

# **PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE**

## **2021-22 Budget Estimates**

Melbourne—Thursday, 27 May 2021

### **MEMBERS**

Ms Lizzie Blandthorn—Chair

Mr Richard Riordan—Deputy Chair

Mr Sam Hibbins

Mr David Limbrick

Mr Gary Maas

Mr James Newbury

Mr Danny O'Brien

Ms Pauline Richards

Mr Tim Richardson

Ms Nina Taylor



## WITNESSES

Mr Tim Pallas, MP, Minister for Industrial Relations, and

Mr Matt O'Connor, Deputy Secretary, Industrial Relations Victoria.

**The CHAIR:** I declare open this hearing of the Public Accounts and Estimates Committee.

On behalf of the Parliament, the committee is conducting this Inquiry into the 2021–22 Budget Estimates. Its aim is to scrutinise public administration and finance to improve outcomes for the Victorian community.

We note that witnesses and members may remove their masks when speaking to the committee but must replace them afterwards.

All mobile telephones and computers should now be turned to silent.

All evidence taken by this committee is protected by parliamentary privilege. Comments repeated outside this hearing may not be protected by this privilege.

Witnesses will be provided with a proof version of the transcript to check. Verified transcripts, presentations and handouts will be placed on the committee's website as soon as possible.

We welcome you as the Minister for Industrial Relations and officers from your department. Minister, we invite you to make a brief opening statement of no more than 5 minutes and this will be followed by questions from the committee. Thank you.

### Visual presentation.

**Mr PALLAS:** Thanks very much, Chair. I would like to start by drawing your attention to a number of key achievements in the industrial relations portfolio. Wage Inspectorate Victoria has undertaken extensive establishment work for the inspectorate to become a statutory authority from 1 July 2021 and has filed four matters in the courts for alleged breaches of the *Child Employment Act* and the *Long Service Leave Act*. The public sector industrial relations unit has overseen negotiations for several major and non-major enterprise agreements, including the VPS enterprise agreement, and is revising the common policies that flow from the new VPS enterprise agreement. The private sector industrial relations unit leads Victoria's government submissions to major industrial relations proceedings and reviews, including the annual wage review, paid pandemic leave in the health sector award, horticultural award minimum rates, Commonwealth Senate inquiries for job security and Fair Work amendment legislation, and the unit is responsible for developing and administering industrial relations legislation for the state, including the recent *Industrial Relations Legislation Amendment Act 2021*.

Last year Victoria became the first state in the country to pass laws establishing criminal penalties for employers who deliberately underpay or do not pay their workers. The new laws deliver on the Andrews Labor government's commitment to establish new criminal offences targeting employers who deliberately withhold wages and other employee entitlements. Along with the passage of the *Wage Theft Act 2020* there has been extensive work undertaken to prepare for the commencement of a new statutory authority, Wage Inspectorate Victoria. The Wage Inspectorate provides advice, education and support to employers and employees about the rights and responsibilities under relevant Victorian industrial relations legislation. From 1 July the Wage Inspectorate Victoria will become an independent statutory body with powers to investigate and prosecute wage theft offences. The establishment of Wage Inspectorate Victoria will ensure that employers who do the wrong thing are investigated and held to account. We said that we would replace the existing legal regime and make the necessary changes to protect workers from unscrupulous employers, and that is exactly what we have done.

I will take you through a recent budget announcement I feel very proud of. Every person deserves to feel safe and secure at work, especially gig workers who so many others have relied on throughout the pandemic. That is why in a national first the Andrews Labor government is taking action to protect the rights of gig workers to make sure these Victorians are getting the fair deal that they deserve. On 13 May 2021 the Andrews Labor government released its response to the *Report of the Inquiry into the Victorian On-Demand Workforce, 2020*.

The government supports in full or in principle the 20 recommendations made by the inquiry, and we have committed to work progressively towards implementing them. This includes \$5 million in the 2021–22 Victorian budget, funding that will help work begin immediately on implementing the government's response to the 20 recommendations in the report, including setting principle-based standards to provide fairer conditions for on-demand workers and ensure platforms operate transparently. The inquiry, and many people who participated in its consultation, called for change to be led at a national level through reforms to national work laws, and the Victorian government fully supports those calls.

Since 2015 the government has facilitated its cooperative and collaborative approach to public sector industrial relations through the public sector industrial relations unit in IRV, and the government encourages entities to engage and adopt a partnership approach with their employees and unions. High-functioning workplaces that achieve service delivery excellence often have open communication between management and staff and the unions that represent them, and the government's industrial relations policy reflects this partnership approach. This year's budget allocation will provide funding of \$4.77 million over four years to enhance the strong role of the public sector industrial relations unit in providing advice and assistance with industrial relations and workforce issues across the public sector.

**The CHAIR:** Thank you very much, Minister. Mr Maas.

**Mr MAAS:** Thank you, Chair. Thank you, Minister, and thank you, Mr O'Connor. Minister, I was wondering if I could take you to the Victorian inquiry into the on-demand workforce, and I make reference to budget paper 3, page 102. Would you be able to explain to the committee the work that has been undertaken by the inquiry and how the government is using the funding in the budget to implement the response?

**Mr PALLAS:** Thanks, Mr Maas, for your question. As you know of course, the government announced the inquiry back in September 2018, and in launching Australia's first inquiry into the on-demand workforce, I am really pleased with the progress that has been made to date. As we know, all too often gig economy workers have found themselves in a situation that looks and feels like it is an employment situation, but often looks can be deceiving, and ultimately the loser out of that engagement is the employee or the worker that has been retained. However, existing mechanisms to determine one's work status—such as, for example, a court or a tribunal—are often slow, costly and inaccessible, and quite frankly they are not built to provide restitution or justice to individuals seeking claims against corporations. The reason I make that point is that often to seek restitution or enforcement of awards, you can be left with the recourse of going to a federal court. That is a very traumatic and might I say daunting prospect for a person seeking to simply get an understanding of what their retention status is—are they an employee, are they not?—and particularly all the more daunting if it involves the retention or the return of outstanding wages or conditions that would otherwise be provided under an award.

The inquiry that was commissioned, by the government, in 2018 followed widespread concerns that we had received from workers over the wages and conditions that were offered to gig workers. It was chaired by former Fair Work Ombudsman Natalie James. We established an inquiry in response to these widespread concerns over wages and conditions offered to those working in the gig economy. The inquiry examined the workplace conditions of Victorians who work for on-demand platforms and provided government with recommendations as to how we could make the gig economy operate fairer and safer for those who operate within it. I need to be clear: there are many people who have benefited from the gig economy and many consumers who see the inherent merit of the gig economy, and there are many who offer single skill-specific offerings through gig platforms that have done well out of the gig economy, so it is not about vilifying or undermining its utility to the community; it is about recognising that there needs to be adequate provision for fairness.

So what the inquiry initially discovered is that there are more people engaged in these platforms than we first realised. The inquiry undertook a national survey to try and determine how widespread this type of work really is. What they found was that, given the changes to consumer preferences, which have been accelerated of course by the impacts of COVID-19, people undertaking this type of work will continue to grow. That is something that I think all regulators, all governments, need to be conscious of. This is as much a demonstration of consumer preference as it is a demonstration of some workers seeing the value in the utility of their labour through this. What is not apparent is exactly what status these workers being retained have and indeed whether there are adequate safeguards built into the general retention of this labour. So what this means is that there has never been a more important time, I think, to reform the on-demand workforce, and it is important for

governments of all stripes to think about how we can make sure that workers have adequate protections and conditions in the gig economy whilst not scaring off business or slowing down any legitimate entrepreneurialism.

So, as mentioned previously, the inquiry report was released in July 2020. The report makes some 20 recommendations to government, which have been accepted in full or in principle. There were six key outcomes: firstly, clarifying and codifying work status to reduce doubt about work status as a result of applicable worker entitlements, protections and obligations. It is a curious thing that we do not have a mechanism at federal law that can give a quick and comprehensive decision about whether you are an employee or not, and perhaps that is because of the conflict between the federal industrial relations system managing employee-employer relations and then of course this broader category of workers, some of whom can be regulated by the state. So coming up with a useful, effective system is important.

Secondly: streamlining advice and support for on-demand workers, especially where work status is borderline. Thirdly: providing fast-tracked resolution of work status so that workers and businesses do not operate with prolonged doubt about the laws that apply. Fourthly: providing for fair conduct to platform workers who are not employees, and that is by establishing fair conduct and accountability standards that are principles based. And we are starting to see these standards emerge internationally, and they serve a very useful purpose. Fifthly: improving remedies for non-employee workers. Existing avenues to challenge the fairness of arrangements are limited, including currently under the *Independent Contractors Act 2006*. And six: enhancing enforcement to ensure compliance with work laws, including where sham contracting has occurred, giving a regulator the ability to proactively intervene to address borderline work status matters. So the government carried out some confidential consultation on the recommendation to inform its response. We went back to those bodies that had put initial submissions in. The Commission have had the opportunity to see the recommendations of the inquiry, and then we sought further and better views about that informed by those recommendations.

Our implementation will begin with developing fair conduct standards. The government allocated \$5 million to undertake a more substantial and ongoing consultation process with stakeholders to determine what should be included in those standards. It is likely that this work will take several months to complete, but we are in an ideal position to begin reform. In terms of what the standards look like, we think there are some key areas that the reforms will necessarily have to include: consultation about work status and arrangements; consideration of parties' leverage or bargaining power; fair conditions and pay; fair and transparent independent dispute resolution; worker representation, including the ability to seek better work arrangements with impunity; and safety.

Obviously some of these areas would require the Commonwealth to take the lead, but the government will continue to explore opportunities to develop consistent standards should that not arise. Quite frankly it is an area where, yes, there is a conflict of laws. There is uncertainty as to where the Commonwealth starts and where we end. But I think it is important that we make a start on this, and we are genuinely keen to work with the Commonwealth to see if we can come up with an appropriate and robust all-encompassing model. To the extent that we cannot we will take what actions fit appropriately within our constitutional capacity to do that. Ms James recommends that in the absence of Commonwealth action the Victorian government establish its own dedicated streamlined support agency. We have currently supported this recommendation in principle, and we will consider whether or not a dedicated support agency or an existing body could help workers and businesses find clarity around work status and of course resolve disputes.

The budget also allocates a quarter of a million dollars over two years to conduct an impact assessment of any reform proposals once they are developed, and that is particularly important in the context of determining the potential role and functions of a recommended streamlined support agency.

**Mr MAAS:** Okay. In the time remaining, Wage Inspectorate Victoria—is that part of that as part of the recommendations, or is that something separate, because it is not really too far a stretch between gig economy workers and the Wage Theft Act coming in?

**Mr PALLAS:** Well, in the time allotted to me for my response I would say that we are yet to finalise the structural decisions that have to be made. As you can see, we would say there is some efficiency to be had in being able to align some of these bodies, but the government has not yet finalised its view around these matters.

**Mr MAAS:** Terrific. Thank you.

**The CHAIR:** Thank you, Mr Maas. Thank you, Minister. Deputy Chair.

**Mr RIORDAN:** Thank you, Chair. Hello, industrial relations minister. Budget paper 3, page 319, states that a 100 per cent target exists for the government of Victoria being represented in major industrial relations cases and inquiries. Is Victoria represented at the UFU overtime wages case at Fair Work Australia?

**Mr PALLAS:** I will pass over to Mr O'Connor for that. I would question whether or not we would see that as major. We tend to think the majority of the major cases are those that have an impact on a broad spectrum of the community.

**Mr O'CONNOR:** The answer, Mr Riordan, is no.

**Mr RIORDAN:** They are not represented?

**Mr O'CONNOR:** No.

**Mr RIORDAN:** Okay. Just following on from that, what is the government's position on the UFU seeking \$50 million in overtime?

**Mr O'CONNOR:** We do not have a position on that at the moment, Mr Riordan.

**Mr RIORDAN:** Good idea, bad idea?

**Mr O'CONNOR:** I could not comment on the merits of the case.

**Mr MAAS:** It is a question of relevance too, Chair, I would say.

**Mr PALLAS:** If I could just make the point, the government extended—

**Mr RIORDAN:** Thank you, Mr Maas. It is taxpayers money; I think taxpayers money is always a relevant question at PAEC hearings.

**Mr PALLAS:** Just to be clear, the government takes the view that workers entitlements are covered by federal award instruments that give them rights and opportunities to seek clarity and the enforcement of those entitlements. Essentially what is happening here is there is an application, I think, by the union seeking clarity about whether or not they have existing rights under an existing award. The state tends not to participate in those matters where we are not directly affected in the sense that it is ultimately a function of the law whether or not they have an entitlement.

**Mr RIORDAN:** Okay. Back to you, Mr O'Connor. It is a fairly significant claim, at \$50 million, and of course this has been a hallmark of this government, its commitment to the UFU. If they are successful in Fair Work, which clearly union members think they will be, have you allocated the necessary funding in the budget to supply that, or will we need a Treasurer's advance?

**Mr O'CONNOR:** Can I just clarify, Mr Riordan, are we talking about doctors' overtime claim or UFU?

**Mr RIORDAN:** The doctors? No, the UFU overtime claim.

**Mr O'CONNOR:** I cannot comment on the outcome of a case which has not been run yet, and in terms of funding that, that would obviously be a matter for discussion between FRV and DTF.

**Mr RIORDAN:** So typically, a very large claim like that, would it be a Treasurer's advance?

**Mr PALLAS:** Well, if a claim were to be successful, the government is very much of the view that we will honour those industrial relations obligations that attach to us—that we are obliged to honour. We are not going to basically shirk our legal responsibilities. That of course would not sit consistently with the industrial relations framework.

**Mr RIORDAN:** Gee whiz, I reckon there are a lot of small businesses out there hoping you can find \$50 million that quickly for them over the next week.

**The CHAIR:** Mr Riordan, can we keep our questions to the portfolio, please.

**Mr RIORDAN:** On 13 May 2021 the Victorian government became the country's largest employer to include the term 'chestfeeding' in a workplace agreement. Do you support future Victorian government EBAs putting a chestfeeding element in their EBAs?

**Mr PALLAS:** Look, Mr Riordan, I support—chest beating?

**Mr RIORDAN:** Chestfeeding.

**Mr PALLAS:** Right.

**Mr RIORDAN:** Part of your new agenda; I am just wondering: is it going to be a standard part of government—

**Mr PALLAS:** What we have tended to do is respect the rights of the industrial participants to determine the appropriate terms and conditions to be incorporated within it. Of course we have a policy that establishes the broad framework and the safeguards that the taxpayer would expect, but by and large the language and the terminologies that are applied are ultimately a function of the relationship between the employer, the employees and also of course the priorities and the concerns of the workforce.

**Mr RIORDAN:** Okay, so that is a yes. Okay. All right. Budget paper 3—

**The CHAIR:** Mr Riordan, you cannot answer the question you put for yourself on top of the answer the minister has provided.

**Mr RIORDAN:** Well, I just asked a yes or no, and I am just summarising. It is up to the Premier to say that that was no, but it is either yes or no.

**The CHAIR:** Mr Riordan, the Premier is not here and neither is the Acting Premier. The Minister for Industrial Relations has provided an answer to your question. It is not for you to then supplement the answer. You ask the questions.

**Mr RIORDAN:** Okay. Well, my interpretation was yes. Budget paper 3, page 313, the industrial relations portfolio output: Minister, the Coate inquiry evidence confirmed that departments were required to obtain Victorian Trades Hall Council approval before engaging security firms on a government contract. In seeking the support of Trades Hall, do you consider that this explicit third-party interference in a contract decision is a flagrant breach of probity?

**Mr PALLAS:** Well, look, I think that question is probably best directed to the minister responsible for those contracts. The minister responsible for those contracts and the arrangements and engagements that were put in place is not me.

**Mr RIORDAN:** Are you aware of how widespread those contractual elements in Victorian government contracts are?

**Mr PALLAS:** I would need greater clarity about what specific contractual elements you are referring to.

**Mr RIORDAN:** That contractors only get a gig if Victorian Trades Hall approve of them.

**Mr PALLAS:** Well, I would be of the view that we have a fair-practice contracting arrangements. We expect of course all contractors with the state to honour their industrial relations obligations. The fact that inquiries are being made to that effect I do not think concerns me at all.

**Mr RIORDAN:** Oh, okay. Right. So then because you do not care what the inquiry said, do you then guarantee to—

**Mr PALLAS:** Once again, you have verballed me, Mr Riordan.

**Mr RIORDAN:** Okay. Well, all right, I will leave that bit out, but my—

**Mr PALLAS:** I made the point—

**The CHAIR:** Mr Riordan, you have put a proposition to the—

**Mr RIORDAN:** Chair, shoosh. Stop the clock if you are going to jump in.

**The CHAIR:** Excuse me, could you withdraw that interjection.

**Mr RIORDAN:** You stop the clock—

**The CHAIR:** That was totally inappropriate to shoosh me. The minister was attempting to answer your question. You put words—

**Mr RIORDAN:** Tick, tick, tick, tick, tick.

**The CHAIR:** Mr Riordan, you are being extremely rude and disrespectful. You cannot put a proposition—

**Mr RIORDAN:** Surely you do not have to protect the Treasurer from the questions.

**The CHAIR:** Mr Riordan, you cannot put words in the minister's mouth without allowing him the opportunity to respond to them.

**Mr RIORDAN:** Thank you, Chair. Minister, will you—

**The CHAIR:** Minister, did you need to clarify that at all?

**Mr RIORDAN:** Will you guarantee that hardworking private firms seeking government work can have confidence that their data and confidential information will not be shared with Victorian Trades Hall in order to get a contract?

**Mr PALLAS:** I can assure you that processes and procedures that the government puts in place for managing contracts are something we take seriously. We take it seriously in the sense that we ensure—

**Mr RIORDAN:** Guarantee—yes or no?

**Mr PALLAS:** that probity and industrial relations obligations are honoured. They are a legitimate inquiry for government to look at.

**The CHAIR:** Time has expired, Mr Riordan. Mr Hibbins.

**Mr HIBBINS:** Thank you, Chair. Thank you, Minister and your team, for appearing again this afternoon. We are going to go into another lockdown, and obviously that means many people are going to be working from home, but there are going to be many workers who actually are still going to be turning up to work because they need to support society still functioning—teachers, healthcare workers. Now, we all said thank you to these essential workers last year for the efforts that they made, and I would have thought demonstrating that thank you would have actually been increasing their future wage growth. Your government is now acting to suppress their future wage growth. Do you think that is fair?

**Mr PALLAS:** Look, I think what is fair is that government makes as substantial and generous a contribution as we can make in the economic environment. And I think the fairest thing you can do for any worker is to make sure that they get access to a good job that is well paid, and that is certainly the aspiration of this government, committee member. But I make the point also that we will continue our efforts to lead the nation in terms of wage returns to our employees, because we actually do believe in paying people an appropriate amount of money. And I will make the point again, as I have made previously, that in doing so we will not be inflicting anything that constitutes a reduction in real wages. This workforce will see real wage appreciation through the policies that the government has put in place, whether it be 1.5 per cent or indeed the 2 per cent that is available to workers through the bargaining processes that we have put in place.



**Mr HIBBINS:** But do you accept that whilst—if we take your statement—they will not be receiving real wage cuts, their wage growth will still be pretty low? It is pretty anaemic, isn't it?

**Mr PALLAS:** Well, we are in an environment where governments have to make choices, Mr Hibbins. And those choices really go to the protection and the wellbeing of the community and our workforce as well, so providing them with the resources to be able to do their job, recognising the enormous contribution that they are providing to the community through doing their job and also providing them, as best we can, with as high a level of job security as we can in circumstances where our revenue growth has been substantially eroded throughout this event, whilst continuing to grow. I mean, the logical consequence of what you put to me is: just continue to pay more and more in circumstances while revenue falls away. We have to be realistic about how we deal with our employees.

**Mr HIBBINS:** That is a really interesting point, because it is a matter of economic theory—the money you put into people's pockets, that is money that goes back into the economy. Do you accept, though, that the less money that is in people's pockets—that is, less wage growth—the less money that is going through the economy and that actually puts our recovery at risk?

**Mr PALLAS:** Well, unlike your political party, I accept that money is a finite commodity, Mr Hibbins—

**Mr HIBBINS:** We actually had a lower GSP from our PBO report than you guys.

**Mr PALLAS:** Well, I do not need to really extol my credentials in terms of managing the economy of this state over the last seven years. I think they are demonstrated, as is our commitment to making sure that workers get a fair return for their labour. In fact I have devoted 30 years of my working life to it, Mr Hibbins.

**Mr HIBBINS:** The RBA are putting more, a 3 to 4 per cent wage growth. They are indicating that they believe the economy would be good to go with 3 to 4 per cent wage growth. Now, your wage cap is well below that. Why don't you accept the RBA's position?

**Mr PALLAS:** Look, we accept exactly what the governor of the Reserve Bank is saying, and I think you need to look at in context exactly what this government has done in its time in office. In practical terms what we have sought to do is ensure where we have the means and the capacity to do it that workers are adequately paid for and they get a real wage appreciation. In circumstances such as the current, where I think the community, where I think business, would expect government to demonstrate that they have put in place adequate rigour around wages, we have sought to ensure that real wage maintenance is a key part of our response to the economic challenges that we confront.

**Mr HIBBINS:** Can I ask—EBAs that are currently under negotiation, will they be subject to this wage cut or will it only be when EBAs start negotiation?

**Mr PALLAS:** I will take that on notice given we have run out of time.

**Mr HIBBINS:** That would be good. Thank you.

**The CHAIR:** Thank you, Mr Hibbins. Thank you, Minister.

**Mr RICHARDSON:** Could I just raise a point of order, Chair, if I may?

**The CHAIR:** Sure.

**Mr RICHARDSON:** I just wanted to flag—obviously the speaking over you as Chair during this morning's hearings I think has been unbecoming of PAEC, particularly the yelling right to your left and in your ear. If this were the Parliament, you could not do that with the Speaker—you could not roar over the top of the Speaker. It has been consistent. It has been quite profound this morning and worse than previous hearings. I do not know the pathway forward on it, but my understanding of chairs of committees is that when the Chair is speaking everyone should remain silent and the ruling has to be made. The fact that you have been shooshed this morning, yelled over and berated I think is very poor form.

**Mr RIORDAN:** I am happy to speak to that point of order, Chair.

**The CHAIR:** Mr Riordan.

**Mr RIORDAN:** Mr Richardson, when something happens at your end the clock gets stopped. The Chair repeatedly interferes in deciding whether the minister can answer or the department head can answer. She goes on and on with not a point of order, not asking us to do anything—she just consistently interprets our questions, she decides whether we can or cannot ask the question and refuses to stop the clock. If you want to propose that every time the Chair has something to say she stops the clock, you will get silence from us and we will be more than happy to be quiet. But while the rules are that the clock stops for you, with already substantially more time than the opposition has, then I am quite sorry that the Chair's interference is malicious, the Chair's interference is deliberate and the Chair's interference does not serve a fair approach to non-government members asking questions. And quite frankly it takes two to tango and the response of the Chair is just time wasting and we see it consistently.

**The CHAIR:** Mr Riordan, she is the cat's mother and I do not appreciate being shooshed. You are entitled to take a difference of opinion, you are entitled to raise a point of order but you are not entitled to be rude to me or any other member of this committee. I uphold the member's point of order and I do request that when the Chair is trying to control the behaviour of this committee and make it worthy and indeed indicative of what people expect of our Parliament you cooperate with that in future. That would be appreciated.

Thank you very much, Minister, for joining us today, and all of your officials. We thank you for appearing before the committee. The committee will follow up on any questions taken on notice in writing and responses will be required within 10 working days of the committee's request.

**Witnesses withdrew.**