, then it's really difficult to have those conversations [raising complaints about things like pay, working conditions or career progression].<sup>250</sup>*

<sup>228</sup> Cavanough and Blain (n 83) 20; Bright, Fitzpatrick and Fitzgerald (n 38) 3.

<sup>229</sup> Bright, Fitzpatrick and Fitzgerald (n 38) 7.

<sup>230</sup> McDonald, Paula et al, 'Componding Vulnerability? Young Workers' Employment Concerns and the Anticipated WorkChoices Act' (2007) 33(1) Australian Bulletin of Labour 60, 62; McDonald, Price and Bailey (n 40) 52.

<sup>231</sup> A CLE Feedback Survey participant noted this when asked 'is there anything stopping you from standing up for your rights?' (see Appendix 2H).

<sup>232</sup> General Youth Survey participant, when asked 'If you experienced [a work rights issue], would you make a complaint about it (e.g. to a senior manager or to an external body)? Why/ why not?'; see Appendix 2A.

<sup>233</sup> Post-secondary focus group participant.

<sup>234</sup> Cavanough and Blain (n 83) 21.

<sup>235</sup> Bright, Fitzpatrick and Fitzgerald (n 83) 2.

<sup>236</sup> General Youth Survey (see Appendix 2A).

<sup>237</sup> CLE Feedback Survey (see Appendix 2H).

<sup>238</sup> See Appendix 2H.

<sup>239</sup> School-aged focus group participant.

<sup>240</sup> School-aged focus group participant.

<sup>241</sup> CLE Feedback Survey (see Appendix 2H).

<sup>242</sup> Post-secondary focus group participant.

<sup>243</sup> General Youth Survey (see Appendix 2A).

<sup>244</sup> Post-secondary focus group.

<sup>245</sup> Intermediary focus group 2.

<sup>246</sup> African post-secondary focus group participant.

<sup>247</sup> Burmese post-secondary focus group participant.

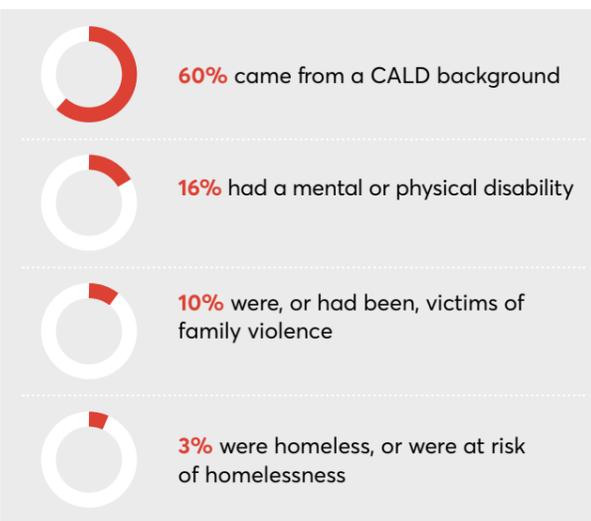
<sup>248</sup> Intermediary focus group 2.

<sup>249</sup> Intermediary focus group 2 participant.

<sup>250</sup> Intermediary focus group 2 participant.

## Additional vulnerabilities precluding self-help

The majority of our YEP clients had indicators of vulnerability, which prevented them from being able or willing to pursue their employment-related legal claims without WEstjustice's support.



In addition, many of these vulnerabilities were intersectional in nature, with 46% of these clients having two or more different vulnerability indicators.<sup>251</sup>

## Difficult-to-identify employers

For those young people who are willing to make a complaint and seek legal assistance, further complications can arise when the legal identity of an employer is not clear. For example, several YEP clients were unable to identify their employer in order to make a claim. Simple barriers, such as an employer's failure to issue payslips, exacerbated these problems.

## CASE STUDY: JOSE

When Jose worked as a casual kitchen hand for \$15 per hour, he did not receive any payslips. Jose knew only the name of the restaurant he worked for and the first name and phone number of the owner. When he came to see WEstjustice, the restaurant had closed down. WEstjustice advised him that he was being underpaid, however we were unable to assist him to recover his outstanding entitlements, as the legal identity of the employer was unknown.

Of considerable concern is that the Registrar of the Australian Business Register (ABR) has announced it will cease publicly displaying the trading names used by entities from 31 October 2023.<sup>252</sup> This means that, for entities who continue to use a trading name for business purposes, any party dealing with that entity will be unable to verify their identity or GST registration via ABN Lookup.<sup>253</sup>

Many YEP clients, particularly those in franchise arrangements, are employed by complex trust structures. In many cases, where those clients have been paid cash-in-hand, or have received deficient payslips, they have needed our help to ascertain the legal identity of their employer. For the most part, we have achieved this by searching the trading name of their employer on ABN Lookup.

### Recommendation 16: Ensure employer identities are kept transparent

To ensure that employees can continue to identify their employers irrespective of whether they receive lawful payslips the Australian Business Register should:

1. continue to publish historic trading names on the register, searchable via ABN lookup, to give certainty to employees about the identity of their employer; and
2. require all businesses conducted through unincorporated entities to publish an address for their principal place of business and registered office which is publicly searchable.

## 6.2 Current approaches

### 6.2.1. Free employment-related legal services

Free legal assistance can vastly improve the ability of young workers to access their employment entitlements. For example, in the 2019/2020 financial year, the YWC assisted young workers to recover a total of \$344,372.39 in compensation and entitlements.<sup>254</sup>

However, the impact of free legal services on the lives of young workers is limited due to the following:

1. there is a lack of sufficient or recurrent funding for the community legal sector, as it relates to legal services for young people; and
2. young people face a range of barriers to seeking legal assistance.

### 1. Resourcing issues in the community legal sector

For several years, the Federation of Community Legal Centres has emphasised the urgent need for greater funding of free and low-cost employment law assistance in Victoria.<sup>255</sup> Recent data provided to us by VLA – which conducted an employment law legal needs assessment in Victoria in 2021 – indicates there is a service gap for young workers. VLA's analysis highlighted that young people are more likely to have high employment legal need and tend to be over-represented in employment law problems, yet only a small number of CLCs offer employment law services in Victoria, and unlike other states and territories, Victoria's law commission (i.e. VLA) does not provide comprehensive employment law assistance.<sup>256</sup>

Indeed, there are few legal services which provide specific targeted employment law services to young people in Victoria. While the existing services perform a vital function, their reach is limited. For example, in the 2019-2020 financial year, in Victoria:

1. the YWC assisted a total of 579 young workers,<sup>257</sup> which included 508 instances of providing information-only and 71 clients assisted with legal advice;<sup>258</sup>
2. YouthLaw assisted a total of 194 young workers, which included 55 clients assisted with legal advice, 1 discrete legal task, 3 open legal files and 31 referrals to other service providers;<sup>259</sup>
3. JobWatch assisted a total of 512 of young workers through their telephone information service,<sup>260</sup> and opened legal files for 28 young workers.

When one considers that there were approximately 429,000 young people in employment as at 1 July 2020,<sup>262</sup> alongside the research about rates of exploitation of young people in the workplace (see pages 68-73 above), the service-gap is evident.

### 2. Barriers to seeking legal help



'Whenever [young] people think of a lawyer they're like 'oh it's going to cost a lot of money' or, just in general, they're like 'I gotta go to court if I get a lawyer' and stuff like that. That's why it seems like such a hassle.'<sup>263</sup>

<sup>251</sup> See Appendix 3.

<sup>252</sup> 'Trading Names in the ABR', *Australian Business Register* (Web page, 11 May 2021) <<http://abr.gov.au/media-centre/featured-news/business-super-funds-charities/trading-names-abr>>.

<sup>253</sup> Ibid.

<sup>254</sup> YWC, *Young Workers Centre Inc. Annual Report (2020 2019)* 6 <[https://d3n8a8pro7vnm.cloudfront.net/victorianunions/pages/1411/attachments/original/1605850147/YWC\\_AnnualReport2020\\_final.pdf?1605850147](https://d3n8a8pro7vnm.cloudfront.net/victorianunions/pages/1411/attachments/original/1605850147/YWC_AnnualReport2020_final.pdf?1605850147)>.

<sup>255</sup> Federation of Community Legal Centres (Vic) Inc, Submission No 69 to Access to Justice Review, Parliament of Victoria (March 2016) 14 <[https://d3n8a8pro7vnm.cloudfront.net/fclc/pages/675/attachments/original/1564632379/FCLC\\_Access\\_to\\_Justice\\_submission.pdf?1564632379](https://d3n8a8pro7vnm.cloudfront.net/fclc/pages/675/attachments/original/1564632379/FCLC_Access_to_Justice_submission.pdf?1564632379)>; Federation of Community Legal Centres, *Putting the Law to Work: Meeting the Demand for Employment Law Assistance in Victoria* (Report, August 2014) <[http://www.communitylaw.org.au/cb\\_pages/federation\\_reports.php](http://www.communitylaw.org.au/cb_pages/federation_reports.php)>.

<sup>256</sup> The analysis provided by VLA was drawn from ABS census data as well as service data from VLA's internal ATLAS databased, CLC data from Community Legal Assistance Services system (CLASS) and data extracts from the JobWatch internal database.

<sup>257</sup> This includes workers up to the age of 29.

<sup>258</sup> YWC (n 254) 6.

<sup>259</sup> Data was provided by YouthLaw from its internal database in response to our request.

<sup>260</sup> JobWatch defines 'young workers' as workers between the age of 15 and 24.

<sup>261</sup> Data was provided by JobWatch from its internal database in response to our request.

<sup>262</sup> ABS, *Labour Force Status by Age, Greater Capital City and Rest of State (ASGS), Marital Status and Sex, February 1978 Onwards* (Catalogue No 6291.0.55.001, 27 May 2021) <<https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia-detailed/apr-2021/LM1.xlsx>>.

<sup>263</sup> Post-secondary focus group participant.

<sup>264</sup> Louis Schetzer and Judith Henderson, *Access to Justice and Legal Needs: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW* (Report, August 2003) 67-68 <[http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/\\$file/public\\_consultations\\_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/$file/public_consultations_report.pdf)>.

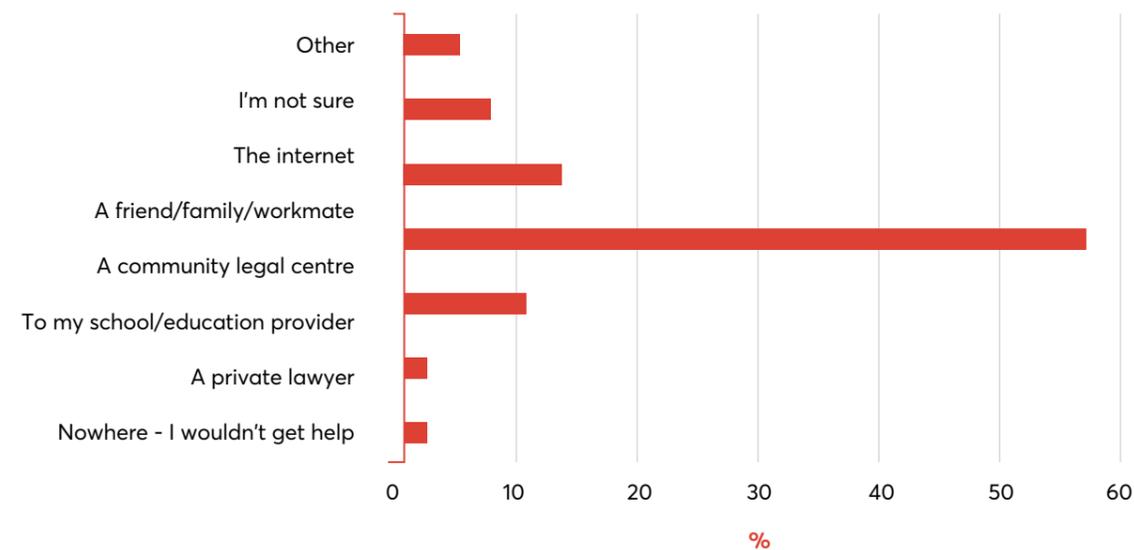
<sup>265</sup> General Youth Survey (see Appendix 2A).

There is very little research regarding the difficulties young people face in accessing employment-related legal services, although previous studies suggest that young people perceive there is a lack of adequate specialist services which specifically cater to young people.<sup>264</sup>

Our research uncovered a number of barriers that can prevent young people from seeking work-related legal assistance.

Generally speaking, when we asked young people where they would go for help or advice if they wanted to make a complaint about an issue at work, **57%** said they would seek help from a friend, family member or workmate. **0%** said they would contact a community legal centre in the first instance, despite **3%** reporting that they would seek assistance from a private lawyer.<sup>265</sup>

### Where would you go for help to make a complaint?



This is significant. However, it is unclear from this data whether survey respondents were unaware of the existence of CLCs, did not trust CLCs or had other reasons for not wanting to contact a CLC.

Similarly, all school-aged participants in our focus groups reported that they would seek assistance from their parents if they wanted to make a complaint.<sup>266</sup> However, the older focus group participants said they would likely report issues to government agencies, citing the 'police' and 'the Ombudsman'.

Other aspects of our research suggest that factors preventing young people from seeking legal help include the following:

1. not knowing where to go for help;
2. a perception of lawyers as untrustworthy or unapproachable;
3. not understanding the legal process; and
4. being unaware of CLCs and opportunities to receive free legal advice.

### Not knowing where to go for help

A number of young people we surveyed who said they would make a complaint if they experienced an issue at work, acknowledged that they wouldn't know how to make the complaint or who to make it to.<sup>267</sup>

Two participants stated:

*Yes [I would make a complaint], because I care about myself. It's just that I don't really know how to do it and who to tell.'*

*Yes [I would make a complaint], but the problem is finding the right person and time [to] do it.*

**64%** of intermediaries we surveyed felt that it was a 'common' issue that young people don't know where to get help for problems at work.<sup>268</sup>

Similarly, for our YEP clients, **25%** of respondents said they had 'no idea' where they would have gone for help with their legal problem if they hadn't heard of WEstjustice.<sup>269</sup> This is significant, noting that the vast majority of our clients were referred to us through other youth services (see page 92).

### Perception of lawyers as untrustworthy and/or unapproachable

*'When you hear the word lawyer, you think it's something scary.'*<sup>270</sup>

Young participants in our focus groups cited a mistrust of lawyers stemming from stereotypes (often perpetuated by TV) as a key barrier to young people seeking legal advice. Participants told us that they primarily associated lawyers with the criminal justice system.

A lack of understanding of key concepts such as legal professional privilege/confidentiality was also a key issue perpetuating this mistrust. In addition, some participants expressed concerns about being implicated in the wrong-doing or being 'dobbed in' to authorities as a consequence of seeking a lawyer.

Participants commented:

*Some kids might think... 'what if I go to jail or what if I did something wrong?'*<sup>271</sup>

*If you tell a lawyer, will you lose your job?*<sup>272</sup>

*Seeing a lawyer is like you 'committed murder' or 'you got busted for having drugs' or something, so something serious.*<sup>273</sup>

Our school-aged focus group participants agreed that not meeting or having access to lawyers was a key issue in building trust. One participant noted:

*'People just don't think that lawyers can be trustworthy because they're not spending time with them. It's having that personal connection. It's hard opening up to someone that you don't really know.'*

In addition, some of our school-aged focus group participants highlighted that young people feel as though it wasn't appropriate to see a lawyer (as compared to adults):

*(Seeing a lawyer)...that's an adult thing.*

*Because you're young, you're not allowed to talk to a lawyer*

### Not understanding the legal process

Another common theme expressed by participants was wanting to avoid court and assuming that seeing a lawyer would necessarily involve court action. Two participants stated:

*We just think lawyers and we just think court immediately*<sup>274</sup>

*I wouldn't want to go to a massive court issue...[it's] the thing you don't really want to happen. You just sort of want to get it over with and don't want to cause too much trouble.*<sup>275</sup>

All our young focus group participants were unaware that only a small number of legal claims go to court and that these matters can often be resolved informally. They all agreed that, for this reason, there was a general perception that lawyers should only be approached if the problem was 'really serious'. One participant noted:

*'I would (go to a lawyer) if it was like something serious...but if it's something that wasn't that serious, I would probably leave the job and look for another job.'*<sup>276</sup>

<sup>266</sup> School-aged focus group.

<sup>267</sup> General Youth Survey (see Appendix 2A).

<sup>268</sup> General Intermediary Survey (see Appendix 2B).

<sup>269</sup> Post-advice Survey (see appendix 2C).

<sup>270</sup> School-aged focus group participant.

<sup>271</sup> School-aged focus group participant.

<sup>272</sup> School-aged focus group participant.

<sup>273</sup> Post-secondary focus group participant.

<sup>274</sup> School-aged focus group participant.

<sup>275</sup> School-aged focus group participant.

<sup>276</sup> Post-secondary focus group participant.

## Unaware of CLCs and free legal advice

All our school-aged focus group participants were unaware of the existence of free legal services to assist with their work rights issues. As one school-aged participant said:

*'No offence to any of my friends, but if I didn't know...they probably wouldn't know either.'*

In addition, only one of our older focus group participants was aware of the existence of CLCs.<sup>277</sup>

When asked if they would have approached a CLC for assistance prior to attending the focus group, young people told us:<sup>278</sup>

*I have never thought about it or heard about it. I've more heard about the lawyers who get paid and go in the courtroom and represent you.*

*I didn't even know they existed. I just thought, like, you gotta hire a lawyer or something.*

*I wouldn't have even thought of that, cause I would think I would have to pay for that.*

## Trusted referral pathways are key

Many of our focus group participants emphasised the concept of 'trustworthiness' as being an integral part of accessible legal service delivery for young people.

Intermediaries from community organisations recognised that, from the perspective of CALD communities, trust requires familiarity and consistency. One of them noted:

*The Western concept of trusting organisations and institutions is very very different'...In black communities, the first question is 'Who do you know?...They're suspicious of anyone who's trying to do the outreach stuff.'*<sup>279</sup>

In line with this, a number of our young focus group participants agreed that that referrals from 'trusted sources' would motivate them to approach lawyers.

*You've got the trustworthiness as well. Not everyone is the same, some lawyers are like way better than others. Word of mouth, yeah, is way better.*<sup>280</sup>

## 6.2.2. The FWO

The FWO is an independent statutory body established under the FW Act. It is tasked with promoting 'cooperative workplace relations' and compliance with the FW Act through:<sup>281</sup>

1. providing education, assistance and advice to workers and employers;
2. monitoring compliance with the FW Act and relevant industrial instruments;
3. investigating and prosecuting non-compliance with the FW Act and relevant industrial instruments on behalf of employees.

Workers can call the FWO's telephone information line, or lodge an online enquiry to: ask about their entitlements; make a complaint (including an anonymous complaint) about a workplace issue; and/or request the FWO's assistance to resolve a workplace dispute.

The FWO has achieved some significant outcomes on behalf of young workers over the past 5 years. Notably, in:

1. FY2016–17, young workers were a strategic priority in the FWO's enforcement actions, to great effect. During this time young workers were involved in 28% of FWO-assisted disputes and 44% of litigation actions. In total, the FWO recovered \$1.4 million in underpayments for 723 young workers;<sup>282</sup>
2. FY2018–19, though they were not explicitly named in FWO's strategic priorities, young workers nonetheless featured prominently in the FWO's compliance activities. The FWO undertook audits of 200 businesses in Geelong, targeting areas with a 'high concentration of young workers, a cohort who are particularly vulnerable to workplace exploitation'.<sup>283</sup>

In the last year, the FWO has announced a shift towards a firmer approach to regulation, with a commensurate increase in the use of compliance and enforcement tools.<sup>284</sup>

Despite the FWO being well placed to achieve significant outcomes on behalf of vulnerable workers, it has been suggested that the ongoing pervasiveness of wage theft in Australia indicates that the FWO's enforcement activities have been ineffective in ensuring employer compliance or deterring employers from breaching the FW Act.<sup>285</sup>

Throughout the course of the YEP, we also identified a number of limitations in the FWO's:

1. data collection practices;
2. management of requests for assistance; and
3. resourcing and ability to support vulnerable workers through to the completion of claims.

## Ad-hoc data collection from customers

As a matter of significance, in response to our requests for data, the FWO informed us that it does not require customers who are seeking information or making a request for assistance to supply demographic data, such as their date of birth. In these circumstances, the FWO supplied information which is more than likely to materially underrepresent the requests for assistance received from young people and the FWO's associated responses.<sup>286</sup>

Given that the FWO reported answering 424,255 calls and 67,217 online enquiries in FY2019-20,<sup>287</sup> if the FWO were to collect demographic data from its customers regarding key vulnerability criteria such as age, disability status, cultural and linguistic background and visa status, it would be well placed to provide an in-depth legal needs analysis to inform future strategic priorities and policies for employment assistance, for both internal and external purposes.

## Recommendation 17: Improve the data collection policies of the FWO

The FWO should collect demographic data regarding key vulnerability criteria from all its customers, wherever possible, to ensure that its strategic priorities are well-informed and to provide a better understanding of the employment-related legal issues of workers in Australia. To avoid customers feeling targeted by requests, this data could be collected with a question such as:

*'Please let us know if any of these apply to you (select all that apply):*

- *I am under the age of 25*
- *I am from a culturally or linguistically diverse background*
- *I am on a temporary visa*
- *I have a disability*
- *I identify as Aboriginal and/or Torres Strait Islander*
- *Etc.'*

## Confusion between requests for assistance and requests for information

Despite the FWO's increased emphasis on the use of compliance and enforcement tools, our clients' experiences indicate that CSOs (who are responsible for responding to customer inquiries and requests for assistance in the first instance) are not always able to distinguish between requests for information and requests for assistance. This is complicated by the fact that all complaints and enquiries come through the same channels.

<sup>277</sup> Post-secondary focus group.

<sup>278</sup> Ibid.

<sup>279</sup> Intermediary focus group 2.

<sup>280</sup> Post-secondary focus group participant.

<sup>281</sup> FW Act (n 66) s 682.

<sup>282</sup> FWO, Fair Work Ombudsman and Registered Organisations Commission Entity Annual Report 2016–17 (Report, 2017) 11.

<sup>283</sup> FWO, Fair Work Ombudsman and Registered Organisations Commission Entity Annual Report 2018–19 (Report, 2019) 19.

<sup>284</sup> FWO, Fair Work Ombudsman and Registered Organisations Commission Entity Annual Report 2019–20 (Report, 2020) 1.

<sup>285</sup> Fitzpatrick (n 169) 180.

<sup>286</sup> The FWO provided us with the following information in response to our request for data regarding FY2019-20:

- The FWO received 1,257 requests for assistance from workers who identified themselves as being young (15 – 25 years old), accounting for 28% of all requests for assistance where workers provided their date of birth.

- The FWO received 5,002 anonymous reports from people who identified themselves as young workers.
- The following compliance and enforcement outcomes were recorded in for requests for assistance involving people who identified themselves as being young workers:
  - 117 Compliance Notices were issued (accounting for 12% of all Compliance Notices);
  - 59 Infringement Notices were issued (accounting for 10% of all Infringement Notices);
  - 22 litigations commenced (accounting for 41% of all litigations); and
  - 43 matters involved the FWO providing assistance for small claims (accounting for 5% of all FWO-assisted small claims).

<sup>287</sup> FWO, 'Fair Work Ombudsman and Registered Organisations Commission Entity Annual Report 2019–20' (n 284) 9.

## CASE STUDY: AJOK

Ajok first identified that her employer had misclassified her as a contractor, rather than an employee, when she called the FWO. She quit after her employer placed unreasonable demands on her to work significant overtime. When she complained to the FWO about her employer's behaviour, the CSO told Ajok that she was in fact an employee, and assisted her to calculate her outstanding entitlements under the relevant modern award. When Ajok asked for help to recover her entitlements, the CSO told Ajok that they weren't a lawyer and couldn't assist her with her claim.

Ajok did not have the relevant knowledge of the law to make a claim without assistance due to the complexity of sham contracting laws. Ajok then approached WEstjustice, who gave Ajok detailed advice and assisted her to draft a letter to her employer in her own name seeking her outstanding entitlements. The negotiations with her employer are still ongoing.

### Recommendation 18: The FWO should assist young workers to articulate requests for assistance

The FWO should ensure that workers, particularly young workers, are specifically asked whether they would like to make a request for assistance (either over the phone by CSOs, or using a tick-box on the enquiry form) to ensure that workers are provided with the appropriate assistance when they are unable to properly articulate their requests or concerns.

### Resourcing limitations

On a number of occasions, the FWO referred YEP clients to WEstjustice because they did not have sufficient resources to assist our clients to progress their claims.

## CASE STUDY: TRACEY

Tracey was not paid out any of her entitlements when she was made redundant as a result of COVID-19. This included redundancy pay, notice pay and accrued annual leave. She attempted to make a complaint to the FWO about her outstanding entitlements. The FWO directed Tracey to the small claims guide to assist her to make an application in the Federal Circuit Court and suggested that she contact WEstjustice for assistance with her claim.

Tracey was not able to understand or prepare the claim forms without assistance and had difficulty calculating her entitlements. WEstjustice assisted Tracey to send a letter of demand to her employer and commenced court proceedings on Tracey's behalf seeking approximately \$10,000 in outstanding entitlements. We were able to negotiate a settlement of Tracey's claims soon after Tracey's employer was notified of the court proceeding.

In recognition of this resourcing gap, the FWO also has a community engagement grants program which funds not-for-profit organisations to provide vulnerable workers with advice, information and assistance with workplace issues. However, this funding is extremely limited. In December 2020, the FWO awarded a total of \$7.2 million to five organisations for a period of four years. In Victoria, funding was granted to JobWatch to provide information through their telephone information service.<sup>288</sup> Whilst we recognise the importance of the work done by JobWatch in providing information and referrals, we encourage the federal government to increase funding to guarantee comprehensive legal services as well.

### Recommendation 19: Increase funding to and through the FWO to support vulnerable workers

The federal government should provide greater funding to the FWO to assist the most vulnerable workers to progress their claims to completion.

The FWO should also provide greater funding to CLCs through its community engagement grants program to ensure that vulnerable workers are able to progress their claims to completion.

## 6.3 What we did

### 6.3.1. Breaking down barriers to exercising rights and seeking legal help

As demonstrated on page 52, our young CLE participants reported that the YEP's education activities assisted them to feel confident and prepared to exercise their rights.

When asked what the most useful thing about our presentation was, some respondents said:<sup>289</sup>

*That I should be able to report or seek for help whenever I'm in an unfavourable situation at my workplace.*

*If I need help I can go to Westjustice*

*What my rights are as a worker and what to do.*

*know your right at work and what to do if there treating you unfair.*

When we asked how participants would use the information they learned in our CLE sessions, some respondents said:<sup>290</sup>

*In case I was to be treated unfairly at work I would be confident enough to stand up for my rights*

*If I encounter a problem in the workplace I would use the advice from today's presentation*

*To my benefit in order to stand up for my rights if the need ever arises*

*Use it to stand up for myself within a workplace*

### 6.3.2. Building trust in legal services through face-to-face education and engagement

During our focus groups, young people told us that meeting a lawyer helped to reduce their preconceived fears or concerns about seeking legal advice. One school-aged focus group participant noted:

*When I hear the word lawyer, you think it's something scary...but talking to you it's not scary...just by meeting you, it's helped me to understand more.*

When asked what would help make CLCs feel more accessible, one participant suggested:

*have someone (from a CLC) come to the school... just to get the kids' attention and go 'hey it's not so bad as you think it is' - 'it's not law and order SVU television stuff' it can be mellow situations'.*

These participants all agreed that advertising/promoting the existence of CLCs would be helpful in reducing barriers to access:

*...just to know it's a safe space. Like, it's not all scary lawyers: they're like still down to earth.<sup>291</sup>*

This was reflected in our survey of CLE participants following our presentations:<sup>292</sup>

 **96%** of respondents agreed that they would contact WEstjustice if they had a problem at work.

 **95%** of respondents agreed that they would recommend WEstjustice to their friends.

While we did not collect any specific data regarding direct referrals between our CLE activities and our legal services,<sup>293</sup> there was clear overlap between our face-to-face CLE activities and our YEP client referrals:

1. a number of YEP legal service clients reported seeking our assistance as a direct result of attending a CLE presentation;
2. a significant proportion of our clients (43%) resided within the Wyndham City Council LGA, which is where we conducted the majority of our in-person CLE sessions; and
3. more specifically, the majority of our clients were referred to the YEP legal service through our School Lawyer Program, which is conducted at schools that are all located within Wyndham City Council LGA.<sup>294</sup>

<sup>288</sup> FWO, 'Community Engagement Grants Program Recipients Named' (Media release, 21 December 2020) <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2020-media-releases/december-2020/20201221-community-engagement-grants-program-media-release>>.

<sup>289</sup> CLE Feedback Survey (see Appendix 2H).

<sup>290</sup> Ibid.

<sup>291</sup> School-aged focus group participant.

<sup>292</sup> CLE Feedback Survey (see Appendix 2H).

<sup>293</sup> Our Youth Lawyers, who conducted the initial intake with our YEP legal service clients, did not record information about CLE attendance from clients.

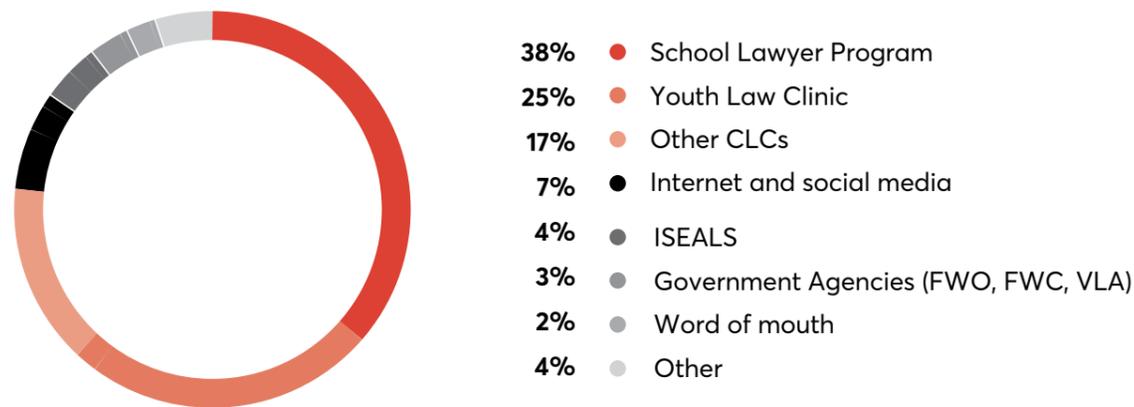
<sup>294</sup> See Appendix 3.

### 6.3.3. Improving access to employment law services

Our casework has shown us that the vast majority of our clients are unwilling or unable to enforce their legal rights without legal assistance. In addition, many were unaware of where to find legal assistance and what was available. By providing free 'in situ' services, young people were better informed of the available services and were better able to access support with their work-related problems.

The majority of our clients (79%) were referred through our various embedded legal clinics. Only 2% of our clients found us through the internet or social media.

#### How clients were referred to the YEP



Unlike many other client cohorts serviced by the EELP (such as our older newly arrived refugee clients), many YEP clients (31%) attended an appointment to seek proactive advice about their work rights (e.g. checking their rates of pay or clarifying entitlements to leave) rather than in response to an identified issue. We consider that this is in large part thanks to our School Lawyer Program.

When we asked clients who attended an advice appointment where they would have gone for help with a work-related legal problem if they hadn't known about WEstjustice, 25% said 'No idea' and 17% said 'probably nowhere'.<sup>295</sup> This suggests that approximately 42% of clients may not have sought advice (or may not have known how to seek help) in relation to their work rights/work-related problems without being referred to us.

### 6.3.4. Providing access to entitlements

#### A strength-based approach to servicing clients

The YEP takes a holistic and strength-based approach to servicing young clients. We tailor our legal services to suit the needs and capabilities of each individual client.

In total, we serviced 106 clients through the YEP legal service between July 2019 and May 2021.

**54** one-off advices – simple enquiries which could be resolved on the spot and/or instances where our first advice enabled clients to self-help without needing further assistance.

**52** ongoing casework files, where we represented the client and/or the client was assisted through to completion of their legal matter.

In addition to the provision of verbal advice, assistance at one-off advice appointments included: providing printed information or other resources; assisting to draft letters in our clients' names for them to send to their employers, and demonstrating how to calculate minimum wages using the FWO 'Pay and Conditions Tool' for clients' future reference.<sup>296</sup>

The YEP provided a range of different assistance to clients.

**21** letters of demand sent in WEstjustice's name.

**13** clients assisted to write letters in their own name to send to employers.

**8** letters or other correspondence sent to employers requesting employment records.

**18** forms of other correspondence including telephone calls to negotiate with employers, or follow-up email correspondence.

**6** clients assisted with or represented at conciliations/mediations.

**7** clients represented in court/tribunal proceedings.

Where possible, we encouraged our clients to self-advocate and provided assistance 'behind the scenes'. For example, we assisted them to draft correspondence or prepare speaking notes for them to use in conversations with their employers or at conciliations. In these instances, our clients reported feeling a substantial increase in confidence to navigate future workplace issues by themselves.

#### CASE STUDY: LAURA

Laura worked as a part time baker and was not paid any penalty rates for her early morning starts. WEstjustice provided advice regarding Laura's correct entitlements and assisted her to write a letter in her own name to send to her employer. As a result, Laura's employer conducted their own investigation and negotiated directly with Laura to pay her what she was owed. Laura thanked us for our support and noted that the process was much easier than she had expected.

#### CASE STUDY: MAHALIA

Mahalia worked as a casual sales assistant in a large retail chain store and was unfairly dismissed for taking too long to greet a customer because she was on the phone to another store. Mahalia lodged an unfair dismissal claim in the FWC and asked us to assist her with the conciliation. Mahalia was nervous but capable, so we assisted her to prepare for the conciliation by providing detailed advice and helping her to draft speaking notes. We also attended the phone conciliation with Mahalia in a support capacity. This gave Mahalia the opportunity to self-advocate and develop more confidence when exercising her legal rights, while still feeling supported.

Mahalia successfully resolved her claim at conciliation and obtained an outcome that she was happy with.

<sup>295</sup> Post-advice Survey (see Appendix 2C).

<sup>296</sup> See Appendix 3 for more information.

## Financial recoveries

In total, we assisted **32** young people to recover a total of **\$156,492.80** through the YEP.

**\$77,542.80**

in unpaid wages and entitlements recovered.

**\$68,400.00**

in compensation for unlawful dismissal, sexual harassment or discrimination.

**\$9,500.00**

presently outstanding and due to be paid in the coming months under Deeds of Settlement.

We have also assisted young people to waive **\$6,750** worth of debts that were incidental to their employment.

These recoveries are very significant to the young people we work with, who are often low-income earners from low socio-economic backgrounds.

## CASE STUDY: RACHEL

Rachel was employed as a trainee at a small consulting firm. Rachel was underpaid more than \$8,000 in entitlements, and with the assistance of the FWO, she and her employer entered into a back-pay arrangement to settle the outstanding wages and entitlements owing to her. However, after Rachel found another job and resigned, her former employer ceased paying her instalments pursuant to the back-pay arrangement. WEstjustice assisted Rachel to commence proceedings in the Federal Circuit Court to recover her entitlements under the back-pay arrangement and represented her at a mediation with her employer. As a result of our assistance, the employer paid Rachel the full amount owing to her.

At the conclusion of her matter Rachel said to us:

***'Thank-you so much for everything! Honestly this whole process has been surprisingly empowering! WEstjustice has been incredible through this whole process.'***

## Non-financial outcomes

We also assisted our clients with critical non-financial outcomes.

**7** clients were assisted to keep their jobs.

**3** clients received an apology from their employer or colleagues for discriminatory and/or other poor behaviour (one written, two verbal).

**2** employers agreed to arrange anti-discrimination/sexual harassment training for the workplace.

**1** client was reinstated after being dismissed.

**1** client received an increase in working hours with our assistance.

In some cases, these outcomes not only had a significant impact on our clients' mental wellbeing, but also had systemic and wide-reaching impacts on their workplaces.

## CASE STUDY: TANDIN

WEstjustice assisted Tandin to lodge a claim for sexual harassment and discrimination with VCAT. WEstjustice represented Tandin through this process, and assisted him to write a victim impact statement to give him the opportunity to highlight the impact of his experiences in the workplace, which he read at a mediation with his employer. After listening to Tandin's statement, his employer provided a verbal apology without being prompted. We also negotiated for the employer to pay a significant amount of money to Tandin to compensate him for the harm he had suffered, and the employer agreed to run anti-discrimination and sexual harassment training for all staff in the workplace.

After conclusion of the mediation, Tandin said to us:

***'the [mediation process] was extremely empowering. It lifted an enormous amount of weight from my chest, and I finally feel like I am free.'***

## Increased awareness and understanding of employment laws and systems

**100%** of clients we surveyed reported that their lawyer helped them to better understand their rights and responsibilities at work.<sup>297</sup>

**88%** of clients who attended an advice appointment strongly agreed this was the case.<sup>298</sup>

**90%** of clients who received ongoing assistance strongly agreed this was the case.<sup>299</sup>

## Confidence to enforce work rights in the future

**100%** of YEP clients surveyed, who had attended an advice appointment, agreed (and 71% strongly agreed) that after receiving help from WEstjustice, they felt prepared to stand up for their rights at work.<sup>300</sup>

**100%** of YEP clients, who received ongoing assistance, agreed (and 80% strongly agreed) that after receiving help from WEstjustice, they felt prepared to stand up for their rights at work.<sup>301</sup>

*I won't let my employers push me over and I will stand up for myself more and I have enough information to know about my rights.<sup>302</sup>*

*I was unsure about my rights and scared to lose my job. Now that I know my rights I feel confident and my work backed off from trying to take advantage of me by signing a contract I didn't agree to. Before I thought I had to sign the contract, now I know I don't have to if I don't agree.<sup>303</sup>*

*Made me less depressed, felt respected, stood up for my rights.<sup>304</sup>*

*It made me more confident that I know my rights and that employers will try to not adhere to them. I am glad I stood up for myself.<sup>305</sup>*

*It helped me understand my rights to give me the confidence to stand up for my rights.<sup>306</sup>*

*More confidence in the workplace; more peace of mind when working and knowing my rights if ever violated are fought for.<sup>307</sup>*

<sup>297</sup> Post-advice Survey (see Appendix 2C); Post-casework Surveys (see Appendix 2D).

<sup>298</sup> Post-advice Survey (see Appendix 2C).

<sup>299</sup> Post-casework Survey (see Appendix 2D).

<sup>300</sup> Post-advice Survey (see Appendix 2C).

<sup>301</sup> Post-casework Survey (see Appendix 2D).

<sup>302</sup> Post-advice Survey Respondent (see Appendix 2C).

<sup>303</sup> Ibid.

<sup>304</sup> Post-casework Survey (see Appendix 2D).

<sup>305</sup> Ibid.

<sup>306</sup> Ibid.

<sup>307</sup> Ibid.

<sup>308</sup> Post-advice Survey (see Appendix 2C).

### Client satisfaction with the YEP legal services

Overall, the feedback from our clients was overwhelmingly positive with the strongest responses from those clients who received the full legal service rather than just advice.

For clients who attended an advice-only appointment:<sup>308</sup>

 **100%** agreed (**79%** strongly agreed) they were satisfied with the advice they received;

 **92%** agreed (**64%** strongly agreed) the legal service suited their needs;

 **100%** agreed (**93%** strongly agreed) that the WEstjustice lawyer was supportive and listened to their problems; and

 **100%** agreed (**92%** strongly agreed) they would recommend the employment law service at WEstjustice to other young people.

For clients who received ongoing assistance:<sup>309</sup>

 **100%** agreed (**92%** strongly agreed) that they were satisfied with the outcome achieved in their case;

 **100%** agreed (**92%** strongly agreed) the legal service suited their needs;

 **100% strongly agreed** that the WEstjustice lawyer was supportive and listened to their problem; and

 **100% strongly agreed** they would recommend the employment law service at WEstjustice to other young people.

### 6.3.5. Improving employment outcomes in the longer term

 **'I got a better job and I know more about my rights and more confident.'**<sup>310</sup>

We were surprised by the extent to which our legal services had a long-term impact on our clients' employment outcomes, as reflected in clients' responses to surveys completed in the 6 to 12 months after we provided assistance.

 **93%** of respondents were employed at the time we contacted them (noting that this has been during the COVID-19 recovery period where evidence shows that many young people are struggling to find work).<sup>311</sup>

 **100%** of respondents who obtained new jobs in the 6 months after receiving our assistance reported an improvement in their working conditions.

 **93%** of respondents agreed (60% strongly agreed) that knowing about their rights and responsibilities at work has made it easier to find work or to keep their job. The client who disagreed with this statement noted *'It isn't any easier to find work because of this information, because that doesn't change what jobs I'm qualified to do.'*<sup>312</sup>

These clients said:

*It has opened my eyes to see there are issues at work and if the matter is serious you have to speak up.*<sup>314</sup>

*I learned about the rights I have and how to be treated correctly and fairly at work.*<sup>315</sup>

*It has educated me of my rights and has made me more confident. I am not scared to lose my job.*<sup>316</sup>

### Recommendation 20: Increase funding for embedded and integrated employment law services for young people

The federal and Victorian governments should provide expanded and long-term funding for integrated and embedded employment law services for young people, comprising the following:

1. an holistic approach to legal services which includes the capacity for multidisciplinary assistance where necessary;
2. targeted CLE for young people and their intermediaries to assist young people to identify and exercise their legal rights; and
3. advocacy and systemic impact, which draws on data collected through casework and education.

<sup>309</sup> Post-casework Survey (see Appendix 2D).

<sup>310</sup> 6-month Follow-up Survey (see Appendix 2E).

<sup>311</sup> 14 out of 15 clients were employed: 6-month Follow-up Survey (see Appendix 2E); 12-month Follow-up Survey (see Appendix 2F).

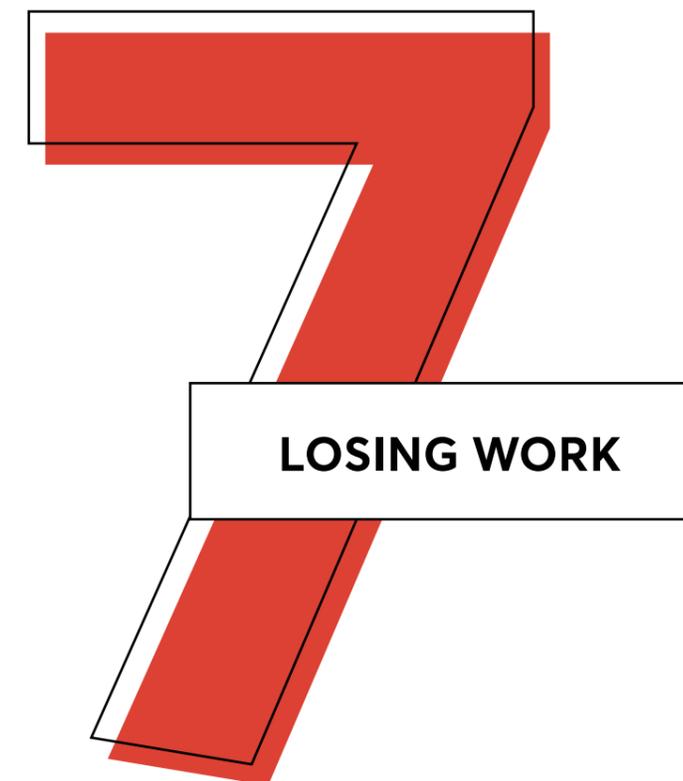
<sup>312</sup> Ibid.

<sup>313</sup> 6-month Follow-up Survey (see Appendix 2E); 12 month Follow-up Survey (see Appendix 2F).

<sup>314</sup> 6-month Follow-up Survey (see Appendix 2E).

<sup>315</sup> Ibid.

<sup>316</sup> 12-month Follow-up Survey (see Appendix 2F).



## 7. LOSING WORK

### SNAPSHOT

1. Young people often struggle to stay in work due to circumstances beyond their control, in particular:
  - COVID-19 has led to a significant loss of work for young people including loss of jobs and reduction in hours of work and shifts; and
  - many young people are unfairly fired, including because of complaints about pay and entitlements;
2. when young people are unfairly or unlawfully dismissed, the short 21-day time period for lodging a claim with the FWC can preclude young workers from accessing key legal protections, given their limited understanding of their rights and where to go for help; and
3. free legal assistance, as well as legislative reform, is needed to ensure that young workers are appropriately protected from unfair or unlawful dismissal.

### 7.1 The problems

#### 7.1.1. High rates of job loss for young people in Melbourne's West

There is limited research which examines the end of employment relationships.<sup>317</sup> However, through the YEP, we found that losing work (whether as a result of termination or a reduction in hours) is a common problem experienced by young people in Melbourne's West and young international students.

**41%** of YEP clients had lost the jobs that were the subject of our advice and/or assistance.

**27%** of young people we surveyed reported having been fired, lost their jobs or forced to reduce their hours of work.<sup>318</sup>

**50%** of intermediaries we surveyed said losing work (including getting fired and forced reduction in hours of work) was a common issue for the young people they worked with.<sup>319</sup>

#### 7.1.2. COVID-19 has exacerbated the problem

**'(I) Found it more difficult to find work as many people are unemployed so there's a lot of competition. My store also closed down due to the lockdown in Victoria.'**<sup>320</sup>

The pandemic took a significant toll on the employment of young people, who were twice as likely to have lost work than other age groups.<sup>321</sup> CMY's survey of young people during the March-April 2020 lockdown period found that 38% of participants lost their jobs, with a further 33% experiencing a reduction in hours.<sup>322</sup>

Consistent with the literature, the young people we surveyed also struggled with job loss and a reduction in hours as a result of COVID-19.<sup>323</sup>

**18%** lost their jobs.

**11%** were stood down.

**4%** experienced a reduction in hours.

Similarly, the intermediaries we surveyed reported that job loss and a reduction in hours of work had become 'much more common' as a result of COVID-19, with young people also struggling to regain work.<sup>324</sup>

This was also a common theme for YEP clients, **29%** of our clients lost their jobs, were stood down or experienced a significant reduction in their shifts

**18%** lost their jobs.

**8%** were stood down.

**5%** experienced a reduction in hours.

In a number of cases, our clients were left with outstanding wages or entitlements when this happened.

#### CASE STUDY: JUN

Jun, a young international student, had been working as a casual waitress at a bar and restaurant venue when COVID-19 hit. As a result, her employer shut its doors and has since closed for good. Jun did not receive her last two weeks' pay, despite several attempts to contact her ex-employer. WEstjustice gave Jun detailed advice about her entitlements and assisted Jun to self-advocate by helping her draft an email which she then sent to her ex employer. Jun was able to negotiate a settlement of her claims. Jun developed a greater understanding of what her employment rights in Australia were, and how she can resolve similar issues in the future.

In these circumstances, it is particularly important that the Victorian and federal governments implement meaningful strategies to help young workers access decent and secure work (see page 44 above).

#### 7.1.3. Many dismissals occur in unfair circumstances

Young people's lack of experience, knowledge and general vulnerability to workplace exploitation can readily culminate in 'poor outcomes' at the end of an employment relationship.<sup>325</sup> A study regarding the dismissal of young people in Queensland highlighted that dismissals were often the result of one or more incidents that were 'inconvenient (or perceived to be inconvenient)' to the employer's business,<sup>327</sup> which seems to suggest that employers view young workers as expendable and/or are less willing to invest in the labour of young workers. In particular, the study illuminated 'concerning trends' of young people being dismissed: for taking sick leave; as a result of illness or injury or becoming pregnant; or because they queried their entitlements or made a complaint of bullying or harassment.<sup>328</sup>

This was one of the more prevalent issues for our YEP legal service clients: **22%** of our clients were unfairly or unlawfully dismissed. In **40%** of these cases, they were specifically dismissed for making complaints or enquiries about their pay or other entitlements. This often occurred in circumstances where our clients were owed substantial amounts of money and the dismissal was used by employers as a way of getting rid of a 'problem'.

#### CASE STUDY: HARRY AND PRIYA

When Harry and Priya received promotions and asked their boss for a pay rise, he became angry and aggressive. He told them both to 'f\*\*\* off' and said that if they didn't like the pay they could leave. During this confrontation, Priya started filming her boss's behaviour. The boss physically assaulted Priya and dismissed both Priya and Harry on the spot; he also made false allegations of theft against Harry.

At the time of the dismissal, Harry and Priya were collectively owed approximately \$50,000.

<sup>317</sup> Ashlea Kellner, Paula McDonald and Jennifer Waterhouse, 'Sacked! An Investigation of Young Workers' Dismissal' (2011) 17(2) Journal of Management & Organization 226, 227.

<sup>318</sup> General Youth Survey (see Appendix 2A).

<sup>319</sup> General Intermediary Survey (see Appendix 2B).

<sup>320</sup> General Youth Survey participant (see Appendix 2A).

<sup>321</sup> Youth Affairs Council Victoria (n 11) 4.

<sup>322</sup> Centre for Multicultural Youth (n 140) 4.

<sup>323</sup> General Youth Survey (see Appendix 2A).

<sup>324</sup> General Intermediary Survey (see Appendix 2B).

<sup>325</sup> Of the 38 clients we assisted between March 2020 – January 2021, as a direct result of COVID-19: 7 lost their jobs, 3 experienced a reduction in hours and 2 were stood down. Note: some clients experienced multiple issues; e.g. they were stood down and then dismissed, or had their hours reduced and then were dismissed.

<sup>326</sup> Kellner, McDonald and Waterhouse (n 321) 241.

<sup>327</sup> Ibid 240.

<sup>328</sup> Ibid 241.

## 7.2 Current approaches

### 7.2.1. Protections against unfair and unlawful dismissal

There are, of course, a number of legislative protections which provide options for recourse in these circumstances. In particular:

1. permanent employees and long-term casuals can, in certain circumstances, make unfair dismissal claims where their dismissal was 'harsh, unjust or unreasonable';<sup>329</sup>
2. employees, and in some circumstances contractors, can make a 'general protections' claim if they are dismissed for: exercising or proposing to exercise a workplace right (such as complaining about rates of pay); engaging in industrial activity; being temporarily absent from work due to illness or injury; or if they are otherwise dismissed for a discriminatory reason;<sup>330</sup> and
3. employees and contractors can make claims under State or federal anti-discrimination laws if they are dismissed for a discriminatory reason.

However, we found that these protections can be undermined by:

1. unfair treatment and/or coercive practices by employers; and
2. short legal time limits for making claims in the FWC

#### Coercion undermines unfair and unlawful dismissal claims

Research has highlighted the prevalence of cases of 'constructive dismissal' in which young people had no choice but to resign as a result of extended periods of bullying and harassment.<sup>331</sup> It has been suggested that in some of these cases it is possible that employers may have coerced employees to resign to avoid the legal risks of unfair dismissal claims.<sup>332</sup>

Indeed, many of our YEP legal service clients who were the subject of discriminatory or otherwise unreasonable behaviour in the workplace chose to resign because they weren't aware that they had any legal options available and could no longer tolerate their workplace conditions.

### CASE STUDY: VALENTINA

Valentina was engaged as a cleaner in a sham contracting arrangement. On top of receiving a rate of pay which was below minimum wage, she was subject to multiple instances of sexual harassment from her supervisor. Before attending an appointment with WEstjustice, she got fed up with the behaviour and quit her job, as she couldn't cope being in that environment any longer.

#### Insufficient time to complain

Under the FW Act, a worker who has been unfairly or unlawfully dismissed only has 21 days from the date the dismissal took effect to submit a claim to the FWC for redress, including compensation.<sup>333</sup> This rule is strictly enforced.<sup>334</sup>

21 days is a significantly short period of time for young workers, particularly considering that many young people are unaware of their rights to make a legal claim (see page 40). Specifically:

1. during our CLE presentations, many young participants expressed surprise about the 21-day time limit. In addition, of the CLE participants we surveyed, a number of respondents said that learning about their rights to make claims in relation to dismissal was the most helpful thing that they gained from our presentation. A few participants specifically cited learning about the 21-day time limit for unfair and unlawful dismissals as being most useful to them;<sup>335</sup> and
2. many of our YEP clients were unaware of their rights upon dismissal. Several of our clients came to us only because they were owed unpaid wages from their employment after their unfair or unlawful dismissal.

Due to multiple overlapping jurisdictions, it can also be also very difficult for our clients to determine the most appropriate forum in which to make their claim.

### CASE STUDY: OLGA

After being dismissed for making a complaint about sexual harassment and sex discrimination, Olga was eligible to make the following claims in relation to her dismissal:

- an unfair dismissal claim under the FW Act;
- a general protections claim involving dismissal under the FW Act;
- a discrimination and sexual harassment claim under the Equal Opportunity Act 2010 (Vic); or
- a discrimination and sexual harassment claim under Sex Discrimination Act 1984 (Cth).

There were multiple competing considerations that Olga needed to consider when assessing the appropriate claim to make, such as the different types of compensation payable in each jurisdiction and the ability to recover other outstanding employee entitlements. In addition, at the time of trying to make this decision, Olga was suffering considerable mental health issues as a result of her treatment at work. Even with WEstjustice's assistance, it took Olga months to feel ready to decide which claim to make – she was therefore precluded from taking any action under the FW Act.

In addition, many of our clients had other vulnerabilities which prevented them from acting quickly to make complaints. A number of our clients who had been unfairly or unlawfully dismissed were from CALD backgrounds, were experiencing significant mental health issues, were current victims of family violence and/or were dealing with other pressing legal matters.<sup>336</sup>

### CASE STUDY: PRIYA

Priya was a victim of family violence and initially came to WEstjustice for assistance with multiple unpaid fines which her ex-partner had hidden from her. It was not until much later that we later discovered the significant exploitation Priya had faced in the workplace, including underpayments, racial discrimination, and unlawful dismissal when she tried to ask for a pay rise. Unfortunately, by the time Priya came to see WEstjustice, she was well out of time to make a complaint to the FWC and almost out of time to make a discrimination complaint. Priya told us that the reason she had not sought assistance about these issues earlier was because at the time of her dismissal she had just found out she was pregnant and needed to escape her violent relationship. When she attended WEstjustice for assistance, Priya had recently given birth to her first child, and was living with her grandmother.

### CASE STUDY: CECILIA

Around the time that Cecilia had been dismissed for having acquired a wrist injury at work, her partner had also been dismissed from his employment. As a result, Cecilia was incredibly stressed, as she and her partner were facing possible homelessness; they were unable to live with Cecilia's family and certain friends due to past experiences with family violence. She didn't know where to go for support. Given these circumstances, and because Cecilia was also struggling with ongoing mental health issues, she did not seek assistance from WEstjustice until well after the 21-day time limit for lodging a claim with the FWC. This extra hurdle to making a claim contributed to Cecilia's decision not to exercise her rights.

<sup>329</sup> FW Act (n 66) pt 3-2.

<sup>330</sup> Ibid pt 3-1.

<sup>331</sup> Kellner, McDonald and Waterhouse (n 321) 237.

<sup>332</sup> Ibid.

<sup>333</sup> FW Act s 366.

<sup>334</sup> See, e.g., *Thai Luu v Employure Pty Ltd [2021] FWC 2599* in which the FWC dismissed an application which was filed online one minute late.

<sup>335</sup> CLE Feedback Survey (see Appendix 2H).

<sup>336</sup> See Appendix 3 for more information.

In summary, the rationale behind the 21-day time limit is to:<sup>337</sup>

1. ensure the matter can be resolved quickly so that the worker can return to work with minimal impact on relationships and business management if their claim is successful (and they are reinstated to employment); and
2. provide certainty to employers about the claims they may be exposed to.

However, the practical reality is that the FWC only reinstates dismissed workers to their jobs in the rarest of circumstances. For example, in the 2018-2019 financial year, reinstatement was only granted in 6% of cases that went to hearing.<sup>338</sup>

In addition, in cases of unfair or unlawful dismissal, our clients rarely wished to be reinstated to their former roles given the poor treatment that often accompanied their dismissals.

On the other hand, employers' interests in relation to unfair dismissal claims are sufficiently protected by:<sup>339</sup>

1. a duty on employees to mitigate their losses by seeking alternative income (which is a key consideration for the FWC when awarding compensation); and
2. a statutory cap on compensation, which is equivalent to 26 weeks' pay.

In these circumstances, it is clear that the 21-day time limit unfairly prejudices the rights of vulnerable young workers for little-to-no justifiable reason.

By contrast, discrimination legislation better recognises the need to provide more time to applicants to elect whether to make a complaint if they are dismissed for a discriminatory reason. Specifically, at the:

1. federal level, the time limit for lodging a complaint with the AHRC for discriminatory dismissal is 6 months.<sup>340</sup> This is a discretionary time limit that is not enforced as strictly as the 21-day time limit for FWC claims; and
2. Victorian level, the time limit for lodging a complaint with the VCAT for discriminatory dismissal is 12 months.<sup>341</sup> Similarly, this is also a discretionary time limit.

### Recommendation 21: Extend the time limit for filing unfair and unlawful dismissal claims with the FWC

Amend the FW Act to extend the time for filing claims for unfair dismissal and unlawful dismissal (including general protections claims involving dismissal) to 12 months (which should be a discretionary limit similar to anti-discrimination legislation) – except in cases where the applicant is seeking reinstatement. This is to ensure that dismissed employees have adequate time to seek appropriate legal advice, consider the most appropriate application and protect their legal interests.

## 7.3 What we did

### 7.3.1. Clients kept in employment or returned to work

Through the YEP legal service, we assisted clients to remain in employment while navigating workplace disputes. On many of these occasions, we advised our clients on how to have constructive conversations with their employers about their workplace entitlements or represented our clients in negotiations with their employers. These negotiations often adopted a much more practical than legal approach, with an emphasis on relationship-building rather than a focus on strict legal claims and processes.

### CASE STUDY: ABDUL

Abdul sought WEstjustice's help as he believed he was being underpaid. When Abdul asked his employer about his appropriate pay rates, they got into an argument – it is unclear if Abdul was dismissed or if he resigned. During Abdul's employment, he was constantly late during his first year. He frequently got into heated conversations with his employer, often threatening to leave his employment. This meant he did not have a strong basis for making an unfair dismissal claim. Abdul's priority was to get back to work as he was the sole income earner for his family, supporting his mother, sister and niece financially.

WEstjustice helped Abdul to understand that while he wasn't being underpaid, he did have rights and his employer couldn't dismiss him for asking about his pay. WEstjustice then facilitated a negotiation between the parties and assisted Abdul to draft an apology to rectify any misunderstandings between him and his employer.

At the conclusion of many weeks of negotiations, Abdul was reinstated, with his annual and sick leave continuing to accrue as if he never left. WEstjustice helped to negotiate an agreement that both Abdul and his employer were happy with, and would give the employment relationship the best chance of success.

### 7.3.2. Adequate compensation

While maintaining employment for young people is always preferable, in cases where this was not possible or where our clients no longer wished to remain employed due to poor treatment, we assisted our clients to recover a total of **\$74,544** in compensation for being unfairly or unlawfully dismissed.

We also assisted clients to obtain future work through negotiations with employers to retrospectively treat their dismissal as a resignation and/or to provide a statement of service.

### CASE STUDY: MAHALIA

When WEstjustice assisted Mahalia to self-advocate at her unfair dismissal conciliation, we helped her ensure that as a part of settlement, her employer provided a statement of service and reclassified her dismissal as a resignation. This was in addition to providing compensation for lost wages. This would assist Mahalia in her applications for future jobs.

We were also able to help prevent future discriminatory conduct by holding employers to account and having them agree to run training for the workplace. That is, we assisted in the negotiation of settlement terms intended to effect systemic change.

### CASE STUDY: OLGA

In preparation for Olga's sexual harassment and discrimination claim, we assisted her to prepare a powerful impact statement highlighting the human impact of her employer's failure to prevent sexual harassment from occurring in the workplace. Olga read this statement at the mediation with her employer and the perpetrators of the discriminatory conduct and sexual harassment.

At the conclusion of the mediation, in addition to financial compensation, Olga received a written apology from one of her colleagues, and her employer agreed to arrange sexual harassment training for every staff member in the workplace.

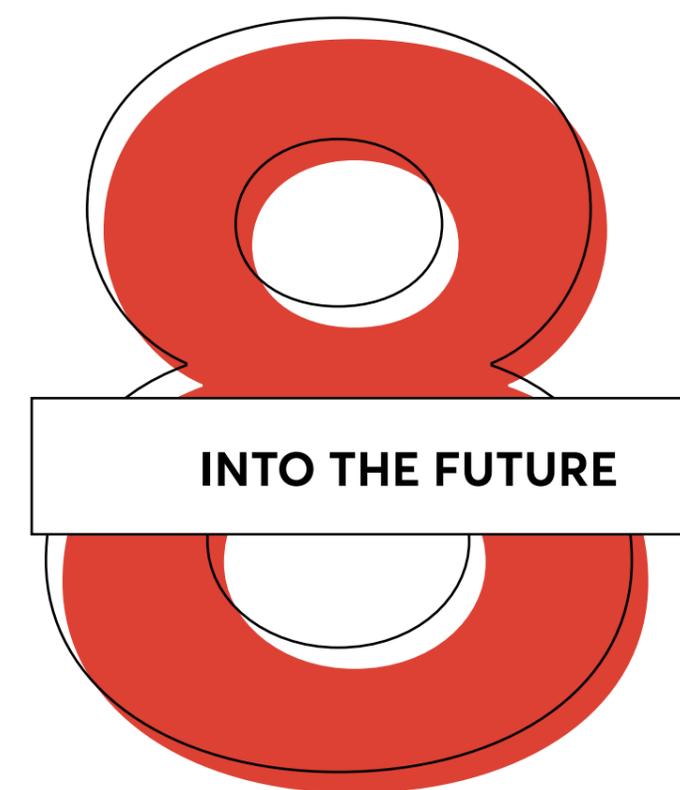
<sup>337</sup> Explanatory Memorandum, *Fair Work Amendment Bill* 2012, 8.

<sup>338</sup> FWC, *Access to Justice 2018-19* (Annual Report, 2019) 147 <[https://www.fwc.gov.au/documents/documents/annual\\_reports/ar2019/fwc-annual-report-2018-19.pdf](https://www.fwc.gov.au/documents/documents/annual_reports/ar2019/fwc-annual-report-2018-19.pdf)>.

<sup>339</sup> FW Act s 392.

<sup>340</sup> *Australian Human Rights Commission Act 1986* (Cth) s 46PH(1)(b).

<sup>341</sup> *Equal Opportunity Act 2010* (Vic) s 116.





## 8. INTO THE FUTURE

### 8.1 Future work

Building on this first phase of the YEP, we are currently in the process of seeking funding to run a further iteration of the project which will include a State-wide approach to empowering young people to understand and advocate for safe and fair work conditions.

To this end, the second phase of the YEP will include:

1. research to investigate in-person service delivery compared to (COVID-19) virtual service delivery;
2. research to establish the basis for young people's perceived knowledge of their work rights;
3. a strategic advertising and communications campaign to increase access to the YEP's legal services;
4. data collection and analysis regarding the number of direct referrals to our legal service as a result of our CLE activities to further analyse the utility of CLE in increasing access to legal services; and
5. a longitudinal study regarding the impact of our targeted education activities on employment outcomes for young people.

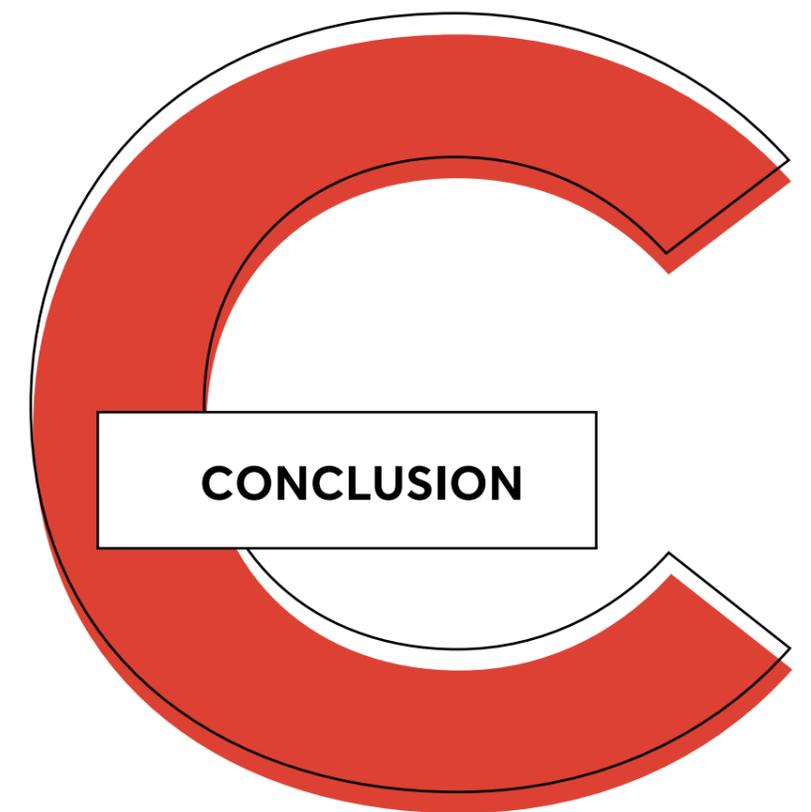
In particular, ethics limitations, and the closure of RISEC (Research in Victorian Government Schools and Early Childhood) during the pandemic, meant that we were unable to conduct in-depth research through our School Lawyer Program, such as conducting focus groups with school students or longitudinal surveys of our CLE participants. Our research through the second phase of the YEP will therefore seek to capture this data from school students.

### 8.2 Recent developments

WEstjustice has recently received funding from the Department of Families Fairness and Housing to run the following programs, which will assist us to build on the recommendations in this report and improve employment outcomes for young people:

1. a comprehensive **Work Rights & Responsibilities Train the Trainer Program**. This program will be made available to Community Employment Connectors (**Community Connectors**) and Victorian African Community Action Plan Employment Brokers (**Employment Brokers**) across Victoria to build their capacity and understanding of basic work rights and responsibilities, key workplace issues and referral options in assisting vulnerable job-seekers to find work;

2. **Getting Ready for Work** training workshops (for young people, as well as newly-arrived and refugee communities) covering key job-readiness and work rights information. These modules will be co-delivered by a WEstjustice lawyer and Community Connectors/Employment Brokers; and
3. a pilot **VCAL Work Rights & Responsibilities** training module aimed at young people from CALD backgrounds. This will be developed in conjunction with a VCAL specialist and piloted in a western suburban school with a diverse population.



## 9. CONCLUSION

Secure and meaningful employment for young people is crucial for their own wellbeing, as well as the wellbeing of our economy. However, the achievement of sustainable employment for young people is conditional upon breaking down the many barriers to young people understanding and enforcing their workplace rights and accessing their legal entitlements and equal opportunities in the workplace.

The YEP, through its targeted and integrated legal services and education programs, has assisted young people in Melbourne's West, and young international students, to achieve improved employment outcomes. These outcomes range from an enhanced understanding of their work rights and responsibilities to prepare for work, and increased confidence to stand up for their rights in the workplace, to achieving improved working conditions in future jobs.

We need to equip young people with tools that enable them to have meaningful and positive experiences at work. This involves: embedding work rights education into secondary and tertiary education programs; providing better access to employment-related legal services, and ensuring the voices and experiences of young workers are central in developing economic policy.

Through this report, we have sought to illuminate the views and experiences of young people in the hope that governments and regulators will give them due attention in developing important policies for economic recovery following the devastating impacts of COVID-19.



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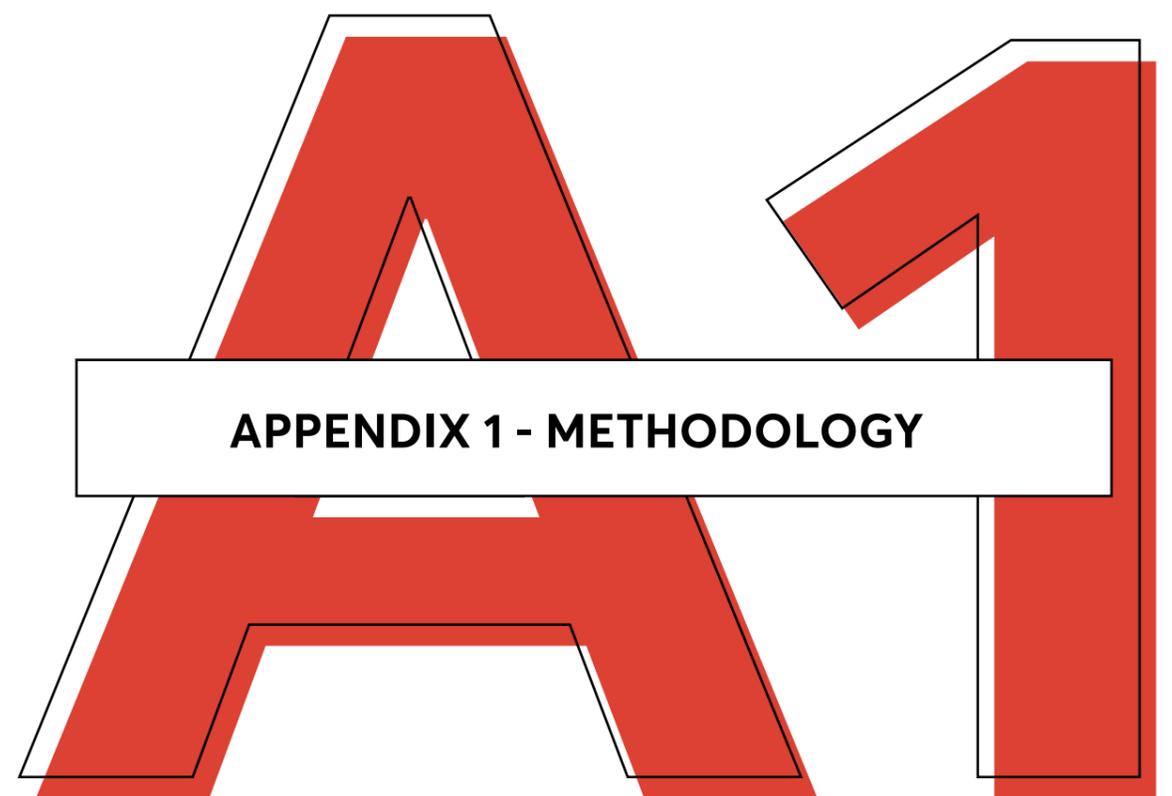
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# APPENDIX 1 - METHODOLOGY

## 1. ENVIRONMENTAL SCAN

To better understand the key barriers/enablers for young people in achieving improved employment outcomes, we: conducted a literature review; consulted with and conducted semi-structured interviews with stakeholders; conducted focus groups, and distributed surveys for young people and intermediaries. Intermediaries included teachers, careers counsellors, mental health professionals, social workers, youth workers etc.

Online surveys were distributed to young people living, working or studying in Melbourne's West and the intermediaries who work with them. Surveys were distributed through our networks and key stakeholders and promoted through our social media platforms. There were two surveys, one of which was directed at young people (General Youth Survey) and the other, which was directed at intermediaries (General Intermediary Survey). Both surveys addressed similar issues, though questions varied based on target survey participants. We drafted our surveys in consultation with academics and intermediaries.

Participants who completed our General Youth Survey were given the opportunity to go into the draw to win prizes, including a pair of Apple Air Pods, a Bluetooth speaker and a Nike voucher. We received ethics approval to offer prizes on the basis of a determination that the chance to win one of these prizes would not vitiate young people's consent. In practice, it appears

that this opportunity may have influenced participants' decision whether to participate, as we had a higher than expected overall response rate. However ultimately, the chance to win prizes did not appear to impinge on participants' consent to participate in the research, as a substantial number of respondents elected not to answer all or some of the survey questions.

We excluded participants who did not answer any substantive survey questions. In addition, a number of participants self-disclosed that they were over the age of 25 and ineligible to complete the survey. In total, we excluded 47 participants. As this was a voluntary survey, we have identified the number of participants who answered each question in Appendix 2A. In total we received 52 valid responses to substantive questions in our General Youth Survey.

In total, we received 12 valid responses to substantive questions in our General Intermediary Survey. We had to exclude 6 participants who did not answer any of the substantive questions.

We also conducted 2 focus groups with a total of 9 young people in Melbourne's West and 2 focus groups with intermediaries (a total of 11 participants from 10 different organisations), and 3 semi-structured interviews with intermediaries.

## 2. EVALUATION OF THE YEP'S PROGRAMS

To evaluate impact of the YEP's legal service and education programs, we invited our clients and CLE participants to participate in feedback surveys.

Clients of the YEP legal service were surveyed by phone following an advice-only appointment (Post-advice Surveys – Appendix 2C) or after the conclusion of their matter (Post casework surveys – Appendix 2D). Subsequently, with their consent, follow-up surveys were conducted with clients 6 and/or 12 months following their advice-only appointment or the finalisation of their matter (6 and 12 month Follow up Surveys – Appendices 2E and F).

Interviewers were instructed not to leave voicemails and to contact clients no more than 5 times if the phone was not answered. Interviewers wrote down participants' responses as accurately as possible without summarising or editing the responses. Where clients indicated they would be happy to participate in our survey, but we could not reach them by phone, they were invited to participate in an email survey (answering the same questions as the phone survey).

In total we received 42 responses to our client surveys. These included:

- **14 post advice surveys.**
- **12 Post casework surveys.**
- **13 6 month Follow-up Surveys.**
- **3 12 month Follow-up Surveys.**

Young participants at our CLE sessions were invited to participate in surveys, which we distributed by email or in hard copy, before and after our presentations (CLE Pre-poll – Appendix 2G; CLE Feedback Survey – Appendix 2H). We also invited intermediaries who attended these sessions to participate in separate feedback surveys (Intermediary CLE Survey – Appendix 2I).

Similarly, intermediaries who participated in a professional development session were invited to participate in an email survey following our presentation (Intermediary PD Survey – Appendix 2J).

## ETHICS APPROVAL

There were a number of ethical considerations in working with young people, so we applied to the Human Research Ethics Committee (HREC) of BSL for ethics approval.

Specifically, we obtained approval to:

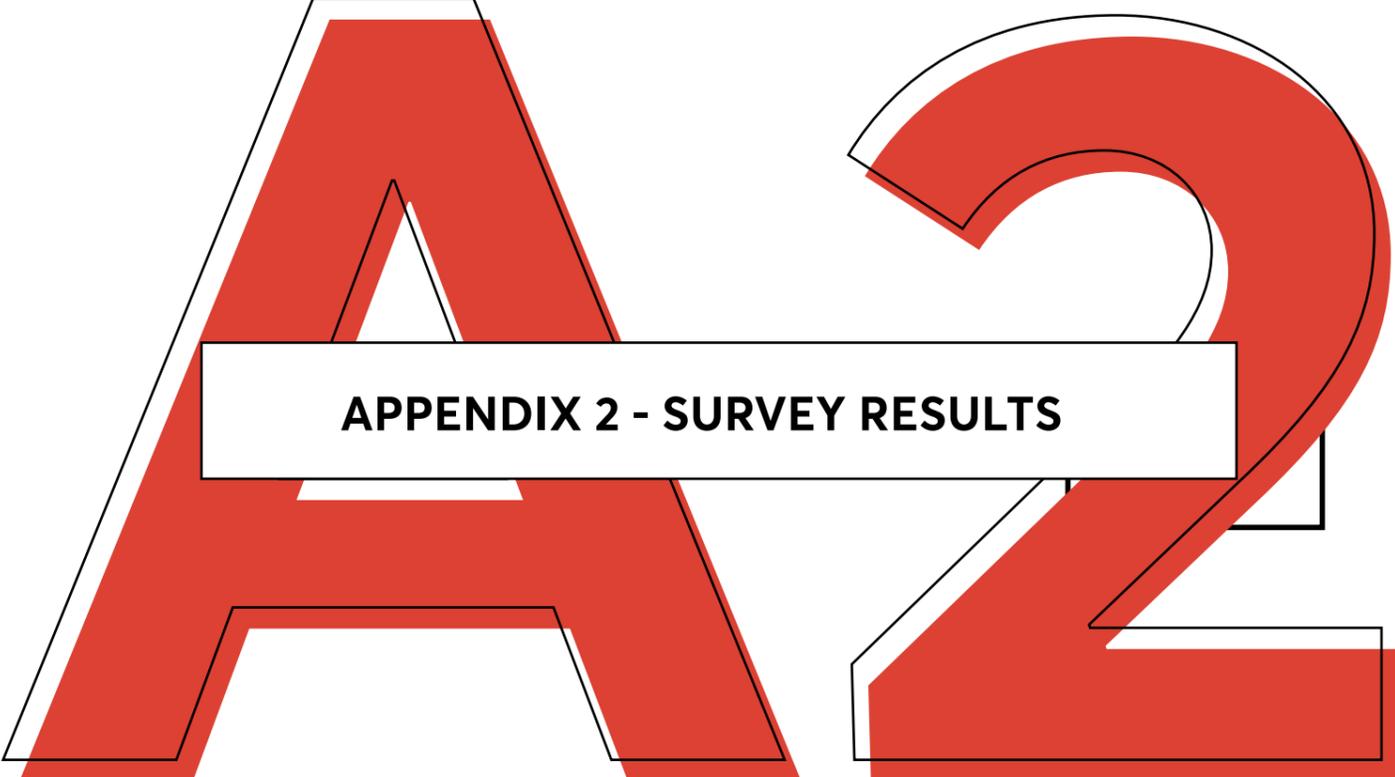
1. conduct surveys and focus groups with young people in Melbourne's West and intermediaries to better understand the barrier/enablers to young people achieving improved employment outcomes; and
2. use the results of evaluation data gathered through our YEP legal service and education activities (which is primarily collected for quality assurance purposes) for a secondary purpose; namely to publish that data in this report.

Key considerations for the HREC were informed consent, the voluntary nature of participation, maintaining confidentiality of participants, data storage and management and planning for adverse consequences for participants.

In this research we were guided by The National Statement on Ethical Conduct in Human Research (2007). In order to manage ethical risks, we put in place following mechanisms (inter alia):

1. as a matter of course in our YEP program activities (and independently of receiving ethics approval), we make it clear that our legal assistance/educational activities are not conditional upon participation in any of our surveys. We also routinely seek consent from all YEP clients to use their de-identified aggregated data in research and advocacy activities;
2. all survey and focus group participants were given information about this research project and told their participation was entirely voluntary and not linked the provision of any of our services; and
3. all survey and focus group participants were provided with information on 'where to go for help' in case – in the course of their participation in a survey or focus group – they discovered that they had a legal issue that they had not previously been aware of.





# APPENDIX 2 - SURVEY RESULTS

## GENERAL YOUTH SURVEY (n=52)\*

\* We received 52 valid survey responses. We excluded a total of 47 respondents who didn't answer the substantive questions or identified being over the age of 25.

### Demographic information about respondents

Q1. HOW OLD ARE YOU? (n=50)		
Age	Count	Percentage
14	1	2%
15	13	26%
16	6	12%
17	11	22%
18	4	8%
19	0	0%
20	3	6%
21	4	8%
22	2	4%
23	2	4%
24	0	0%
25	4	8%

Q2. WHAT IS YOUR CURRENT GENDER IDENTITY? (n=52)		
Gender Identity	Count	Percentage
Female	35	67%
Male	15	29%
Non-binary	2	4%
Gender-diverse	0	0%
Other (please specify)	0	0%

Q3. HOW WOULD YOU DESCRIBE YOUR CULTURAL IDENTITY?*(n=49) (open-ended question, coded by researchers)		
Cultural Identity	Count	Percentage
African	2	3%
Asian	3	5%
Australian	11	19%
Eastern European	1	2%
Israeli	1	2%
Bangladeshi	2	3%
Bengali	3	5%
Cameroonian	1	2%
Chinese	1	2%
Dutch	1	2%
English	2	3%
Ethiopian	1	2%
Filipino	3	5%
Hindi	1	2%
Indian	16	27%
Karen	1	2%
New Zealander	1	2%
Pacific Islander	1	2%
Punjabi	2	3%
South East Asian	1	2%
Vietnamese	4	7%
No answer/invalid response	3	5%

\* Some respondents noted multiple cultural identities (e.g. Vietnamese/Australian). Where this was the case, we have recorded both cultural identities separately.

Q4. WERE YOU BORN IN AUSTRALIA? (n=52)		
Responses	Count	Percentage
Yes	19	37%
No	33	63%

Q5. HOW DID YOU COME TO AUSTRALIA? (n=52)		
Responses	Count	Percentage
I'm from a refugee background/came on a Humanitarian Visa	3	6%
I came through family migration	31	60%
I am an International student	6	12%
Other*	12	23%

Q6 – We omitted this question (relating to current visa status), because it appeared to cause confusion among respondents.



## Experiences at work

### Q7. HAVE YOU HAD A JOB BEFORE? (n=49)

Responses	Count	Percentage
Yes	32	65%
No	17	35%

### Q8. WHAT JOBS HAVE YOU DONE?\*

(n=34) (open-ended question, coded by researchers)

Responses	Count	Percentage
Baker	1	2%
Childcare worker	1	2%
Cleaner	2	4%
Crowd Controller	1	2%
Delivery worker	1	2%
Fast Food	14	25%
Hospitality	5	9%
IT/accounts	4	7%
Kitchen Hand	1	2%
Librarian assistant	1	2%
Marketing/Human resources	5	9%
Modelling/Acting	1	2%
Retail (store based)	6	11%
Sport instructor	1	2%
Sport referee	1	2%
Teaching/tutoring	7	12%
Warehousing	1	2%
Youth Worker	2	4%
Other	2	4%

\* Respondents provided multiple answers

### Q9. HOW MANY HOURS DO YOU WORK PER WEEK? (n=34) (open-ended question, coded by researchers)

Responses	Count	Percentage
1 to 9 hours*	13	38%
10 to 19 hours	4	12%
20 to 29 hours	9	26%
30 plus hours	8	24%

\*85% of respondents who worked less than 10 hours per week were under the age of 18.

### Q10. DO YOU GET A PAYSリップ? (n=34)

Responses	Count	Percentage
Yes	23	68%
No	8	24%
Not sure	3	9%

### Q11. DO YOU GET SUPERANNUATION? (n=34)

Responses	Count	Percentage
Yes	15	44%
No*	9	26%
Not sure	8	24%
What is superannuation?	2	6%

\*We identified that, of the respondents who were not receiving superannuation, it is likely that 2 (22%) were entitled to be paid superannuation, on the basis that they were over 18 years in age, and reported working 20 hours per week on a part-time basis (therefore earning more than \$450 per month). Both of these respondents were international students.

### Q12. WHAT KIND OF JOB DO YOU HAVE? (n=34)

Responses	Count	Percentage
Full-time	3	9%
Part-time	17	50%
Casual	11	32%
Independent contractor (using an ABN)	1	3%
Labour hire	0	0%
Other	2	6%

### Q13. DO YOU WORK THE SAME HOURS EVERY WEEK? (n=34)

Responses	Count	Percentage
Yes	18	53%
No	13	38%
Not sure	3	9%

### Q14. DO YOU GET PAID HOLIDAYS OR TIME OFF IF YOU ARE SICK? (n=34)

Responses	Count	Percentage
Yes	8	24%
No*	24	71%
Not sure	2	6%

\*65% of respondents who said they worked in part-time jobs (see above, n=17) reported that they did not receive paid holidays or time off when sick. Of these respondents who did not get paid holidays or time off when sick, 100% (n=11) of them were not born in Australia.

### Q15. HOW DID YOU FIND YOUR JOB (E.G. GUMTREE, A JOB AGENCY, A FRIEND) (n=32)\* (open-ended question, coded by researchers)

Responses	Count	Percentage
Asked around	1	3%
Company site	2	6%
Facebook	2	6%
Friend/Family	12	38%
Gumtree	1	3%
Handed my resume into the store	1	3%
I was a student there	2	6%
Internet	2	6%
Internship	2	6%
Job agency	3	9%
Job search website (like Seek etc)	2	6%
Previous School	1	3%
Uber account	1	3%

\* Respondents provided multiple answers.

## Experiences at work (continued)

Q16. HAVE YOU, OR HAS ANYONE YOU KNOW, EXPERIENCED THESE THINGS AT WORK? (n=37)				
Responses	Yes I have experienced this	Someone I know (who is a similar age to me) has experienced this	No. I don't know anyone who has experienced this	Not sure
I'm not paid regularly (at least once per month) or when promised	22% (8)	27% (10)	49% (18)	3% (1)
I have completed unpaid work or unpaid training (for example, an unpaid 'trial period', unpaid work for training or an unpaid internship)	35% (13)	19% (7)	43% (16)	3% (1)
I don't know the name of the award or agreement covering my employment	24% (9)	11% (4)	46% (17)	19% (7)
I don't know the minimum pay rates for my job	41% (15)	11% (4)	46% (17)	3% (1)
I don't get paid extra to come in early or stay late	41% (15)	11% (4)	46% (17)	3% (1)
I'm paid in cash and don't get a pay slip	16% (6)	22% (8)	59% (22)	3% (1)
I lost my job/got fired/got forced to reduce my hours of work	27% (10)	14% (5)	57% (21)	3% (1)
I was discriminated against at work (for example, I was treated unfairly or differently because of my race/religion/age/gender/sexuality/disability etc.)	11% (4)	24% (9)	62% (23)	3% (1)
I have been sexually harassed at work (someone did or said something of a sexual nature that was unwanted and humiliating)	11% (4)	14% (5)	76% (28)	0% (0)
I have been bullied at work (for example being regularly teased or yelled at by a boss or co-worker)	19% (7)	16% (6)	65% (24)	0% (0)
I have been treated differently because I'm pregnant	0% (0)	0% (0)	95% (35)	5% (2)
My boss has refused to allow me to work flexibly to support my caring arrangement	3% (1)	5% (2)	84% (31)	8% (3)
I have been treated unfairly because I am young	16% (6)	14% (5)	59% (22)	11% (4)
I have been injured at work	25% (9)	8% (3)	64% (23)	3% (1)
I have been forced to do unsafe work	19% (7)	5% (2)	73% (27)	3% (1)
I have worked as an independent contractor (using an ABN/sending invoices), but I wasn't running a business	8% (3)	8% (3)	78% (29)	5% (2)
I don't know where to get help if I have a problem at work	22% (8)	11% (4)	59% (22)	8% (3)
I don't know what my work rights are	38% (14)	5% (2)	46% (17)	11% (4)



## Experiences at work (continued)

### Q17. IF YOU EXPERIENCED ANY OF THESE ISSUES, WOULD YOU MAKE A COMPLAINT ABOUT IT (E.G. TO A SENIOR MANAGER OR TO AN EXTERNAL BODY)? WHY/WHY NOT?\*

(n=25) (open-ended question, coded by researchers)

Response themes	Count	Percentage
Yes I would make a complaint	9	36%
I would like to make a complaint but I don't know how	2	8%
No, I lack knowledge or experience	2	8%
No, it wouldn't help	4	16%
No, I'm scared of the consequences	4	16%
No (other)	1	4%
I'm not sure	4	16%

### Examples of responses:

(Dot points below are direct quotes from survey participants)

#### Yes, I would make a complaint

- Yes, because I'm entitled to a fair and respectful workplace where I can do the work I'm being paid for.
- Yes, because there are people who are able to help.
- Yes, I would make a complaint because I understand that there are rights in place that ensure I receive fair treatment in the workplace.
- Yes, I would make a complaint. I do not want to endanger myself and I want to make sure the issues do not happen to other people.
- Yes, the current jobs I work are great and very supportive. But when I worked in retail (I quit a few weeks ago) and fast food (quit when I was 16), I would have been too anxious about bringing up most of these issues. I did try to speak to my boss once about my hours being cut, but they just denied it was happening in the first place ("We don't cut hours.").

#### Yes, I would like to make a complaint but I don't know how

- Yes, because I care about myself. It's just that I don't really know how to do it and who to tell.
- Yes, but the problem is finding the right person and time to do it.

#### No, I lack knowledge/experience

- No, Not experienced.
- No, simply because I wouldn't be sure if these were normal problems that everyone goes through, or something that needs to be addressed, since this is my first job.

#### No, it wouldn't help

- No, because it was just retail and it wasn't something that my manager could control.
- No, Because they dont care.
- No, i dont think people would listen.
- No, Senior management at my workplace was part of the problem in providing a systemically toxic environment. I felt like if I reported it to a senior manager they'd side against whatever I said.

#### No, I'm scared of the consequences

- No, as a casual would be worried about losing my job if I complained. I also struggle with anxiety so I dont deal well with confrontation.
- No. Fearing that I would loose the job. This is the real situation with most of the international students.
- No, Because I'm scared.

#### I'm not sure

- I'm not sure.
- I'm not sure . Maybe. if i thought it was illegal.
- I'm not sure. Sometimes its not that easy . From a Pacific Islander background, we have a duty to help our family through financial stability. So to keep our families well and looked after we cannot afford to make complaints that may result in reducing our hours or even getting fired/let go of. We have to brush those issues off, and harden our hearts. Our families lively hoods are heavily relied on us, we will never jeopardise that. Workplaces are also bias and have favoritism, so you already know the issues wont be resolved. There is no point in wasting your breath and energy!

### Q18. IF YOU WANTED TO MAKE A COMPLAINT ABOUT AN ISSUE AT WORK, WHERE YOU GO FOR HELP OR ADVICE?\*

(n=37)

Responses	Count	Percentage
Nowhere – I wouldn't get help	1	3%
A private lawyer	1	3%
To my school/ education provider	4	11%
A community legal centre	0	0%
A friend/family/ workmate	21	57%
The internet	5	14%
I'm not sure	3	8%
Other	2	5%

### Q19. HAVE YOU EXPERIENCED ANY PARTICULAR ISSUES AT WORK, OR IN TRYING TO FIND WORK, AS A RESULT OF COVID-19? IF SO, PLEASE PROVIDE DETAILS.\*

(n=28) (open-ended question, coded by researchers)

Responses	Count	Percentage
No	11	39%
Yes - lost job	5	18%
Yes - stood down	3	11%
Yes - reduced hours	1	4%
Yes - issues with managers in the workplace	2	7%
Yes - difficulty finding new work	5	18%
Yes - safety concerns	1	4%

## KNOWLEDGE OF WORK RIGHTS

Q20. PLEASE SELECT THE TOP 3 ISSUES YOU WOULD LIKE TO LEARN MORE ABOUT		
Responses	Count	Percentage
Salary: minimum pay rates, how often you should be paid etc	33	23%
Different types of employment & entitlements: what are the different rights for casual/part time / full time/independent contractors	30	21%
Being a parent and work: parental leave, flexible work arrangements, discrimination	1	1%
Unfair treatment at work: what is discrimination, sexual harassment and bullying and what are your rights	12	8%
Your rights if your boss ends your job	26	18%
Safety at work and what to do if you get injured at work	17	12%
How to speak up if you have an issue at work	25	17%
Other	1	1%

Q21. WOULD YOU FIND ANY OF THE FOLLOWING THINGS HELPFUL TO BETTER UNDERSTAND YOUR WORK RIGHTS AND RESPONSIBILITIES? (n=46)				
Responses	Not Helpful	Somewhat Helpful	Very Helpful	Not Sure
Fact sheets in English	2% (1)	20% (9)	78% (36)	0% (0)
Fact sheets in another language	30% (14)	24% (11)	39% (18)	7% (3)
Information session during school/university/TAFE classes	2% (1)	15% (7)	78% (36)	4% (2)
Information sessions provide during transition-to-work programs	2% (1)	13% (6)	83% (38)	2% (1)
In-person information sessions/workshops with a lawyer	0% (0)	43% (20)	50% (23)	7% (3)
Online information sessions/workshops with a lawyer	4% (2)	42% (19)	49% (22)	4% (2)
Information session with a lawyer and a community worker who speaks your language	18% (8)	33% (15)	47% (21)	2% (1)
Information using social media (e.g. Facebook, Instagram, Twitter)	7% (3)	26% (12)	65% (30)	2% (1)
YouTube video/other video	2% (1)	43% (20)	54% (25)	0% (0)
A website	4% (2)	37% (17)	57% (26)	2% (1)
An App	22% (10)	33% (15)	43% (20)	2% (1)
A telephone information service	24% (11)	47% (21)	27% (12)	2% (1)
Online information service (i.e. chat service)	7% (3)	51% (23)	38% (17)	4% (2)
In-person information service (with someone who is not a lawyer)	9% (4)	50% (23)	39% (18)	2% (1)
A one-on-one meeting with a lawyer	18% (8)	40% (18)	36% (16)	7% (3)
Play, theatre or information by other creative performance	48% (22)	24% (11)	22% (10)	7% (3)
Other (please specify)		11% (4)	59% (22)	8% (3)
I don't know what my work rights are	38% (14)	5% (2)	46% (17)	11% (4)

## GENERAL INTERMEDIARY SURVEY (N=12)\*

\* We received 12 valid responses in total. We excluded 6 responses which did not answer any of the substantive questions.

### Q1: APPROXIMATELY WHAT PERCENTAGE OF THE YOUNG PEOPLE YOU WORK WITH HAVE JOBS? (n = 10) (open-ended question, coded by researchers)

Average	41%
Range	10%-60%

### Q2: WHAT SORT OF JOBS DO THE YOUNG PEOPLE YOU WORK WITH GENERALLY HAVE? (E.G. CLEANING, AGED CARE, FACTORY WORKER, RETAIL WORKER ETC) (n = 10) (open-ended question, coded by researchers)

Sector	Count
Retail	7
Hospitality	6
Trades	6
Warehouse/Farm	5
Other (e.g. cleaner, aged care worker)	4

### Q3: WHAT DO YOU SEE AS SOME OF THE BARRIERS TO YOUNG PEOPLE FINDING WORK? (open-ended question, coded by researchers; dot points are direct quotes from survey participants)

#### Key Themes

##### 1. Health, Abilities and Motivation

- Mental Health.
- Literacy, numeracy, and dyslexia issues.
- Hospitality/retail/other entry-level jobs tend to have a toxic work culture that causes young people to have negative mental health and have a terrible first impression of what it is like to have a job. All these barriers can cause young people to have a lack of confidence and self-worth.
- Low motivation.

##### 2. Limited Resources Available to Young People

- Lack of transport.
- Limited networks.
- Unable to market themselves for a job.
- Education on job search skills, resume writing, interview skills etc, confidence/motivation especially after multiple attempts at applying for jobs.
- Criminal records.
- Lack of social capital.

##### 3. Mismatch Between Jobs and Skills

- Mismatch between skills and available jobs.
- Lack of previous job experience.
- Most employers are not youth-friendly: prioritising past experience and not valuing attitude/personality/soft skills as much.

##### 4. Labour Market

- Lack of jobs.
- Unreliability of previous workers.
- Competitive markets.
- Difficult to balance work and other needs or responsibilities ie. young carers, young parent, study, mental health and disability (as some examples).
- Discrimination on the basis of race, age, gender, ability, etc.
- Most work cultures are not flexible, especially with time.
- Poor working conditions and pay.
- Employers unwilling to take a chance on young people or hesitant to invest in young people.
- Postcode bias & discrimination.



Q4: BASED ON YOUR EXPERIENCE, ARE THE FOLLOWING ISSUES COMMON FOR YOUNG PEOPLE AT WORK? (n=11)				
Responses	Yes	Someone I know (who is a similar age to me) has experienced this	No. I don't know anyone who has experienced this	Not sure
Not paid regularly (at least once per month) or when promised	27% (3)	36% (4)	18% (2)	18% (2)
Undertaking unpaid work or unpaid training (for example, an unpaid 'trial period', unpaid work for training or an unpaid internship)	36% (4)	46% (5)	9% (1)	9% (1)
Don't know the name of the award or agreement covering their employment	64% (7)	18% (2)	9% (1)	9% (1)
Don't know the minimum pay rates for their job	64% (7)	18% (2)	9% (1)	9% (1)
Don't get paid extra to come in early or stay late	27% (3)	46% (5)	18% (2)	9% (1)
Don't get paid superannuation	18% (2)	36% (4)	27% (3)	18% (2)
Paid in cash and don't get a pay slip	55% (6)	18% (2)	9% (1)	18% (2)
Lost their job / got fired / got forced to reduce hours of work	50% (5)	30% (3)	10% (1)	10% (1)
Were discriminated against at work (for example, treated unfairly or differently because of race/religion/age/gender/sexuality/disability etc.)	18% (2)	46% (5)	9% (1)	27% (3)
Been sexually harassed at work (someone did or said something of a sexual nature that was unwanted and humiliating)	18% (2)	27% (3)	36% (4)	18% (2)
Been bullied at work (for example being regularly teased or yelled at by a boss or co-worker)	18% (2)	36% (4)	27% (3)	18% (2)
Treated differently because of pregnancy	9% (1)	27% (3)	36% (4)	27% (3)
Boss has refused flexible work to support caring arrangements	9% (1)	18% (2)	46% (5)	27% (3)
Been treated unfairly because the worker is young	27% (3)	36% (3)	18% (2)	18% (2)
Injured at work	18% (2)	9% (1)	46% (5)	27% (3)
Forced to do unsafe work	27% (3)	9% (1)	46% (5)	18% (2)
Worked as an independent contractor (using an ABN/sending invoices), but wasn't running a business	27% (3)	36% (4)	18% (2)	18% (2)
Don't know where to get help for problems at work	64% (7)	9% (1)	18% (2)	9% (1)
Don't know what their work rights are	73% (8)	9% (1)	9% (1)	9% (1)
Other (please specify)				

Q5: ARE ANY OF THE ABOVE ISSUES MORE PREVALENT IN PARTICULAR DEMOGRAPHIC GROUPS (E.G. CALD COMMUNITIES, SCHOOL AGED YOUNG PEOPLE, YOUNG PEOPLE WITH DISABILITIES)? IF SO, PLEASE PROVIDE DETAILS?

(open-ended question, coded by researchers; dot points are direct quotes from survey participants)

**Key demographics:**

**CALD groups**

- In CALD communities, underpayment and apparent sham contracting are particularly common.
- CALD communities/young people from CALD backgrounds that I have supported have advised of not knowing about their work rights or where to get help, as well as losing their jobs and needing to find work. Some young people with disabilities that I have supported have advised they may not disclose their disability when applying for jobs as they worry about being discriminated.
- CALD and school aged are our primary cohort and both of these group seem to lack awareness around above mentioned issues.
- Yes - newly arrived, CALD, lower levels of education, English not first language.
- CALD communities (especially international students) in particular seem to have these issues more prevalently - for example, many international students work "cash on hand" jobs.

**Young people**

- With the employers I work with at [Farm Name], they are prepared to give all young persons from all demographic groups a run but they tend not to stay with the jobs. Occasionally they turn up late or skip shifts without pre notification to employer.
- Yes. Young people do not receive much education on their work rights.

**Women**

- It is common for young women to get harassed in the workplace (especially in retail, fast food, etc.). This comes from both the customers and co-workers.

**Young people with a disability**

- Due to the very inflexible and toxic culture of many entry-level positions, as well as discrimination, young people with disabilities do not get the support they need at work. They struggle to find any work at all.

**Q6. HAVE ANY OF THESE ISSUES BEEN MORE PREVALENT AS A RESULT OF COVID-19? IF SO, PLEASE PROVIDE DETAILS**

- Job loss and reduction of hours is now much more common.
- Job loss / redundancy/reduced hours has been more prevalent due to COVID-19.
- More unemployed or under-employed.
- Lots of young people were working in jobs in the frontline (in healthcare, retail, grocery stores, food, etc.). Young people were at higher risk of being exposed to the virus because of the nature of their jobs.
- Yes, I have had clients lose work due to Covid-19 and struggle to regain work.

**Q7: HOW WELL DO YOU THINK THE YOUNG PEOPLE YOU WORK WITH UNDERSTAND THEIR RIGHTS AT WORK? (n=10)**

Responses	Count	Percentage
They do not understand their work rights at all	1	10.00%
They understand their work rights a limited amount	9	90.00%
They have a good understanding of their work rights	0	0.00%
They have a very good understanding of their work rights	0	0.00%
Your rights if your boss ends your job	26	18%
Safety at work and what to do if you get injured at work	17	12%
How to speak up if you have an issue at work	25	17%
Other	1	1%

**Q8: PLEASE SELECT THE TOP 3 ISSUES YOU THINK SHOULD BE PRIORITY TOPICS FOR LEGAL EDUCATION/INFORMATION INITIATIVES FOR THE YOUNG PEOPLE YOU WORK WITH (n=10)**

Responses	Count	Percentage
Salary: minimum pay rates, how often you should be paid etc.	6	60.00%
Different types of employment & entitlements: what are the minimum rights for casual/part time / full time/independent contractors	5	50.00%
Being a parent and work: parental leave, flexible work arrangements, discrimination	0	0.00%
Unfair treatment at work: what is discrimination, sexual harassment and bullying and what are your rights	6	60.00%
Your rights if your boss ends your job (redundancy, unfair dismissal etc)	2	20.00%
Union membership (e.g. the right to join/ not join a union)	1	10.00%
How to speak up if you have an issue at work	9	90.00%
Safety at work and what to do if you get injured at work	0	0.00%
Other (please specify)	1	10.00%

**Q9: IN YOUR EXPERIENCE, WOULD ANY OF THE FOLLOWING THINGS BE USEFUL IN HELPING YOUNG PEOPLE TO BETTER UNDERSTAND THEIR WORKPLACE RIGHTS AND RESPONSIBILITIES? (n=10)**

Responses	Not helpful	Somewhat helpful	Very helpful	Not sure
Fact sheets in English	0 % (0)	20 % (2)	80% (8)	0% (0)
Fact sheets in another language	10% (1)	0% (0)	90% (8)	0% (0)
Information sessions during school/ university/TAFE classes	0% (0)	0% (0)	100% (10)	0% (0)
Information sessions provided during transition-to-work programs	0% (0)	10% (1)	90% (9)	0% (0)
In-person information sessions/ workshops with a lawyer	0% (0)	30% (3)	70% (7)	0% (0)
Online information sessions/workshops with a lawyer	0% (0)	50% (5)	50% (5)	0% (0)
Information session with a lawyer and a community worker who speaks your language	0% (0)	20% (2)	80% (8)	0% (0)
Youtube video/other video	0% (0)	40% (4)	60% (6)	0% (0)
A website	0% (0)	56% (5)	44% (4)	0% (0)
An app	11% (1)	33% (3)	56% (5)	0% (0)
A telephone information service	10% (1)	70% (7)	20% (2)	0% (0)
Online information service (i.e. chat service)	0% (0)	50% (5)	50% (5)	0% (0)
In-person information service (with someone who is not a lawyer)	0% (0)	30% (3)	70% (7)	0% (0)
A one-on-one meeting with a lawyer	20% (2)	20% (2)	60% (6)	0% (0)
Information using social media (e.g. Facebook, instagram, Twitter)	0% (0)	20% (2)	80% (8)	0% (0)
Play, theatre or information by other creative performance	40% (4)	40% (4)	20% (2)	0% (0)
Other (please specify)				

**Q10: WHICH OF THE ABOVE MEASURES WOULD BE MOST USEFUL TO ENGAGE THE YOUNG PEOPLE YOU WORK WITH TO LEARN MORE ABOUT THEIR WORK RIGHTS (PLEASE LIST UP TO 3): (n=10)**

(open-ended question)

**Key Comments**

- Information sessions provided during School/TAFE/University and Transition to Work classes and programs.
- Information on social media.
- Fact sheets in other languages.
- In-person information sessions/ workshops, especially in different languages.
- One-on-one support based on contextualised needs.
- Train the trainer.
- Role plays/actors.
- Interactive website.
- In person workshops with lawyer.
- App.

**Q11: WE ARE CURRENTLY PILOTING AN EMPLOYMENT LAW LEGAL SERVICE FOR YOUNG PEOPLE. THINKING ABOUT THE YOUNG PEOPLE YOU WORK WITH, WHICH OF THE FOLLOWING OPTIONS WOULD ENHANCE THE ACCESSIBILITY OF THE SERVICE? (n=9)**

Daytime appointments, nighttime appointments or a combination of the two?	Appointments via telephone or face to face or online?	Scheduled appointments or a drop in service?	Embedded in other service providers (such as schools or community hubs) or located at WEstjustice or other outreach (please specify)?
Daytime and afternoon	All three	Both	All three
Combination	All of the above	Scheduled	All of the above
Combination	Important	Somewhat important	Somewhat important
Combination	Face-to-face or telephone	Drop in	Embedded in other service providers
Combination	combination - but particularly phone given accessibility is easiest	scheduled appointments	youth outreach, schools definitely
After school hours	Face-to-face	Both	Yes - Hubs, schools
Both	All three options available	Both	Both
Nighttime appointments would be necessary for those at school.	Both options	Both	Both
Combination of the two	face to face & online no telephone	drop in service	embedded in other service providers (LGA youth centres)

**Q12: PLEASE SUGGEST ANY OTHER FEATURES YOU THINK WOULD ENHANCE THE ACCESSIBILITY OF AN EMPLOYMENT LEGAL SERVICE FOR YOUNG PEOPLE**

**Quotes**

- Young ones use social media. That is the best way forward.
- Apps and social media! Maybe a text line? YP (and millennials!) really don't like making phone calls.



## POST ADVICE SURVEY (N=14)

Q1: PLEASE RATE HOW YOU FEEL ABOUT THESE STATEMENTS				
Responses	Strongly agree	Agree	Disagree	Strongly disagree
The legal service at WEstjustice was easy to access	29% (4)	71% (10)	0% (0)	0% (0)
The lawyer helped me to better understand my rights and responsibilities at work	86% (12)	14% (2)	0% (0)	0% (0)
The lawyer helped me understand my options to resolve my legal problem(s)	79% (11)	21% (3)	0% (0)	0% (0)
The legal service suited my needs	64% (9)	29% (4)	7% (1)	0% (0)
The WEstjustice lawyer was supportive and listened to my problems	93% (13)	7% (1)	0% (0)	0% (0)
I am satisfied with the advice I received	79% (11)	21% (3)	0% (0)	0% (0)
After receiving help from WEstjustice, I feel prepared to stand up for my rights at work	71% (10)	29% (4)	0% (0)	0% (0)
After receiving help from WEstjustice, I feel confident about having positive experiences in my current or future job	64% (9)	36% (5)	0% (0)	0% (0)
I would contact WEstjustice if I have another problem at work	79% (11)	21% (3)	0% (0)	0% (0)
I would recommend the employment law service at WEstjustice to other young people	93% (13)	7% (1)	0% (0)	0% (0)
A telephone information service	10% (1)	70% (7)	20% (2)	0% (0)
Online information service (i.e. chat service)	0% (0)	50% (5)	50% (5)	0% (0)
In-person information service (with someone who is not a lawyer)	0% (0)	30% (3)	70% (7)	0% (0)
A one-on-one meeting with a lawyer	20% (2)	20% (2)	60% (6)	0% (0)
Information using social media (e.g. Facebook, Instagram, Twitter)	0% (0)	20% (2)	80% (8)	0% (0)
Play, theatre or information by other creative performance	40% (4)	40% (4)	20% (2)	0% (0)

Q2: IF YOU DIDN'T KNOW ABOUT WESTJUSTICE, WHERE WOULD YOU HAVE GONE FOR HELP WITH YOUR WORK RELATED LEGAL PROBLEM? (PLEASE SELECT ONE)		
Responses	Count	Percentage
A teacher at my University or school	16.67%	2
A private lawyer	0.00%	0
Another community legal centre	8.33%	1
Young Workers Centre	8.33%	1
The Fair Work Ombudsman	25.00%	3
Probably nowhere	16.67%	2
No idea!	25.00%	3
Other (please specify)		2

### Q3: NOW YOU HAVE RECEIVED LEGAL ADVICE FROM WESTJUSTICE, WHAT IMPACT DO YOU THINK THIS WILL HAVE ON YOUR EXPERIENCES AT WORK – NOW AND/OR IN THE FUTURE?

- It will make me confident that I hold my own at work, I can stand against it if I feel it's not right for me.
- The service was great and helpful, but it should be advertised because I didn't know about it.
- I received my compensation and left my workplace.
- I won't let my employers push me over and I will stand up for myself more and I have enough information to know about my rights.
- It has been so long I can't remember.
- Gave me a better understanding of my payments and receiving the correct payments. It made me clear about my pay and hours working.
- I was unsure about my rights and scared to lose my job. Now that I know my rights I feel confident and my work backed off from trying to take advantage of me by signing a contract I didn't agree to. Before I thought I had to sign the contract, now I know I don't have to if I don't agree.
- I am a short stay VISA so I want to make sure whatever I do is right, that is why I spoke to WEstjustice. I am so glad I called Westjustice to get helped. I would have breached my VISA if I had not called.
- I will definitely come to WEstjustice again because I had a good experience. I have confidence in speaking up about what is right, if there is a problem, speaking to management.
- I learnt about the basics of tax and getting underpaid, it has helped a lot so I don't get underpaid.
- Positive impact in knowing my rights.
- In the future, at least now I know my rights e.g. if you get fired. I wasn't aware of it before and I have the confidence to go to them.
- Being more careful about choosing the employer. I know my rights better because the lawyer explained it to me.
- Being aware of your entitlements now and future.

## POST CASEWORK SURVEY (N=12)

Q1: PLEASE RATE HOW YOU FEEL ABOUT THESE STATEMENTS				
	Strongly agree	Agree	Disagree	Strongly disagree
The legal service at WEstjustice was easy to access.	83% (10)	20% (2)	0% (0)	0% (0)
The lawyer helped me to better understand my rights and responsibilities at work	92% (11)	10% (1)	0% (0)	0% (0)
The lawyer helped me understand my options to resolve my legal problem(s)	92% (11)	10% (1)	0% (0)	0% (0)
The legal service suited my needs	92% (11)	10% (1)	0% (0)	0% (0)
The WEstjustice lawyer was supportive and listened to my problems	100% (12)	0% (0)	0% (0)	0% (0)
I am satisfied with the outcome achieved in my case	92% (11)	10% (1)	0% (0)	0% (0)
After receiving help from WEstjustice, I feel prepared to stand up for my rights at work	92% (11)	10% (1)	0% (0)	0% (0)
After receiving help from WEstjustice, I feel confident about having positive experiences in my current or future job	83% (10)	20% (2)	0% (0)	0% (0)
I would contact WEstjustice if I have another problem at work	92% (11)	10% (1)	0% (0)	0% (0)
I would recommend the employment law service at WEstjustice to other young people	100% (12)	0% (0)	0% (0)	0% (0)

Q2: IF YOU DIDN'T KNOW ABOUT WESTJUSTICE, WHERE WOULD YOU HAVE GONE FOR HELP WITH YOUR WORK RELATED LEGAL PROBLEM? (PLEASE SELECT ONE) (N=9)		
Responses	Count	Percentage
A teacher at my University or school	9%	1
A private lawyer	0%	0
Another community legal centre	27%	3
Young Workers Centre	9%	1
The Fair Work Ombudsman	45%	5
Probably nowhere	0%	0
No idea!	9%	1
Other (please specify)		1

- Q3: NOW YOU HAVE RECEIVED LEGAL ADVICE FROM WESTJUSTICE, WHAT IMPACT DO YOU THINK THIS WILL HAVE ON YOUR EXPERIENCES AT WORK – NOW AND/OR IN THE FUTURE?**
- It definitely helped by telling me my rights. I was going through a lot at the time. It pushed me in the right direction - it was definitely a massive help to me.
  - It's opened my eyes to a lot of things. It taught me a lot and I learned a lot from my lawyer. It helped me feel more comfortable in the workplace and in myself.
  - Made me less depressed, felt respected, stood up for my rights.
  - I got a bunch of money back from my previous workplace.
  - Being an International Student I was not aware of the regulations and they helped me understand and how to apply the rules and regulations. I was perplexed and confused before now I am not.
  - It made me have a better understanding of my rights as a young person in the workforce.
  - It made me more confident that I know my rights and that employers will try to not adhere to them. I am glad I stood up for myself.
  - It helped me understand my rights to give me the confidence to stand up for my rights.
  - Very smooth and transparent and easy.
  - More confidence in the workplace; more peace of mind when working and knowing my rights if ever violated are fought for.



## 6-MONTH FOLLOW UP SURVEY (N=13)

### Q1. ARE YOU STILL IN THE SAME JOB AS YOU WERE IN WHEN YOU CAME TO SEE US? (n=13)

Responses	Count	Percentage
Yes	6	46%
No	6	46%
Dismissed or resigned while receiving WJ assistance	1	8%

### Q2. (FOR THOSE IN THE SAME JOB) HAVE YOUR CONDITIONS AT WORK IMPROVED OR GOTTEN WORSE OR STAYED THE SAME SINCE YOU RECEIVED HELP? (n=6)

Responses	Count	Percentage
Improved	2	34%
Stayed the same	4	67%
Gotten worse	0	0%

### Q3. (FOR THOSE NOT IN THE SAME JOB) ARE YOU CURRENTLY WORKING (n=7)

Responses	Count	Percentage
Yes	6	86%
No	1	14%

### Q4. HAVE YOUR CONDITIONS AT YOUR (NEW) CURRENT JOB IMPROVED, STAYED THE SAME OR GOTTEN WORSE COMPARED TO THE JOB YOU WERE IN WHEN YOU RECEIVED HELP? (n=6)

Responses	Count	Percentage
Improved	6	100%
Stayed the same	0	0%
Gotten worse	0	0%

### Q5. (FOR THOSE NOT WORKING) WHY AREN'T YOU WORKING? (E.G. FOCUSING ON SCHOOL, CAN'T FIND WORK, CARING RESPONSIBILITIES ETC.)

Due to COVID.

### Q6. RATE HOW YOU FEEL ABOUT THESE STATEMENTS:

	Strongly agree	Agree	Disagree	Strongly disagree
I still think about or use the information and skills I learned through WEstJustice	50% (6)	33% (4)	8% (1)	8% (1)
After getting assistance from WEstjustice, I am more confident to stand up for my rights in the workplace	83% (10)	17% (2)	0% (0)	0% (0)
Knowing about my rights and responsibilities at work has made it easier for me to find work or to keep my job	67% (8)	25% (3)	8% (1)	0% (0)

### Q7. IF YOU SAID DISAGREE OR STRONGLY DISAGREE TO ANY OF THE ABOVE QUESTIONS, PLEASE GIVE SOME DETAILS

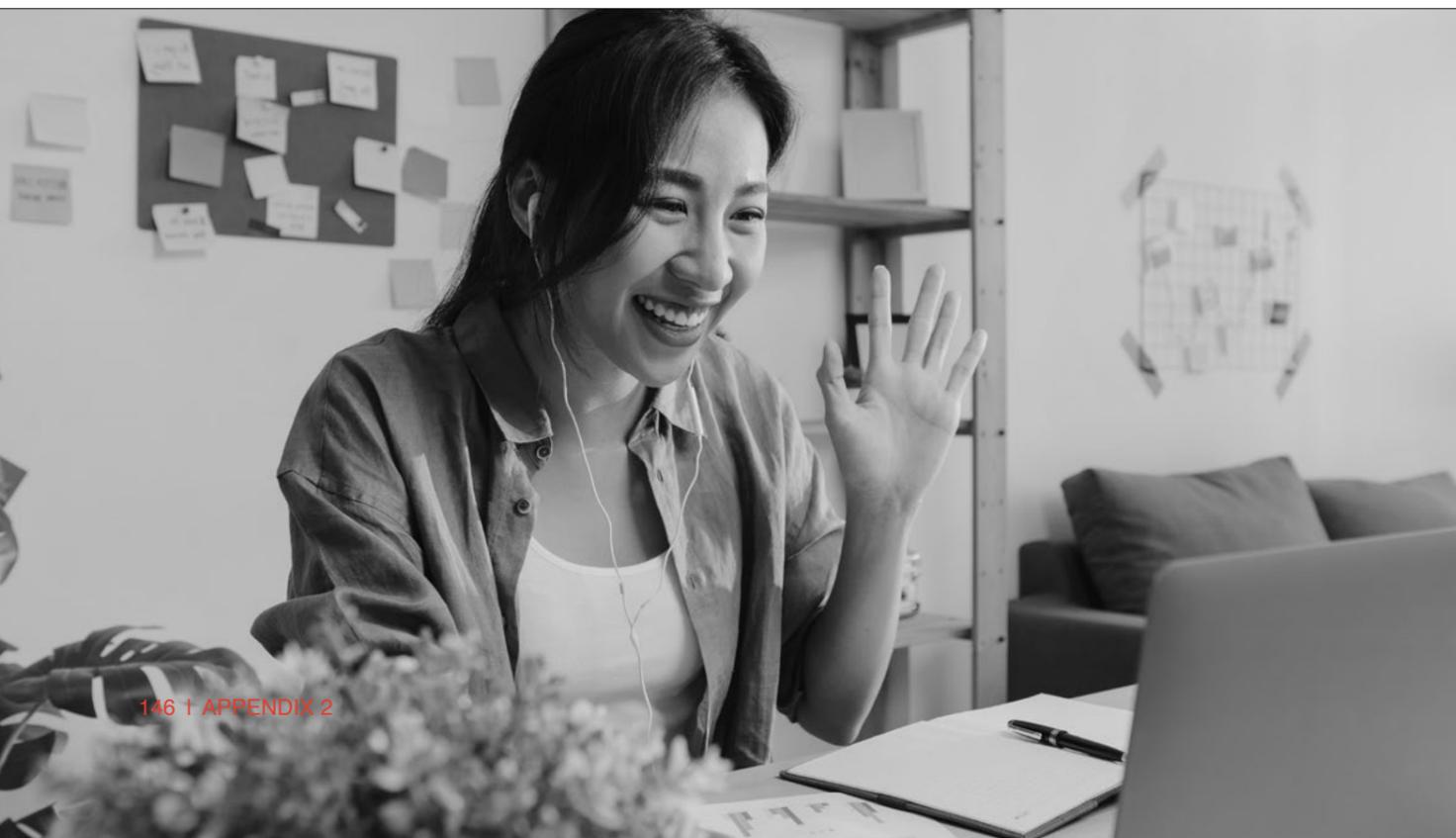
#### Quotes

- It isn't any easier to find work because of this information, because that doesn't change what jobs I'm qualified to do.
- I cannot remember it has been too long.

### Q8. HOW HAS GETTING HELP FROM WESTJUSTICE MADE A DIFFERENCE TO YOU/YOUR LIFE?

#### Quotes

- Has benefitted me for the future. The staff were friendly and I was empowered.
- I got a better job and I know more about my rights and more confident.
- It has opened my eyes to see there are issues at work and if the matter is serious you have to speak up.
- I learned about the rights I have and how to be treated correctly and fairly at work.
- It made it easier for me because I found the information hard about tax. It was good to talk someone about at WEstjustice.
- Before I was not familiar with the law and now I know where I can go get advice for free.
- It was good to get the advice. I liked the lady who was helping me and quick at responding, I like how she followed up. She helped me to stand up for what is right at work.
- Know your rights better and rates better and more aware of employer.
- Confidence to stand up for my rights and gained knowledge of my rights.
- Confidence to stand up for my rights.
- Helped me to understand that there are external resources to help especially when there are troubled times at work.



### 12-MONTH FOLLOW UP SURVEY (N=3)

Q1. ARE YOU STILL IN THE SAME JOB AS YOU WERE IN WHEN YOU CAME TO SEE US? (n=3)		
Responses	Count	Percentage
Yes	3	100%
No	0	0%
Dismissed or resigned while receiving WJ assistance	0	0%

Q2. (FOR THOSE IN THE SAME JOB) HAVE YOUR CONDITIONS AT WORK IMPROVED OR GOTTEN WORSE OR STAYED THE SAME SINCE YOU RECEIVED HELP? (n=3)		
Responses	Count	Percentage
Improved	3	100%
Stayed the same	0	0%
Gotten worse	0	0%

Q6. RATE HOW YOU FEEL ABOUT THESE STATEMENTS:				
	Strongly agree	Agree	Disagree	Strongly disagree
I still think about or use the information and skills I learned through WEstJustice	33% (1)	33% (1)	33% (1)	0% (0)
After getting assistance from WEstjustice, I am more confident to stand up for my rights in the workplace	67% (2)	33% (1)	0% (0)	0% (0)
Knowing about my rights and responsibilities at work has made it easier for me to find work or to keep my job	33% (1)	67% (2)	0% (0)	0% (0)

**Q7. IF YOU SAID DISAGREE OR STRONGLY DISAGREE TO ANY OF THE ABOVE QUESTIONS, PLEASE GIVE SOME DETAILS**

**Quotes**

- Forgot about it.

**Q5. HOW HAS GETTING HELP FROM WESTJUSTICE MADE A DIFFERENCE TO YOU/YOUR LIFE?**

**Quotes**

- I gained confidence at work, got paid.
- I got clear on what I was getting paid.
- It has educated me of my rights and has made me more confident. I am not scared to lose my job.

### CLE PRE-POLL (N=233)

Q1. RATE HOW YOU FEEL ABOUT THESE STATEMENTS:				
	Strongly agree	Agree	Disagree	Strongly disagree
I feel confident I understand my rights and responsibilities at work	21% (48)	61% (141)	17% (39)	2% (4)
I know where to go for help if I have an work rights problem	25% (58)	49% (115)	21% (49)	5% (11)
I know how to find out my correct rate of pay	16% (38)	37% (86)	40% (92)	7% (16)
I know what to do if I am injured at work	22% (52)	51% (118)	25% (57)	2% (5)
I know what my options are if I have been treated unfairly or unlawfully at work	23% (52)	46% (107)	27% (62)	4% (10)
I feel confident about having positive experiences in my current or future job	25% (57)	66% (153)	8% (18)	2% (5)
I would be likely to stand up for my rights in the workplace and take action if my boss did something wrong	30% (69)	49% (114)	17% (39)	4% (9)

Q2. DO YOU HAVE A JOB? (n=233)		
Responses	Count	Percentage
Yes	75	32%
No	158	68%

Q3. HAVE YOU LOST WORK, OR HAD PROBLEMS GETTING A JOB AS A RESULT OF COVID-19?		
Responses	Count	Percentage
Yes - I've lost work	5	2%
Yes - I can't find a job	51	22%
Both - I've lost work and I can't find a job	6	3%
No - I haven't had any problems	165	73%

CLE FEEDBACK SURVEY (N=190)

Q1. NOW YOU HAVE LISTENED TO OUR PRESENTATION...RATE HOW YOU FEEL ABOUT THESE STATEMENTS (n=188)				
	Strongly agree	Agree	Disagree	Strongly disagree
I feel confident I understand my rights and responsibilities at work	40% (75)	58% (109)	1% (2)	1% (2)
I know where to go for help if I have an work rights problem	48% (90)	50% (94)	0.5% (1)	2% (3)
I know how to find out my correct rate of pay	39% (73)	52% (97)	8% (14)	2% (3)
I know what to do if I am injured at work	42% (79)	54% (101)	2% (4)	2% (3)
I know what my options are if I have been treated unfairly or unlawfully at work	47% (88)	50% (93)	3% (5)	1% (2)
I feel confident about having positive experiences in my current or future job	41% (77)	54% (102)	4% (7)	1% (2)
I would be likely to stand up for my rights in the workplace and take action if my boss did something wrong	43% (81)	50% (93)	6% (11)	1% (2)

Q2. RATE HOW YOU FEEL ABOUT THESE STATEMENTS (n=187)				
	Strongly agree	Agree	Disagree	Strongly disagree
The information in the presentation was easy to understand	51% (95)	47% (88)	0.5% (1)	2% (3)
After today's session I would contact WEstjustice if I had a problem at work	50% (93)	46% (86)	3% (6)	1% (2)
After today's session I would recommend WEstjustice to my friends	46% (86)	49% (91)	4% (8)	1% (2)
After today's session, I feel prepared to stand up for my rights at work	45% (84)	51% (94)	2% (4)	2% (4)
I know what my options are if I have been treated unfairly or unlawfully at work	47% (88)	50% (93)	3% (5)	1% (2)
I feel confident about having positive experiences in my current or future job	41% (77)	54% (102)	4% (7)	1% (2)
I would be likely to stand up for my rights in the workplace and take action if my boss did something wrong	43% (81)	50% (93)	6% (11)	1% (2)

Q3. WHAT WORKPLACE RIGHTS DO YOU WANT TO KNOW MORE ABOUT? (n=153) (open-ended question, coded by researchers)			
Theme	Percentage	Some key quotes	
Not sure	14% (21)	<ul style="list-style-type: none"> <li>Not too sure yet</li> <li>I don't know</li> </ul>	
Nothing/I learned a lot today	21% (32)	<ul style="list-style-type: none"> <li>I learned everything</li> <li>Nothing really. Today's session was enlightening</li> <li>None. I feel like the presentation was informative enough.</li> <li>None. That is all the info i need.</li> </ul>	
Award coverage / EBAs	1% (2)	<ul style="list-style-type: none"> <li>Casual employees and awards/enterprise agreements</li> <li>Zombie agreements</li> </ul>	
Wages	19% (28)	<ul style="list-style-type: none"> <li>I want to know more about how to know i'm getting paid right</li> </ul>	
Contracts	3% (4)	<ul style="list-style-type: none"> <li>Contracts</li> <li>Independent contracting</li> </ul>	
Payslips / cash in hand	2% (3)	<ul style="list-style-type: none"> <li>How to access payslip</li> <li>What should be included in a pay slip</li> <li>Cash in hand</li> </ul>	
Safety	4% (6)	<ul style="list-style-type: none"> <li>Health and safety</li> <li>Safety</li> <li>What to do if i get injured at work</li> </ul>	
Unlawful treatment	8% (12)	<ul style="list-style-type: none"> <li>Regarding harassment, and if there are any other ways to collect evidence, and out of work harassment regarding co-workers</li> <li>How i can claim my money without being fired</li> </ul>	<ul style="list-style-type: none"> <li>What to do if you think you are being discriminated on in the workplace</li> <li>What to do if you are given a false work contract or contact information</li> </ul>
Changing jobs	2% (3)	<ul style="list-style-type: none"> <li>Changeing jobs</li> <li>If you want a different position within the workplace</li> <li>More rights for changing carrer within workplace</li> </ul>	
Workplace conflict/ conversations	1% (2)	<ul style="list-style-type: none"> <li>The right to freedom of speech when speaking to my employer.</li> <li>Arguments within work</li> </ul>	
Specific industries/jobs	7% (10)	<ul style="list-style-type: none"> <li>Construction</li> <li>Fast food</li> <li>How to manage stuff as a freelance filmmaker</li> <li>I would want to know about technology workspaces</li> </ul>	
Termination	3% (4)	<ul style="list-style-type: none"> <li>About why im getting fired out of no where</li> <li>What exactly are reasons that u can be fired, can u refuse</li> <li>How i can claim my money without being fired</li> </ul>	
Superannuation	3% (4)	<ul style="list-style-type: none"> <li>Who is eligible for superannuation</li> <li>More specifications on superannuation</li> </ul>	
General work rights	3% (5)	<ul style="list-style-type: none"> <li>All of them rights</li> </ul>	
Lawyers/law firms	1% (2)	<ul style="list-style-type: none"> <li>Lawyers - law</li> </ul>	
Other	6% (9)	<ul style="list-style-type: none"> <li>If you are unable to work because of a disability, how do you get money?</li> <li>Questions to ask when applying for a job</li> <li>Maternity leave</li> <li>Evidence</li> </ul>	<ul style="list-style-type: none"> <li>Taxes</li> <li>Uniform</li> <li>Celebration related activities that i can't participate in.</li> <li>Can you bring your siblings to work and snakes?</li> </ul>

\*Some respondents gave multiple answers. Each answer was recorded separately.

Q4. WHAT WAS THE MOST USEFUL THING ABOUT TODAY'S SESSION?*		
(n=163) (open-ended question, coded by researchers)		
Theme	Percentage	Some key quotes
Not sure	5% (8)	<ul style="list-style-type: none"> <li>I don't know really</li> </ul>
Learning about health and safety	4% (7)	<ul style="list-style-type: none"> <li>I learned what to do when I'm hurt at work</li> <li>Workplace safety</li> <li>The safety in work place</li> <li>Work compensation</li> </ul>
Learning about pay rates/how much I should be paid	22% (37)	<ul style="list-style-type: none"> <li>Pay deduction</li> <li>How correct to pay rate</li> <li>How to figure out if you getting the right pay or not</li> <li>Knowing how to handle my pay rate</li> </ul>
Right around unlawful treatment	6% (10)	<ul style="list-style-type: none"> <li>Discrimination laws</li> <li>Know your right at work and what to do if there treating you unfair.</li> <li>What to do if we face discrimination</li> <li>What to do if not treated right at work</li> </ul>
Rights relating to dismissal	6% (10)	<ul style="list-style-type: none"> <li>Learning about reasons employees can't be fired for</li> <li>That we have 21 today's to file a compliant</li> <li>21 Day thing after getting fired</li> <li>The 21 day limitation after being wrongfully fired</li> </ul>
Learning about work rights (generally)	35% (57)	<ul style="list-style-type: none"> <li>Everything</li> <li>What my rights are as a worker and what to do</li> <li>The most useful thing is knowing we got rights at workplaces</li> <li>Learning about the rights and responsibilities of workers</li> </ul>
Rights relating to super	1% (2)	<ul style="list-style-type: none"> <li>Teaching me about my super</li> <li>That 9.5% You get your super annuation</li> </ul>
Information relating to contracts	1% (2)	<ul style="list-style-type: none"> <li>Learning about contracts.</li> <li>Learning that SMS is also par of contract.</li> </ul>
Learning about cash in hand payments	3% (5)	<ul style="list-style-type: none"> <li>The cash in hand part</li> <li>Hand cash money</li> </ul>
Options for making claims	2% (4)	<ul style="list-style-type: none"> <li>The claims you can make</li> <li>Who to report to</li> </ul>
Information was easy to understand	2% (3)	<ul style="list-style-type: none"> <li>How easy the advice was to understand</li> <li>Explaining everything so it was really easy to understand</li> <li>Very informative and good understanding</li> </ul>
Where to get help	10% (16)	<ul style="list-style-type: none"> <li>Information on how to get help and where</li> <li>Knowing we have free legal advice.</li> <li>If i need help i can go to westjustice</li> <li>The most useful ting about the session was if i need legal help i can contact westjustice</li> </ul>
The interactive elements	5% (8)	<ul style="list-style-type: none"> <li>The short quizzes</li> <li>The questions being answered.</li> <li>The videos and quizzes</li> </ul>
Other	1% (1)	<ul style="list-style-type: none"> <li>The work placement</li> </ul>

\*Some respondents gave multiple answers. Each answer was recorded separately.

Q5. WHAT WOULD HAVE MADE THIS SESSION BETTER?*		
(n=154) (open-ended question, coded by researchers)		
Theme	Percentage	Some key quotes
Nothing	35% (54)	<ul style="list-style-type: none"> <li>No improvement needed</li> <li>Nothing would make this session better</li> <li>It was really good already</li> <li>It was perfect</li> </ul>
More examples and case studies	3% (4)	<ul style="list-style-type: none"> <li>More examples of different things to demonstrate what they actually mean.</li> <li>More case studies</li> <li>Maybe more examples</li> </ul>
More visual aids/videos	14% (22)	<ul style="list-style-type: none"> <li>More visuals (videos)</li> <li>If the videos where a bit longer and shows what should happen</li> <li>More visuals like memes or a video</li> </ul>
More interactive activities and games	19% (29)	<ul style="list-style-type: none"> <li>More interactive activities</li> <li>If there was some exercises we could do</li> <li>More games</li> </ul>
Funnier/more interesting content	3% (4)	<ul style="list-style-type: none"> <li>If they could of maybe made the presentation a little bit more fun.</li> <li>Something funnier... Today felt kinda boring</li> </ul>
Less tech Issues	3% (5)	<ul style="list-style-type: none"> <li>No sudden speaker bursts every 30 seconds!</li> <li>No audio issues</li> </ul>
More details / longer session	12% (18)	<ul style="list-style-type: none"> <li>If we had more time</li> <li>If it was longer to allow us to get more in depth into the information instead of rushing it</li> <li>More time to do the presentation</li> </ul>
Less disruption from other participants	5% (7)	<ul style="list-style-type: none"> <li>Cohort was frustrating</li> <li>If the students were quiet</li> <li>When people actually stopped talking so guest could speak uninterrupted...</li> </ul>
A shorter presentation	2% (3)	<ul style="list-style-type: none"> <li>If it didn't go on for that long</li> <li>If it was shorter</li> </ul>
Other	8% (12)	<ul style="list-style-type: none"> <li>Food</li> <li>Show this in high schools</li> <li>Proving facts</li> <li>Better examples of contract agreement</li> </ul>

\*Some respondents gave multiple answers. Each answer was recorded separately.

**Q6. IS THERE ANYTHING STOPPING YOU FROM STANDING UP FOR YOUR RIGHTS AT WORK? IF SO, WHAT ARE THEY? (E.G. SCARED OF LOSING YOUR JOB, DON'T HAVE THE TIME, NEED THE MONEY ETC.)\***  
(n=153) (open-ended question, coded by researchers)

Theme	Percentage	Some key quotes
Not having a job	10% (15)	<ul style="list-style-type: none"> <li>• Haven't gotten to the job point quite yet</li> <li>• I don't have a job yet</li> </ul>
None (will stand up for rights)	54% (83)	<ul style="list-style-type: none"> <li>• Nothing. I will stand up for my rights</li> <li>• Not really, just worried i may not have the time.</li> <li>• There is nothing stopping me from standing up</li> </ul>
I don't know	3% (4)	<ul style="list-style-type: none"> <li>• I don't know</li> </ul>
Scared of losing job	14% (21)	<ul style="list-style-type: none"> <li>• Might lose my job</li> <li>• Scared for loosing my job</li> <li>• Just the feeling of being fired</li> </ul>
Need money	5% (7)	<ul style="list-style-type: none"> <li>• Need the money, don't want to lose my job, parents will get mad</li> <li>• Needing money.</li> </ul>
Fear of consequences to workplace relationships	7% (11)	<ul style="list-style-type: none"> <li>• Fear of being on bad terms with employer</li> <li>• Creating a scene, or making it uncomfortable between you and the employer</li> <li>• Scared what the boss might think of me</li> <li>• Others judging</li> </ul>
Not being able to/knowing how to	8% (13)	<ul style="list-style-type: none"> <li>• I don't like confronting people unless i absolutely have to</li> <li>• Confidence but nothing else</li> <li>• I am very shy and socially awkward with most people</li> <li>• Not confident about speaking up with those things</li> <li>• Disability</li> </ul>
There's no point/don't care	1% (2)	<ul style="list-style-type: none"> <li>• Probably the fact that the managers would all stand together</li> <li>• I don't care enough</li> </ul>
Other	5% (7)	<ul style="list-style-type: none"> <li>• Probably all</li> <li>• Still a touchy subject</li> <li>• Scary boss</li> </ul>

\* Note: we allowed for open-ended questions and have categorised according to the following themes. Some respondents gave multiple answers. Dot points are direct quotes from survey participants

**Q7. HOW WILL YOU USE THE INFORMATION FROM TODAY'S SESSION?\***  
(n=149) (open-ended question, coded by researchers)

Theme	Percentage	Some key quotes
I won't	2% (3)	<ul style="list-style-type: none"> <li>• I won't</li> </ul>
I don't know	6% (9)	<ul style="list-style-type: none"> <li>• I don't know</li> <li>• No idea</li> </ul>
In the future / for future jobs	40% (61)	<ul style="list-style-type: none"> <li>• i will use this info for my career, This is the most important concept or skill as an employee that we need to understand</li> <li>• ...prepare for work</li> <li>• when I get a job and attend an interview for a job</li> <li>• I will follow them and do my best at work</li> <li>• use it in the future for getting new jobs and working</li> <li>• to take a smart approach to getting a job</li> <li>• i will further try to seek and apply for a job using the knowledge i learnt from to today's session</li> <li>• use it when i apply for jobs and when i get jobs</li> </ul>
To know where to go if I need help	7% (10)	<ul style="list-style-type: none"> <li>• I'll remember my rights and ask for help with lawyers</li> <li>• If I ever need legal help in a job</li> <li>• if i ever need help with a job i would know how to go there for help</li> <li>• i don't have a job but when i do i know where to go</li> <li>• i might contact the school lawyer if i'm in trouble in the future</li> </ul>
To make sure I am being paid right	3% (5)	<ul style="list-style-type: none"> <li>• I will use the information from today's session to know if I'm getting paid right</li> <li>• Get better pay</li> <li>• Go over my working conditions and make sure im being treated and paid fairly</li> </ul>
To stand up for my work rights / deal with a problem at work	28% (42)	<ul style="list-style-type: none"> <li>• give others advice.</li> <li>• I will assist others, and prepare for work</li> <li>• Tell others about it</li> </ul>
To help others	3% (4)	<ul style="list-style-type: none"> <li>• If we had more time</li> <li>• If it was longer to allow us to get more in depth into the information instead of rushing it</li> <li>• More time to do the presentation</li> </ul>
Wisely	5% (8)	<ul style="list-style-type: none"> <li>• Wisely</li> <li>• wisely and always be aware of people trying to scam me out of what i really earn.</li> <li>• correctly</li> </ul>
Other	3% (4)	<ul style="list-style-type: none"> <li>• I will remember it</li> <li>• I already know it</li> <li>• very good and also useful</li> <li>• Use it for more research</li> </ul>

\* Some respondents gave multiple answers.

## INTERMEDIARY CLE SURVEY (N=10)

Q1. PLEASE RATE HOW YOU FEEL ABOUT THESE STATEMENTS:				
	Strongly agree	Agree	Disagree	Strongly disagree
The information presented today was easy to understand	40 % (4)	50% (5)	10% (1)	0% (0)
Following this session I feel more equipped to notice legal issues experienced by the young people I work with	70% (7)	20% (2)	10% (1)	0% (0)
Following this session, I feel more confident in referring young people with work rights issues to the appropriate legal service	50% (5)	50% (5)	0% (0)	0% (0)
Following this session I feel more confident in assisting young people who are having work-related legal issues	50% (5)	50% (5)	0% (0)	0% (0)

### Q2. WHAT WAS THE BEST THING ABOUT TODAY'S SESSION?

(Open-ended question, coded by researchers; dot points are direct quotes from survey participants.)

#### Where to go for help

- That students are aware that Westjustice can help them. Also the information about payrates - where people can look this up to check if they are being paid correctly.
- Our team will be able to contact Westjustice lawyers directly not like before that admin block the door and make it difficult for others to access your services.
- Understanding the types of services WestJustices provided and level support they can assist clients with.

#### Where to go for help

- There was a lot of relevant information for the students.
- All information today was definitely useful for the students. Even though some topics were quite abstract to students (NEP, awards and agreements), student engagement was still good.
- Regulations related to work conditions
- Giving students ideas about employment law. Building awareness.
- It was very clear and informative.
- It was all relevant information.

### Q3. WHAT WOULD HAVE MADE THIS SESSION BETTER

(Open-ended question, coded by researchers; dot points are direct quotes from survey participants.)

#### None/not sure

- I'm not sure.
- None.

#### More interactivity

- Increasing student involvement.
- Activities where students can engage in. There were some true/false questions which were great. So more activities similar to this. Due to time constraints, I totally understand if there were other activities usually planned but had to be left out.
- More interaction.
- I'm not sure, but maybe some videos to make it more attractive for kids. However it was very nicely done and engaging.

#### More time/more sessions

- Increasing the time for the session and having one short break 5 minutes at least .
- Provide more information sessions to empower the team and enable them to support the community.
- Having activities, and scenarios for participants.

#### Other

- To focus on one area of law at a time.

### Q4. IS THERE ANYTHING ELSE YOU WOULD LIKE TO TELL US?

#### Quotes:

- I think these sessions are so important for young people to hear - they might think they 'know it all' but I'm sure each student learnt something new from this presentation. They are now more aware about THEIR rights.
- I enjoyed the presentation and wish I had the knowledge a couple of years ago.
- Students really enjoyed were fascinated with case examples. So presenting more anecdotes and real life cases as examples to support the ideas and topics will be helpful to engage and teach students.
- None.
- Its will be beneficial for WestJustice to offer young South Sudanese students with Workplaces, volunteerism opportunities to diversify work environment.
- Just to thank you.

## INTERMEDIARY PD SURVEY (N=21)

Q1. PLEASE RATE HOW YOU FEEL ABOUT THESE STATEMENTS:				
	Strongly agree	Agree	Disagree	Strongly disagree
The information presented today was easy to understand	81% (17)	19% (4)	0% (0)	0% (0)
Following this session I feel more equipped to notice legal issues experienced by the young people I work with	57% (12)	43% (9)	0% (0)	0% (0)
Following this session, I feel more confident in referring young people with work rights issues to the appropriate legal service	67% (14)	33% (7)	0% (0)	0% (0)
Following this session I feel more confident in assisting young people who are having work-related legal issues	60% (12)	40% (8)	0% (0)	0% (0)

### Q2. WHAT WAS THE BEST THING ABOUT TODAY'S SESSION?

(Open-ended question, coded by researchers; dot points are direct quotes from survey participants.)

<p><b>Information was presented in a way that was easy to understand</b></p> <ul style="list-style-type: none"> <li>• Having the information broken down in plain english slides so that young people can also understand the content.</li> <li>• Easy to understand and very helpful for a newer mentor about to embark on assisting my mentee in finding work :)</li> <li>• Very clearly set out visually.</li> <li>• Concise &amp; topical for lawyers.</li> <li>• Clear presentation / overview of issues.</li> <li>• Very clear and informative.</li> <li>• All of the information was clearly presented and gave a good overview of potential issues a young person may encounter.</li> <li>• The information was presented in a clear and concise way and good use of examples or scenarios to ensure understanding.</li> <li>• Comprehensive coverage and well-laid out.</li> <li>• Good examples were demonstrated during the session.</li> <li>• Starting with a quiz was very helpful to brain storm the legal issues for work rights, and all the information and examples were very informative.</li> <li>• Getting professional, straightforward advice. Very easy to understand.</li> </ul>	<p><b>Gaining knowledge about young people's work rights</b></p> <p>Learning that verbal employment agreement should be followed up by email or text msg btw young person and employee to confirm what is being agreed to. And can be later used as evidence.</p> <ul style="list-style-type: none"> <li>• Gain more knowledge and awareness about young people's work rights.</li> <li>• Learning about practical ways young people can keep evidence and records.</li> </ul> <p><b>Learning where to refer young people for support</b></p> <ul style="list-style-type: none"> <li>• Able to refer young people for any employment law questions.</li> <li>• Tips for employees!</li> <li>• Very clear and informative.</li> </ul> <p><b>The amount of information covered</b></p> <ul style="list-style-type: none"> <li>• [The presenter] was excellent - lots of info - learnt lots.</li> <li>• The detail and breadth of issues covered. Excellent slides and checklists to reference later.</li> </ul>
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### Q3. WHAT WOULD HAVE MADE THIS SESSION BETTER

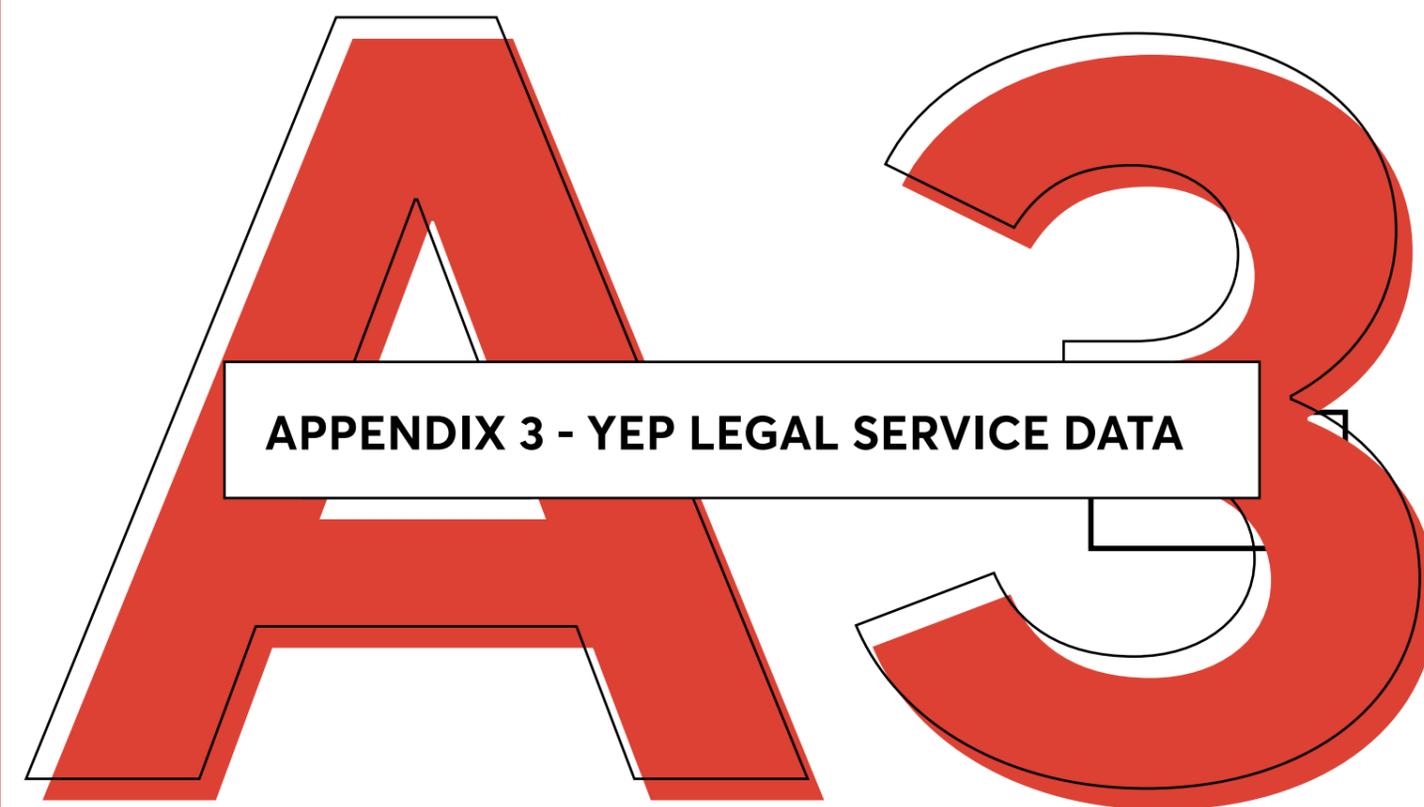
(Open-ended question, coded by researchers; dot points are direct quotes from survey participants.)

<p><b>More time</b></p> <ul style="list-style-type: none"> <li>• More time allocated for questions/discussion.</li> <li>• Would be good to have a little more time, to open up discussion for greater participation and engagement. Content was just enough to cover in an hour, but felt the last section was rushed to fit within the allotted time. A little extra time for discussion would have been great.</li> <li>• Sometimes the slide was finished too soon.</li> <li>• More examples of the cases / issues you regularly see.</li> <li>• more time for the presenter to present and take questions but that was not her fault</li> </ul> <p><b>More examples/case studies</b></p> <ul style="list-style-type: none"> <li>• More interactive activities e.g. putting participants into break-out rooms to go through the hypothetical situations together; more time for participants to raise questions or hypotheticals or share experiences themselves.</li> <li>• More tips for employees! ie. how to deal with discrimination, harassment, incorrect pay, contracts etc.</li> <li>• Possibly some more examples from different industries? ie. youth working in hospitality, retail etc?</li> </ul> <p><b>Nothing</b></p> <ul style="list-style-type: none"> <li>• Fine as is.</li> <li>• Nothing. [The presenter] was thorough, clear and engaging.</li> <li>• I was very happy with the presentation.</li> <li>• can't think of any.</li> <li>• Nothing, it was great.</li> </ul> <p><b>More activities/interaction</b></p> <ul style="list-style-type: none"> <li>• More interactive activities e.g. putting participants into break-out rooms to go through the hypothetical situations together; more time for participants to raise questions or hypotheticals or share experiences themselves.</li> </ul>
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### Q4. IS THERE ANYTHING ELSE YOU WOULD LIKE TO TELL US?

(Open-ended question, coded by researchers; dot points are direct quotes from survey participants.)

<p><b>Quotes:</b></p> <ul style="list-style-type: none"> <li>• Thank you for your time and commitment on this.</li> <li>• Presentation was good and easy to follow.</li> <li>• Fantastic session, incredibly informative.</li> <li>• Just love your work team. Keep it up.</li> <li>• Great presentation! Really informative.</li> <li>• Thank you so much for holding the session. Look forward to one being available for young people to attend.</li> <li>• Really like the professional support. It will be good to be able to refer students to Westjustice.</li> <li>• No, overall great session and really informative.</li> <li>• Great session, very informative.</li> <li>• Excellent resource, thank you very much :-)</li> <li>• Thank you for organising this :)</li> </ul>
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**APPENDIX 3 - YEP LEGAL SERVICE DATA**

# CLIENT PROFILE

## Key Demographics



**106** No. of clients assisted between July 2019 - May 2021.

### IMMIGRATION

**27%** (29) temporary visas

### EMPLOYMENT

**58%** (62) employed  
**42%** (44) unemployed

### RESIDENCE

**44%** (47) Wyndham  
**11%** (12) Brimbank  
**8%** (9) Maribyrnong  
**2%** (2) Hobsons Bay  
**5%** (5) Melton  
**35** (3) Moonee Valley  
**2%** (2) Not stated  
**27%** (29) Other (not in the western suburbs)

### INCOME

**34%** (36): No income  
**21%** (22): \$1-199 weekly  
**12%** (13): \$200-299 weekly  
**8%** (8): \$300-399 weekly  
**15%** (16): \$400-599 weekly  
**8%** (9): \$600- 799

### AGE\*

**16%** (17) aged 16-18  
**11%** (12) aged 19-21  
**18%** (19) aged 22-23  
**30%** (32) aged 24-25

\*At the time of seeking assistance. 1 client was 26 at the time of seeking our assistance, but the issue pertained to employed she had at the age of 25, so we considered her to be within the remit of the project.

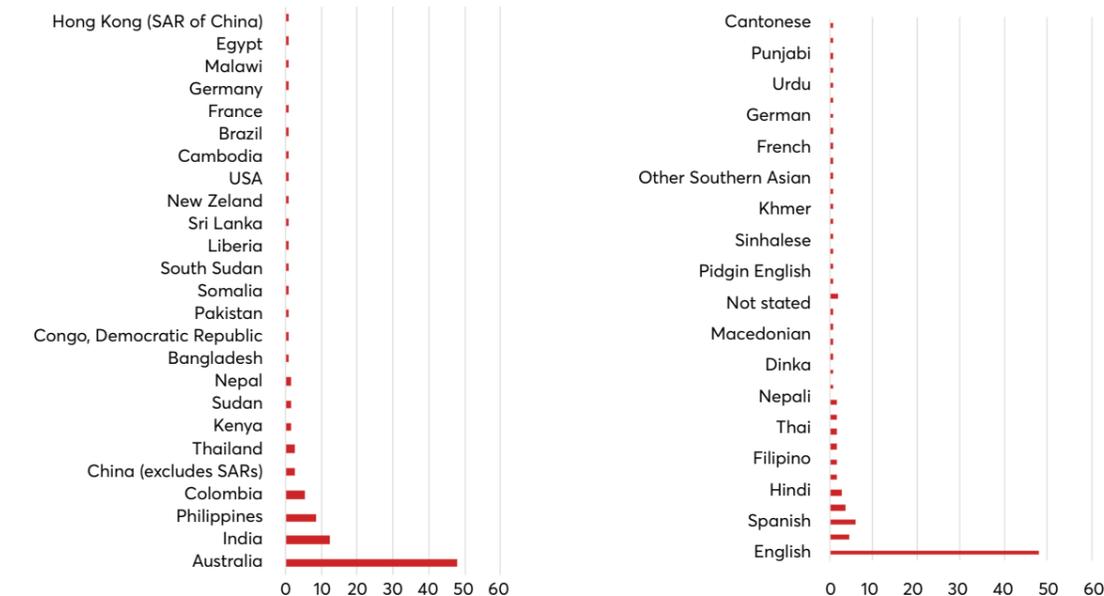
### COUNTRY OF BIRTH

**53%** (56) were born in a country other than Australia. Coming from a total of **24** different countries.



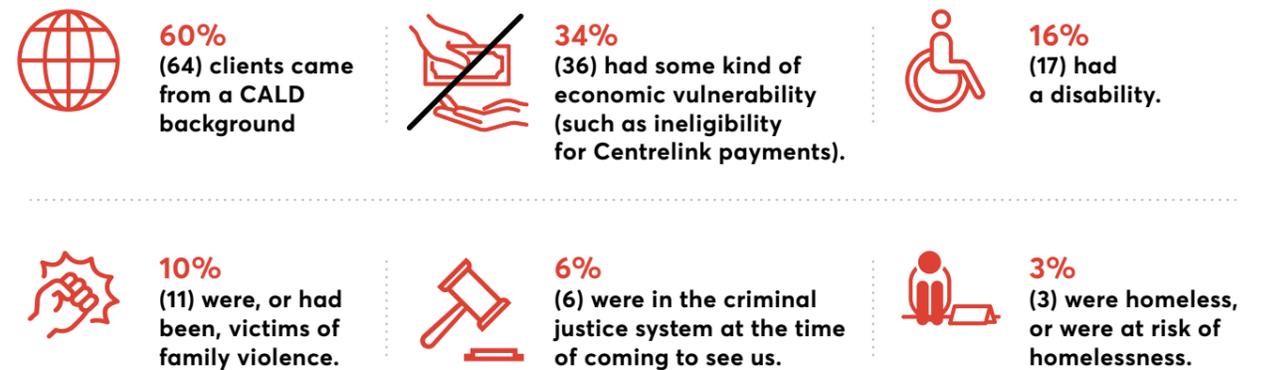
### LANGUAGE

**57%** (60) of clients spoke a language other than English at home. Clients spoke a total of **34** different languages.



## Vulnerability Indicators

**84** of our clients (79%) identified having indicators of vulnerability/disadvantage. These included the following:



**46%** of these clients identified having some kind of intersectional disadvantage. Specifically:

VULNERABILITY INDICATORS	
1 vulnerability indicator	54%
2 vulnerability indicator	25%
3 vulnerability indicator	13%
4 vulnerability indicator	8%
5 vulnerability indicator	0%



## Employment Type



## Industry of work

Hospitality and service industry	39% (41)
Retail industry	13% (14)
Cleaning	8% (8)
Community and personal services	8% (8)
Wholesale and manufacturing	5% (5)
Construction and engineering	6% (6)
Professional services and IT	4% (4)

Property and real estate	2% (2)
Transport and delivery	3% (3)
Arts and entertainment	4% (4)
Other/unknown	5% (5)
Education and training	2% (2)
Electricity gas and water services	2% (2)
Health Services	2% (2)

## HOW CLIENTS WERE REFERRED TO THE YEP LEGAL SERVICE

School lawyer program	38% (40)
Study Melbourne Student Centre	24% (25)
Youth hubs (Visy Cares Hub, Youth Resource Centre)	17% (17)
Government agencies (FWO, FWC, VLA)	7% (7)
Other CLC	4% (4)

Word of mouth (friends, family, colleagues)	3% (3)
Internet, website, social media	2% (2)
Community agency	2% (2)
Other	1% (1)
Internal referral	1% (1)

## TYPE OF ASSISTANCE PROVIDED

Of the 106 clients assisted, services provided were as follows:

**54 ONE-OFF ADVICES** – simple enquiries which can be resolved on the spot and/or instances where our first advice enables clients to self-help without needing further assistance;

**52 ONGOING CASEWORK FILES** – where we represented the client and/or the client was assisted through to completion of their legal matter, or referred out for further assistance.

● one-off advices ● ongoing casework



### 1. ONE-OFF ADVICE APPOINTMENTS

In addition to the provision of verbal advice, assistance at one-off advice appointments included:

**7** instances of providing printed information and other resources (such as templates and application forms) to clients;

**13** letters, emails or other correspondence drafted in the client's name for them to send; and

**33** occasions when we demonstrated how to calculate their minimum wages using the FWO's 'Pay and Conditions Tool' for clients' future reference.

### 2. ONGOING CASEWORK

Casework included:

**21** letters of demand;

**8** letters or other correspondence requesting employment records;

**7** applications for court/tribunal proceedings prepared and lodged;

**18** forms of other correspondence such as telephone calls to negotiate with employers and follow-up written correspondence; and

**6** conciliations/mediations assistance with or representation at.

## PROBLEM TYPE

We provided advice and casework assistance on **23** different problem types. The main problem type experienced by our clients was wage recovery.

Wage Recovery	53%	56
Recovery of entitlements	32%	34
General Advice	31%	33
Unfair Dismissal	16%	17
Payslip issues (non-receipt/defective payslips)	13%	14
JobKeeper/COVID-19 issues	13%	14
Superannuation	12%	13
Discrimination	11%	12
Other	10%	11
Sham Contracting	11%	12
Bullying	9%	10
General Protections Dismissal	9%	10
WorkCover	6%	6
Independent Contracting	5%	5
Breach of Contract	4%	4
Sexual Harassment	4%	4
Unpaid Trial	3%	3
Accessorial Liability	2%	2
Job Readiness advice	2%	2
Occupational Health and Safety issues	2%	2
Victimisation	2%	2
Requirement to Spend Money	1%	1
Scam	1%	1

## NUMBER OF LEGAL PROBLEMS

Young people regularly attended the service with more than one employment-related problem type:

1 problem type	29%	56
2 problem types	23%	34
3 problem types	19%	33
4 problem types	15%	17
5 or more problem types	13%	14

In addition, 14% of clients had other (non-employment related) legal matters.

**WEstjustice**