

TRANSCRIPT

LEGISLATIVE ASSEMBLY ENVIRONMENT AND PLANNING COMMITTEE

Inquiry into Employers and Contractors Who Refuse to Pay Their Subcontractors for Completed Works

Melbourne – Thursday 8 June 2023

MEMBERS

Juliana Addison – Chair

Martin Cameron – Deputy Chair

Jordan Crugnale

Daniela De Martino

Sam Groth

Martha Haylett

David Hodgett

WITNESSES (*via videoconference*)

Ms Amanda Threlfall, Assistant Secretary, Victorian Trades Hall Council, and

Ms Felicity Sowerbutts, Director, Young Workers Centre.

The CHAIR: Hello. It is great to be recommencing our committee hearing today and hearing evidence in relation to the Inquiry into Employers and Contractors Who Refuse to Pay Their Subcontractors for Completed Works. The evidence given is being recorded. It is fantastic to have Amanda Threlfall from Victorian Trades Hall Council here with us today. Thank you. We are really looking forward to hearing from you.

All evidence taken is protected by parliamentary privilege as provided by the *Constitution Act 1975* and further subject to the provisions of the Legislative Assembly standing orders. Therefore the information you provide during the hearing is protected by law. You are protected against any action for what you say during this hearing, but if you go elsewhere and repeat the same things those comments may not be protected by this privilege. Any deliberately false evidence or misleading of the committee may be considered contempt of Parliament.

All evidence is being recorded. You will be provided with a proof version of the transcript following the hearing. Transcripts will ultimately be made public and posted on the committee's website.

For the Hansard record, can you please state your name and the organisation that you are representing.

Amanda THRELFALL: Thanks very much, Chair. My name is Amanda Threlfall. I am Assistant Secretary of Victorian Trades Hall Council.

The CHAIR: It is fantastic to have you here today. Would you like to make some opening remarks, and then we will open it up to questions.

Amanda THRELFALL: Yes. Thank you very much, Chair. Thank you very much also for the opportunity to appear before the committee today in relation to this inquiry. My name is Amanda Threlfall, and I am Assistant Secretary of Victorian Trades Hall Council.

I would like to acknowledge the traditional owners of the lands on which we meet and work. I am currently at Trades Hall, which stands on the land of the Wurundjeri people of the mighty Kulin nation, and I pay my respects to their elders past and present. Victorian Trades Hall Council acknowledges that this land was stolen, never ceded, and always was and always will be Aboriginal land.

Victorian Trades Hall Council was founded in 1856 and is the peak body for unions in Victoria. We represent over 41 affiliated unions and more than 500,000 workers across the state. These workers are members of unions that reach into every industry across Victoria, including construction. We strongly support the submission made by the Victorian branch of the CFMEU construction and general division to this inquiry.

Since winning the 8-hour day in 1856, Victorian Trades Hall Council has had a long history of fighting for and defending the rights of workers in Victoria. From superannuation to equal pay, we continue to fight for the rights of every Victorian worker, and we are most proud to have led the campaign to win workplace manslaughter laws, wage theft laws and, most recently, an apprenticeship task force. The Young Workers Centre is based at Trades Hall.

Following my opening remarks, Felicity Sowerbutts, Director of the Young Workers Centre, will speak about the devastating impacts on young workers when employers and contractors refuse to pay their subcontractors for completed works.

The security-of-payment scheme must be strengthened and improved to protect workers in Victoria. The regular practice of subcontractors not being paid for completed work unfortunately occurs in every industry, but it is very prominent in the construction industry. Head contractors, often large corporations, are responsible for pricing projects. However, construction workers are employed by subcontractors rather than being directly employed by head contractors. As a result, the risk is shifted from large head contracting companies to those who are least able to bear it, such as subcontractors and small suppliers. A fair day's pay for a fair day's work

has never been more important and relevant with the current cost-of-living crisis and stagnant wage growth. It impacts directly on workers when employers and contractors refuse to pay or delay payment to their subcontractors for completed works. There is a power imbalance, as subcontractors and workers are at the end of the contractual supply chain. Subcontractors do not pay workers when they do not receive timely payment for completed works. Workers are unable to pay for everyday living expenses such as rent, mortgage repayments, groceries and transport costs. It is common for head contractors to liquidate then reconstitute the business under a different Australian business number or Australian company number. This practice of phoenixing makes it impossible to recover unpaid debts and pay wages owed to workers. Workers are not eligible to make a claim under the Fair Entitlements Guarantee, as they are not employed by the insolvent head contractor.

The *Building and Construction Industry Security of Payment Act 2002* is no longer fit for purpose. The Queensland government introduced reforms to their security-of-payment regime in 2017. The Queensland system now includes a project trust account framework in the building and construction industry. Trust accounts are aimed at ensuring money paid by head contractors is secured for the benefit of subcontractors. As of March 2023 nearly \$10 billion is now protected for tradespersons under project trust accounts, which ensures tradespersons are paid on time and in full. The framework is designed to strengthen security of payments to subcontractors and, by extension, their employees and ensure safe workplaces and quality construction outcomes. We support reforms being made to bring the Victorian scheme into line with the Queensland scheme. We recommend the implementation of a statutory stage progress payment system. This requires a principal contractor to process and pay a progress payment request on behalf of a subcontractor within a stipulated period. We propose 21 days is a suitable period to ensure timely payment.

We recommend the implementation of statutory project bank accounts on all construction projects in Victoria, applicable to all entities engaging the services of another entity. Statutory stage progress payments must be deducted from the relevant project bank account upon a statutory stage progress payment request by a subcontractor. The onus must be on the principal contractor or head subcontractor to lodge a dispute if a statutory stage progress payment is disputed. Under the current system the subcontractor must lodge the dispute. The dispute must be lodged via a payment schedule prior to the due date of the statutory stage payment request and must contain relevant particulars as to why the payment is disputed. Only these particulars can be used in the dispute, to prohibit an amalgamation of claims. The lodgement of a dispute must not affect future progress claims made by a subcontractor which may be presented by a subcontractor pursuant to a construction contract for works undertaken.

These proposed reforms will address the problems associated with systematic non-payment of completed works in the construction industry. We look forward to working with the Victorian government to implement changes to the security-of-payment scheme to improve the lives of workers. I now invite Felicity Sowerbutts, Director of the Young Workers Centre, to address the committee. Thank you.

The CHAIR: Thanks, Amanda.

Felicity SOWERBUTTS: Thank you very much for the opportunity to appear before the committee in relation to this inquiry this afternoon. My name is Felicity Sowerbutts and I am the director of the Young Workers Centre. I would also like to acknowledge the traditional owners of the land on which I am today. I am on the land of the Boon Wurrung people of the mighty Kulin nation, and I pay my respects to elders past and present. This land was stolen, never ceded, and always was and always will be Aboriginal land.

The Young Workers Centre is a one-stop shop for young workers aged 30 and under in Victoria who want to learn more about their rights at work or who need assistance in resolving workplace issues. Our team of lawyers, organisers and educators seek to empower young people working in Victoria with the knowledge and skills needed to end workplace exploitation and insecurity. We produce resources aimed at assisting young people to understand their rights at work as well as running training days and social events for young people who want to get involved in the fight for safe and secure jobs. We support young people to collectively solve problems at work. The centre is also an accredited community legal centre and provides free and confidential personalised advice and representation to young people who have come across issues at work such as unfair dismissal, wage theft, bullying and harassment. Since the centre was founded in 2016, we have spoken to more than 2800 young workers about issues at work and provided general advice or referral to 2090 of them and ongoing assistance to 715 young workers in Victoria. Since 2016 we have recovered more than \$2 million in

compensation for young workers, including \$1.2 million in unpaid wages, \$50,000 worth of unpaid superannuation and \$600,000 worth of compensation for termination of employment, discrimination and sexual harassment matters. As you can see, the majority of our work relates to unpaid wages, or wage theft, and also termination of employment, bullying and discrimination matters. Most of the young workers who contact the centre are employed or have been working for microbusinesses. 47.3 per cent of people who make inquiries are working for an employer with less than five employees, and 16.9 per cent are working for an employer with six to 14 employees.

When thinking about young workers, you anticipate that a lot of young workers are working in hospitality and retail. Whilst that is the case, the construction trades industry is the second-highest industry from which we receive inquiries. Sixteen per cent of all calls to the Young Workers Centre are from the construction or trades industry. As you will have heard, cash flow is a problem for businesses in the construction industry due to the hierarchical and pyramidal contract operations. Basically, the project head contractor, principals and head subcontractors wait to be paid before paying a subcontractor, who waits for that money before paying their subcontractors or employees. It means any delay in payment leads to the people who have actually done the building work not getting paid on time, regularly and sometimes at all. If payments do not get made on time, eventually someone goes under, causing a chain reaction and workers miss out. Shockingly, many of those workers are apprentices – young, vulnerable and supposedly the future of the construction industry. They leave in droves because they cannot afford to live on apprentice wages, even if they were actually paid them in the first place. Many workers in the construction industry cannot access the Fair Entitlements Guarantee scheme for a variety of reasons – for example, if they are migrant worker, a true subcontractor or a sham subcontractor or due to the nature of when payments are made or the time they were employed being more than 12 months prior to when their employer becomes insolvent or bankrupt. The current security of payment Act does not help employees who are owed money at all, but it does have a direct effect on them, because we at the Young Workers Centre know that employees, including apprentices, do not get paid if the boss does not get paid. Business owners do not and should not bear any of the risks of non-payment by clients, but the model in the construction industry means that they do and are often the ones who lose out.

I have a few case studies from the Young Workers Centre to share with you today. Please note that I am not using these young workers' actual names. First of all, I want to tell you about William. William was a 20-year-old apprentice bricklayer when he reached out to the Young Workers Centre. William was paid infrequently and never received payslips. He wanted information about how often he should be paid. The Young Workers Centre informed him that he should be paid weekly and that he should also receive payslips each time he was paid. We also provided William with information about his superannuation entitlements. William spoke with his employer, as he felt that they were a small team and got along well. Unfortunately William's employer told him that he would not be getting paid until the employer was paid. William eventually left the employer and is still owed months of wages. William has not continued his apprenticeship.

Jackson was a 19-year-old labourer working as a subcontractor for a bricklayer. The bricklayer would arrive at Jackson's home to pick him up and drive him to jobs. One day the bricklayer did not pick him up. Jackson was unable to contact him by phone and had no other contact details. Jackson later learned the bricklayer had left Victoria and was now bankrupt, and Jackson is owed a month's worth of wages.

Finally, Aaron was a 17-year-old carpentry apprentice. His employer attempted to pay Aaron under an ABN as an independent contractor. After six months the employer stopped paying Aaron and blocked his number. The employer was later deregistered by the Australian Securities and Investments Commission, so Aaron was unable to make a Fair Entitlements Guarantee scheme application. The Young Workers Centre applied unsuccessfully for ASIC to exercise its discretion to reverse the deregistration and place the company into liquidation to enable Aaron to make a FEGS application. As ASIC did not exercise its discretion, there was simply no avenue, sadly, for Aaron to recover any of his unpaid wages.

A system that guarantees there is a project bank account from which payments are made at appropriate progress points will ensure that vulnerable contractors, employees and apprentices are paid their wages. Thank you again for the opportunity to address the committee.

The CHAIR: Thank you, Felicity, and particularly thank you for those case studies. It really does put a face on the data, being able to understand these as young people – particularly, many of them, in their first job – being burned by an employer, which I am sure is a really negative experience for them. I did not introduce the

committee earlier, so I will quickly do that now. We have Martin Cameron, Deputy Chair, Member for Morwell; Daniela De Martino, Member for Monbulk; Martha Haylett, Member for Ripon; Jordan Crugnale, Member for Bass; Sam Groth, Member for Nepean; and David Hodgett, Member for Croydon.

I will open it up to the committee for questions. Please indicate if you would like to ask one. Thanks, Daniela. Sorry, Martin. You can be next.

Daniela DE MARTINO: Sorry to pip you there, Martin. Just going through the information that you presented, with the data that you have gathered in terms of the 40 per cent of people who work for a microbusiness with less than five employees, what was that next figure afterwards? I just have another question that follows on from there – who work with six to –

Felicity SOWERBUTTS: 16.9 per cent are working for an employer with six to 14 employees. Was that the one you were after?

Daniela DE MARTINO: That was the one I was after. Thank you. I just want to ask: with the data that you gather in terms of non-payment or short payment, have you got that disaggregated to sort of look at the different industries and the prevalence? Is it coming through more from the domestic, commercial or civil?

Felicity SOWERBUTTS: Yes, when young workers reach out to us we ask them for, obviously, their employer's details and how many people are employed there and so on. And yes, we do get, obviously, a lot from small businesses and in the domestic industries.

Daniela DE MARTINO: Thanks. Thank you for those case studies as well. They were really upsetting actually, because I think your first experience or your early experiences in the workplace shape how you sort of engage with others in the future, and it is a pretty awful situation, to be in effect burned at such a young stage. I was just wondering about the apprentice. Was there any sort of recourse through apprenticeships Australia, because I think that governs apprentices? That is old information from me, though. I am not right up to scratch with the apprenticeship situation, but I was wondering if there was any protection there for him at all.

Felicity SOWERBUTTS: Yes, for both William and Aaron, the two apprentices that I mentioned?

Daniela DE MARTINO: Yes.

Felicity SOWERBUTTS: Yes. William chose not to continue his apprenticeship. It is quite a complex space, the apprenticeships system, so we often find that so many apprentices struggle to navigate it. There is in Victoria the VRQA, the Victorian Registration and Qualifications Authority, which gives approvals to employers to take on an apprentice. We do encourage and support apprentices to make reports or complaints through to the VRQA so that is recorded and they can take the effective next steps to make sure that any future apprentices are looked after and potentially not employed by the same employer, because we do find repeat offenders, where they are churning through apprentices one after another.

Daniela DE MARTINO: Sorry, is there anyone else who wants to jump in right now, because I am just dovetailing off that. I know Martin does, I think.

Martin CAMERON: Keep going, keep going.

Daniela DE MARTINO: Okay. Sorry. In your experience – and I know you probably do not have the whole dataset in front of you – for a lot of these apprentices, and you did mention that their employers are subcontractors who are not getting paid, is this the flow-on effect from the subbies not being paid then, all the way down the chain so it is even the apprentices and employees?

Felicity SOWERBUTTS: Yes. The case studies that I shared today, they are the workers on the ground who are employed by the subcontractors. Did you want to add anything, Amanda?

Amanda THRELFALL: Yes. Thanks, Felicity. I obviously support what Felicity has just told the committee. It also goes to apprenticeship completion rates. As we know, apprenticeship completion rates both across Australia and in Victoria are low. We are looking forward to the introduction of the apprenticeships task force, which is the announcement made by the Andrews Labor government in the lead-up to the Victorian

election. It will tackle the low apprenticeship completion rates but also the rampant exploitation and mistreatment of apprentices at the moment.

Through our direct engagement with apprentices what is evident is that they are not leaving their apprenticeship because of their educational experience, it is because of their experience at work – wage theft, unsafe workplace practices, bullying and harassment, low wages and not being paid wages at all. By subcontractors not being paid, it does not just end there. The direct impacts on workers and throughout the construction industry are quite significant.

Daniela DE MARTINO: Thank you both so much. Thank you.

Martin CAMERON: Thanks, Amanda and Felicity. A question from me is: the data that we get is obviously from the subcontractors coming in and saying, ‘Hey, we’re not being paid’ and ‘How do we go about it?’ What is your feeling about the subcontractors that do not engage and that are not being paid by the builders but just cannot engage or cannot be bothered engaging to give us some more stats? Is there an underline of them not self-reporting?

Amanda THRELFALL: Is that in terms of subcontractors not wanting to appear here at the committee or a broader problem?

Martin CAMERON: A broader one – like, not appear at the committee or they just do not engage in reporting a non-payment, but you can hear stories and other people talk. Is there a high amount, do you think, or is it not relevant?

Amanda THRELFALL: As I mentioned in my opening remarks, we strongly support the CFMEU submission, and the CFMEU actually talks about in their written submission the amount of time and resources it takes for subcontractors to chase up payments. The CFMEU put forward in their written submission that the majority of subcontractors purport to spend upwards of 70 per cent of their time chasing payments. When you are a small business owner and you have tight cash flow and you are trying to grow your business, that is a lot of time to be chasing up payments rather than actually carrying out the work. There is some concern as well, in my understanding, about some subcontractors coming forward to try and recover the money because of fear of retribution – so they may not get offered a contract again by another head contractor.

Martin CAMERON: Thank you.

Amanda THRELFALL: Thank you.

The CHAIR: Jordan.

Jordan CRUGNALE: Thank you so much for your presentation and coming before us today. I just want to continue on from the CFMEU, who mentioned they have got a dedicated team to deal with the non-payments and recovering unpaid wages and super, and it was quite an eye-watering amount of \$67 million. You have outlined in your submission as well – and supporting theirs – that change in dispute lodgement avenues. I just wonder if there are any non-legislative options as well. And I guess part 2, with the Young Workers Centre and what you are seeing out in the field from your members but also the dedicated team of the CFMEU, has the trend from 2016 to now been escalating over a period of time?

Amanda THRELFALL: It is probably a question more for the CFMEU, who would have been able to see the direct impacts over time, but definitely my strong view is that it has escalated over time. We are also hearing more and more in the media around underpayment-of-wages claims. Workers are certainly coming forward with the introduction of the *Wage Theft Act* here in Victoria, and that is also bringing to light the issues in the construction industry around these pyramid structures and subcontracting arrangements. I certainly think that there is a culture now of people coming forward a lot more with underpayment-of-wages claims, which is showing the problems in the industry. Also in my research in preparing for today’s appearance before the inquiry I was reading in some reports that the construction industry is burdened every year by nearly \$3 billion in unpaid debts. That includes subcontractor payments, employee entitlements and tax debts, averaging around \$630 million a year for the last three years. Again, the flow-on effects of that are quite significant when there is a lot of infrastructure to build here in Victoria as well.

Felicity SOWERBUTTS: I can also add quite an alarming statistic from the Young Workers Centre. We have seen an increase every year since 2016 of the number of apprentices reaching out to us for assistance. Last year, so in 2022, 77 per cent of our clients were apprentices. The year prior, 2021, 21 per cent of our clients were apprentices. There has been a dramatic increase in the number of apprentices reaching out to us. That figure includes all industries, it is not just the construction industry. Apprentices in the construction industry make up a decent proportion of the apprentices we support, so it does show an increasing trend.

The CHAIR: Are there other questions from the committee? Martha.

Martha HAYLETT: Thank you so much, Amanda and Felicity. I am just wondering what your opinions are on systemic issues and particular business practices within the construction industry that contribute to non-payments. What do you think is at the root of this? What particular practices do you think are rife that are contributing to this?

Amanda THRELFALL: I touched on the serious imbalances of power, meaning that risk is shifted from that large head contracting company to those who are least able to bear it, namely subcontractors, small suppliers and employees. Those intense competitive pressures create some of those unfair competitive advantages as well, which in turn leads to the exploitation of workers in order to win a contract.

Martha HAYLETT: Felicity, do you want to add anything to that? It might be a slightly different perspective specific to those younger people.

Felicity SOWERBUTTS: I think it is similar in that it is a power dynamic. It is that power imbalance. We see young workers in the workplace having a lot less power than their boss, and then when you add in these hierarchical structures and contractual systems, that power imbalance is exaggerated even further.

Martha HAYLETT: Thank you.

The CHAIR: Can I just ask a question following on from that? We have heard an example from the CFMEU about a plasterer who did go through all the legal action, seeking to it, and then they got effectively blackballed from the industry. What happens to young people who speak up about underpayment of wages? We have heard that William decided not to continue on, but is there a real culture for young people working in construction not to rock the boat and not to stand up for their rights?

Felicity SOWERBUTTS: Yes. It is really hard for young workers any time to speak up about their unpaid wages. They find it easier and are in a stronger and more powerful position when they do it with their co-workers, but often they do not have that luxury or that ability when the employer only has maybe a couple of employees or when they go off the face of the earth. It is really tricky for them to speak up, and it really can be quite hard for them to find more work in the industry when they do, especially if they are in quite a small community. We find that particularly the case for young workers in regional areas too.

The CHAIR: And just following on, Amanda mentioned some of the great legislative changes we have had with workplace manslaughter as well as wage theft. Is there scope under the wage theft legislation that would cover underpayment of subcontractors in the construction sector?

Amanda THRELFALL: The *Wage Theft Act* applies to employees. So if you are a subcontractor with an Australian business number and an Australian company number, you are not going to be covered by the *Wage Theft Act*. It applies to employees.

The CHAIR: But for our young apprentices, can they then use the *Wage Theft Act* to try and get back their lost moneys?

Amanda THRELFALL: Yes, absolutely. They can use the *Wage Theft Act*, and that process is available. That is a criminal prosecution under the *Wage Theft Act*. So Wage Inspectorate Victoria is responsible for enforcing the *Wage Theft Act*. So it is the standard of 'beyond reasonable doubt' when it is going through a criminal prosecution. If they are trying to recoup their money, though, it is a process of going through the Fair Work Ombudsman, which is an extremely lengthy process. Often the Fair Work Ombudsman does not have the resources or time to assist a young worker, particularly if it is a small amount of money – which may seem

small to other people, but to a young worker that is a lot of money. So that is certainly a very time- and, as I said, resource-intensive process at the moment. Felicity, is there anything you wanted to add to that?

Felicity SOWERBUTTS: No. You have covered everything there.

The CHAIR: So my reading of it is: despite there being other levers that could be pulled, it would be much better for a security-of-payment option to exist within the construction industry to ensure the payment of wages for workers, rather than these other processes that are quite challenging, difficult, et cetera.

Amanda THRELFALL: Absolutely. And also if you are prosecuting your employer – that is, the subcontractor – if they have become insolvent because they have not been paid as well, it makes it extremely difficult to recoup that money. I also talked about in my opening remarks how head contractors often engage in phoenixing as well to avoid any liability that they [inaudible].

The CHAIR: Thank you. Other questions? Was there anything else that you wanted to add? Because we have got a few minutes left if you wanted to add anything else, Felicity or Amanda.

Amanda THRELFALL: That has covered everything from my end. I just thank the committee again for providing us this opportunity to appear today to speak on this very important issue.

The CHAIR: Well, thank you very much for appearing and having the perspective of the broader workforce and the union movement. That particular focus on young people has been really, really valuable for us. So thank you so much for your contribution.

I will remind you that you will receive a copy of the transcript in the next few weeks for proofreading, and we look forward to sharing our findings of our inquiry with you and everyone who has made submissions.

Amanda THRELFALL: Thank you very much, Chair. Thank you to the committee.

The CHAIR: Thank you so much. Thanks, everyone.

Witnesses withdrew.