

20 September 2022

Committee Secretary  
Select Committee on Work and Care  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By email: [workandcare.sen@aph.gov.au](mailto:workandcare.sen@aph.gov.au)

Dear Committee Secretary

### **Select Committee on Work and Care Inquiry**

We write to provide our response to the Select Committee on Work and Care Inquiry. We have focussed our response to the areas of the consultation paper that we believe we have the experience and skills to respond to.

#### **Inquiry Terms of Reference:**

- a. the extent and nature of the combination of work and care across Australia and the impact of changes in demographic and labour force patterns on work-care arrangements in recent decades;
- b. the impact of combining various types of work and care (including of children, the aged, those with disability) upon the well-being of workers, carers and those they care for;
- c. the adequacy of workplace laws in relation to work and care and proposals for reform;
- d. the adequacy of current work and care supports, systems, legislation and other relevant policies across Australian workplaces and society;
- e. consideration of the impact on work and care of different hours and conditions of work, job security, work flexibility and related workplace arrangements;
- f. the impact and lessons arising from the COVID-19 crisis for Australia's system of work and care;
- g. consideration of gendered, regional and socio-economic differences in experience and potential responses including for First Nations working carers, and potential workers;
- h. consideration of differences in experience of disabled people, workers who support them, and those who undertake informal caring roles;
- i. consideration of the policies, practices and support services that have been most effective in supporting the combination of work and care in Australia, and overseas; and
- j. any related matters.

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## **Our organisation**

Established in 1973, South East Monash Legal Service (SMLS) is a community legal centre that provides free legal advice, assistance, information, and education to people experiencing disadvantage in our community. SMLS also undertakes significant community development, as well as policy and law reform. Our vision is a fair and inclusive community where people can access the resources, networks and support they need to resolve legal issues and overcome barriers to social, cultural, and economic inclusion and participation.

We provide a range of innovative programs to achieve this vision, such as providing a full-time duty lawyer service at Dandenong Magistrates Court, various family law services, outreach services, community development initiatives and legal education programs.

## **SMLS and Employment Law**

SMLS recognises that there is an ongoing need within our local community for free employment law assistance for workers. The complexities and constantly shifting nature of employment law is often difficult for our clients to navigate, particularly for clients from culturally and linguistically diverse communities.

At SMLS we aim to empower clients to become better informed of their rights and of the legal avenues available to assert those rights.

We also understand that our clients may not always be in a position to self-help if, for example, a matter is complex or if a client is facing disadvantage due to factors such as limited English or disability. Some clients may feel intimidated by the employer and may not otherwise be willing to assert their rights in the absence of a legal advocate. We seek to redress these power imbalances by providing ongoing assistance which may include preparing applications to the Fair Work Commission and negotiating a settlement with employers.

Our employment law service may provide advice and assistance in relation to: Unfair treatment in the workplace or unfair dismissal, workplace bullying, discrimination, disputes regarding unpaid or underpaid wages, unpaid leave, redundancy, sham contracting and other entitlements.

In addition to our onsite employment law clinic, we operate a duty lawyer outreach service at the Fair Work Commission in partnership with Job Watch in response to ongoing need within our local community for free employment law assistance. We also deliver the International Students Accommodation and Employment Legal Clinic, in partnership with Study Melbourne, Westjustice and Jobwatch.

## Introduction

These recommendations are based on our extensive work assisting the most disadvantaged workers in our community. Out of 2447 clients we assisted between 2016 and 2020 regarding an employment matter, approximately:

- 11% were born overseas and arrived in Australia in the last 5 years
- 38% were born overseas and arrived in Australia in the year 2000 or thereafter
- 43% indicated their main language was a language other than English
- 8% required an interpreter
- 10% indicated they had a disability
- 7% were aged 25 years or younger
- 31% were over the age of 50
- 30% were visa holders
- 3% indicated they had experienced family violence
- 45% identified as female
- 20% indicated they had dependent children or other dependents
- 7% indicated they were at risk of homelessness<sup>1</sup>

Many of our clients are in precarious or insecure jobs and working in low-paying industries. By and large for the clients we see, opting for insecure or precarious employment is not a matter of choice but often as a result of having no other alternatives. Insecure and precarious employment creates barriers for those workers who are also carers to children, those with a disability and the elderly.

Fundamentally, in order to achieve social cohesion, there needs to be an eradication of the immense disparities in wealth and income in our society and elimination all forms of discrimination, including discrimination based on race, gender, disability and age. Any reforms aimed at promoting social cohesion must be working towards removing systemically entrenched barriers for certain cohorts of workers from achieving secure and decent work. We see that migrant workers, visa holders, women, workers who speak English as a second language and workers with a disability are disproportionately over-represented in low-paying and precarious jobs. These barriers are exponentially felt for those workers that are also carers.

Our submissions are intended to demonstrate the added challenges that our clients face when balancing up carer/worker obligations and the increased burdens when people are facing insecurities such job insecurity, financial insecurity and visa insecurity.

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<sup>1</sup> Anecdotally, we see it is not uncommon that many clients may not necessarily apply a broad definition of homelessness as taken by the Australian Bureau of Statistics. So this figure may very well be an under-estimate

## **Job Security- The impact of sudden job loss for the vulnerable and disadvantaged worker in low-paying industries**

Vulnerable and disadvantaged workers in low paying industries who are also carers are particularly vulnerable of insecure and uncertain employment conditions. Recent High Court decisions<sup>2</sup> have attempted to clarify the uncertainty between an employee and an independent contractor by focusing on the contents of the written contract rather than the totality of the relationship, however many workers do not have comprehensively written contracts (or even have discussions about the terms of their relationship) and thus the test still provides uncertainties. Therefore, we recommend a statutory definition of an employee, with a presumption that all workers are employees unless proven otherwise. Whilst the Fair Entitlements Guarantee (FEG) provides a safety net for some 'eligible' employees, vulnerable employees who are visa holders are ineligible for the scheme. Despite the Migrant Workers' Taskforce's recommendation that the Fair Entitlements Guarantee (FEG) be expanded so as to include temporary visa holders, this has not yet been implemented. Accordingly, temporary visa holders who have lost their employment because of their employer's liquidation or bankruptcy continue to be barred from recovering their unpaid employment entitlements from the FEG scheme. We recommend that the FEG scheme be available to all employees working in Australia, irrespective of their visa status.

We are pleased to see the recent changes to the Fair Work Act introducing pathways to casual conversion however the pathway has flaws, and whilst the Act provides employees pathways to make a complaint, many of our clients are less inclined to complain due to the real fear of job loss. Furthermore, whilst there is now a statutory definition of casual employment in the Act, the definition is not adequate as it wrongly presumes that parties have comprehensive conversations about the terms of engagement at the commencement of work. We see that there is indeed still significant confusion amongst employees and employers as to whether the terms of employment is on a casual or permanent basis. It is often not expressly discussed (for example it may be that the worker is a new arrival or that there is an unequal bargaining power between employer and employee), and the conduct of the parties is not necessarily consistent with either type of employment. We recommend that there be a statutory presumption that in the absence of an express agreement between the employer and employee, it is presumed the employment is on a permanent basis unless proven otherwise. A statutory presumption of permanent employment should be created to deter unscrupulous employers and remove the significant burden from mistreated employees to prove their employment status.

For workers experiencing disadvantage, it may well take a prolonged period of time to recover from the financial crisis of job loss if finding comparable alternative work is limited. This may be especially so for persons with a disability. As our clients are predominantly working in low-paying jobs, there may be limited scope to set aside savings to cushion against unexpected loss of income either due to illness or job loss. For the casual worker working for example in hospitality or in the cleaning industry, the weekly income may be just enough to make ends meet. The process of recovering from such a crisis can be a long and complex one, requiring significant support from

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<sup>2</sup> *ZG Operations & Anor v Jamsek & Ors* [2022] HCA 2 and *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1

services, including legal services. There must be statutory reforms to better regulate the impact of insecure employment.

The lack of job security has implications for clients experiencing family violence. Without a steady income, it becomes difficult for workers experiencing family violence to leave an unsafe home environment, and when there are dependents that rely on their income, they may feel more compelled to stay in an unsafe relationship. Women in pregnancy may also experience unique disadvantage if in insecure or precarious work as it may mean that they do not have the benefit of parental leave under the national employment standards. Given the immense impact for workers who are in insecure or precarious work, we support moves towards allowing for greater pathways for casual workers to convert their employment to a permanent position. We reiterate our past recommendations that the employer bear the onus of proving that there were reasonable grounds not to offer casual conversion.

The sudden loss of income for those already receiving low income can lead to a serious financial crisis and have a crippling domino effect on all aspects of the person's life. The process of recovering from such a crisis can be a long and complex one, requiring significant support from services, including legal services. The sudden loss of income for vulnerable or disadvantaged workers may lead to a real risk of homelessness, spiraling debts and may impact significantly on mental health. This may have particularly serious implications for clients with dependent children or other dependents.

### **Job insecurity and increased risk of exploitation**

Aside from the constantly looming threat of sudden job loss, workers in insecure or precarious work are especially vulnerable to exploitation. From our casework, we have seen widespread instances of clients being underpaid or not receiving payment at all. Many have unpaid superannuation owing. We have seen employers purporting to shirk their obligations by creating sham contracting arrangements. The lack of job security also places workers at a greater risk of being bullied and/or sexually harassed.

For our clients, remaining in gainful employment is the priority and so are less willing to complain about work conditions or entitlements for fear of compromising their job. This fear is particularly prevalent for those who have dependents that also rely on the workers income. This contributes to an unwillingness to complain of an employer's unlawful conduct. Many of our clients are reluctant litigators and may not have the means or confidence to enforce their rights out of their initiative. Being from different minority groups mean they will face a range of factors which impact their employment. It is difficult for people to understand how to complain when faced by poor behaviour from an employer or colleague, fearing for their ongoing employment if they speak up. The threat of poverty and destitution is very real for our clients, many of whom have dependants who would suffer significantly if the family bread winner loses their job. For many, this results in a reluctance to self-advocate and seek help, as the cost of unemployment is too high. This creates a flawed system where those who rely on sham contracting, exploitation and legal grey areas to obtain competitive advantage are undercutting businesses who are using secure and properly paid forms of employment.

## **The risks of insecure or precarious work exposed or exacerbated by the COVID-19 crisis**

In times of economic downturn, such as that brought on by the pandemic, it is no surprise that those in insecure or precarious work are likely to be the first to lose their job, with little to no notice and with no eligibility for a redundancy payment. The impact of sudden job loss for those already experiencing disadvantage can be devastating, especially for visa holders who are not eligible for Centrelink payments or government support. It also highlights the difficulties carers face of balancing work and carer obligations when in insecure and precarious work. As mentioned above, our submissions are intended to demonstrate the added challenges that our clients face when balancing up carer/worker obligations and the increased burdens when people are facing job insecurity, financial insecurity, visa insecurity, etc. We recommend government intervention is needed to ease the burdens that give rise to job insecurities for vulnerable workers.

Out of 2447 clients we assisted between 2016 and 2020 regarding an employment matter, approximately 24% reported they received no income at all. The COVID-19 pandemic has had a significant and disproportionate impact on many of our clients, and served to expose the limitations of our workplace relations system, particularly for those in insecure and on-demand work.

International students and other migrant workers are particularly vulnerable to exploitation as they cannot access JobSeeker schemes. This has led many vulnerable workers into the gig economy, working for less than the federal minimum wage with limited saving potential. Combined with the lack of access to minimum protections such as sick leave, many vulnerable gig economy workers have 'little choice but to continue working regardless of COVID-19 symptoms.' In the six months prior to COVID (1/9/2019-29/2/20), SMLS assisted 38 workers on temporary visas with employment matters. In the six months since the COVID pandemic struck (1/3/20-31/8/20), SMLS has assisted 59 workers on temporary visas (a 150% increase). Inquiries relating to dismissal doubled. More broadly, the service saw a 148% increase in all vulnerable workers given information, advice and/or case work for employment law, when comparing July to September 2019 to 2020. (197 people in 2019 to 289 in 2020). In the last year alone, SMLS were able to assist clients to recover over \$193,000 in unpaid wages and entitlements. A significant proportion of the clients accessing the SMLS employment law clinic are linked to the 'on demand' economy, including digital platform workers.

Approximately 5% of the clients SMLS assisted between 1 March 2020 to the end of June 2021 who reported as having a disability were also on temporary visas. In times such as during and after the pandemic where returning to a person's home country is not a real option (due to border closures, travel restrictions, or depleted safety nets), we recommend that the government introduce basic temporary safety nets to allow jobseekers on temporary visas, many of whom are carers for dependents, to survive whilst seeking employment. These clients and their families otherwise face destitution. This may be especially needed for persons living with a disability where job options may be more limited.

For workers experiencing disadvantage, it may well take a prolonged period of time to recover from the financial crisis of job loss if finding comparable alternative work is limited. Anecdotally we see it

may be especially difficult to find a new job for those who are carers, those living with a disability, migrant workers, visa holders and workers from non-English speaking backgrounds. As our clients are predominantly working in low-paying jobs, there may be limited scope to set aside savings to cushion against unexpected loss of income either due to illness or job loss. For the casual worker working for example in hospitality or in the cleaning industry, the weekly income may be just enough to make ends meet.

We recommend that the government conduct regular evidence-based reviews to ensure the minimum entitlements of casual workers, especially for low paying industries, are on par with contemporary costs of living.

### **Workplace and consumer trends and the associated impact on employment arrangements in sectors of the economy including the ‘gig’ and ‘on-demand’ economy**

Workplaces are becoming increasingly complex, with our clients often at the bottom of the supply chain. What this means is that in some instances, it is not clear who carries the obligation to ensure workers are receiving their minimal entitlements or are working in a safe environment. This is the case for example, where a labour hire company employs the worker. We have seen instances for example of clients making complaints of being sexually harassed in the workplace or bullied and it not dealt with adequately by either the labour-hire company or the host workplace. It is not enough to place the obligation solely with the labour-hire company as there is little commercial incentive for the labour-hire company to advocate for the worker against the host workplace.

To ensure that the worker is effectively protected, we consider that both the host workplace and the labour-hire company should share joint liability for complying with the usual obligations of an employer. Given that the host workplace also profits from the labour of the worker, it makes sense that it be found liable to comply with the same legal obligations as the direct employer, the labour-hire company. As already mentioned, the difference between employees and independent contractors is becoming increasingly blurred. This is especially the case for those working in the gig/on-demand/digital platform economy. From what we have seen on the ground, those workers are largely required to supply an ABN and/or sign agreements to say they are an independent contractor. In many instances, we would say those were sham contracting arrangements.

For example, our clients often obtain an ABN upon the request of the purported principal contractor. They are provided with all the tools, have little to no control over when they perform their work and how, would have no power to delegate their work and for all intents and purposes could in no way be said to be running their own business. The work is usually poorly paid, certainly below the minimum wages that would normally apply to employees. Anecdotally, it appears to us also that workers from migrant backgrounds and visa holders are disproportionately over-represented in the gig/on-demand/digital platform economy. Many of these workers are also carers who have dependents that rely on their income.

Many carers can feel pushed into on-demand work because of the ‘flexibility’ it provides, however they are then faced with poorly paid work and often left unprotected from accidents or injury as many are not insured and cannot afford the cost of insurance. Given the immense power imbalance between the worker and the digital platform operator, whereby the worker has close to no

bargaining power or ability to negotiate the terms of the engagement, it is far cry from what would normally be expected if it were truly an independent contractor arrangement. The lack of effective protections for vulnerable workers in the gig/on-demand/digital economy is intolerable. We see there is an urgent need to regulate digital platform operators to ensure workers are receiving a decent income, have safe working conditions and have access to prompt and low-cost options to resolve workplace disputes. We support the Labor Government's commitment to "extend[ing] the powers of the Fair Work Commission to include "employee-like" forms of work, allowing it to better protect people in new forms of work from exploitation and dangerous working conditions. This change will allow the Fair Work Commission to make orders for minimum standards for new forms of work, such as gig work."<sup>3</sup> This will in turn protect those vulnerable gig workers who have the added responsibilities of being carers.

### **Migrant workers and vulnerable workers**

Employment relationships almost always have a significant power imbalance between employer and employee. This imbalance is further deepened if the employee has other indicators of disadvantage or vulnerability in their lives. Given SMLS's location in one of the most multicultural local government areas in Victoria, many of our clients are from non-English-speaking backgrounds and have lived in Australia for varying periods of time; from new arrivals to immigrants from the early 1950's. We frequently assist people who have found themselves in workplaces where they do not have a strong understanding of their workplace rights, or the tenure of their employment is uncertain and shaky. Our clients are predominantly low-income earners.

Being from different minority groups mean they will face a range of factors which impact their employment. It is difficult for people to understand how to complain when faced by poor behaviour from an employer or colleague, fearing for their ongoing employment if they speak up. The threat of poverty and destitution is very real for our clients, many of whom have dependants who would suffer significantly if the family bread winner loses their job. For many, this results in a reluctance to self-advocate and seek help, as the cost of unemployment is too high.

This was true for our client Sara<sup>\*4</sup>, who moved with her husband and three children from Afghanistan in 2016. As new migrants, they struggled to find work. She finally found a job as a home care worker. She generally worked seven days a week for a minimum of 50 hours per week. The wages were very low, and after the first few weeks of employment, Sara's boss stopped paying her. Sara kept working because her boss was promising to pay her soon, and because it was very difficult for her to find work the first time. Sara's visa type precluded her from eligibility for social security and she was worried about how long it may take her to find her next job. She also had family members depending on her. She was unaware of her legal rights and knew little about the service delivery sector of Victoria. By the time she found out about SMLS and made an

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<sup>3</sup> Australian Labor Party "Labor's Secure Australian Jobs Plan" <https://www.alp.org.au/policies/secure-australian-jobs-plan>

<sup>4</sup> \*Client names have been changed to protect client confidentiality.



appointment with us, she had been unpaid for approximately 6 months, as well as underpaid for her first few weeks.

SMLS sent her boss a letter of demand that went unanswered, so on Sara's instruction we filed an application to the Federal Circuit Court for a claim for more than \$50,000. During the time waiting for the hearing date, the company that employed Sara was deregistered by ASIC. We applied to ASIC to have the company reinstated, and then joined the director as a party to the application. The court then ordered the parties attend a mediation. With the assistance of a barrister, the matter was successfully settled in Sara's favour. Sara was not able to navigate the complexities of this matter without the assistance of a community legal centre. We recommend an increase in funding for community legal centres to deliver dedicated employment law assistance to vulnerable workers, including temporary visa holders

### **Childcare, Paid Parental Leave and Personal Leave**

Further reform is needed in relation to childcare access and costs, the period and amount of paid parental leave legislated for both parents, and also personal leave (in particular in times of pandemics) to better protect workers or prospective workers who are carers.

The cost of childcare is a major contributor to discouraging women from entering or reentering the workforce. Childcare can become an impossible expense after the cost of groceries rent/mortgages and other living expenses is deducted from a carer's wages, especially for single income families or those not in secure employment. Some of the current barriers to childcare for families include the activity test for subsidised hours, and the number of funded hours for kinder. In a recent UNICEF report, when comparing rich countries Indicators of national childcare policies (Leave, Access, Quality and Affordability) Australia ranked 37<sup>th</sup> of 41 (in the bottom third).<sup>5</sup> Anecdotally, our clients have also reported that they often face a difficult position of turning down employment opportunities where the working arrangements are not suitable for traditional childcare arrangements (for example when required to work nightshifts or inconsistent and uncertain casual hours).

Currently in Australia eligible employees who are the primary carer of a newborn or newly adopted child get up to 18 weeks' Parental leave pay, which is paid at the National Minimum Wage. Meanwhile Dads and partners are only entitled to 2 weeks Government paid leave. Paid parental leave where both parents can take time off and build family relationships and bonds is critical for cognitive child development, happiness and can improve gender equality. It is shown to reduce gender inequality when both parents, not just the mother, take parental leave. "when fathers take paid leave, couples share their housework responsibilities and child care more equally."<sup>6</sup> The

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<sup>5</sup> Anna Gromada and Dominic Richardson "Where do rich countries stand on childcare?" <https://www.unicef-irc.org/publications/pdf/where-do-rich-countries-stand-on-childcare.pdf> June 2021

<sup>6</sup> Kristen Schultz Lee and Hiroshi Ono, The Conversation, "Paid family leave makes people happier, global data shows" <https://theconversation.com/paid-family-leave-makes-people-happier-global-data-shows-179539> 6 April 2022

World Health Organisation and UNICEF have reported that “Paid leave promotes gender equity, increases women’s economic participation, and improves mothers’ physical and mental health”<sup>7</sup> “As one notable example, a recent study ... showed that the Japanese government’s investments in generous paid leave for families with small children, access to child care, child allowances and free health insurance for children, as well as increased benefits for older adults, were associated with modest gains in overall happiness.”<sup>8</sup> The OECD have also reported that “The availability and generosity of paid parental and home care leave varies considerably across countries... The OECD average entitlement available to mothers stands at just under 32 weeks, with most countries that offer at least one week providing somewhere between 26 and 52 weeks.”<sup>9</sup> In terms of Fathers pay, “Paid leaves specific to or reserved for fathers tend to be far shorter than paid leaves available to mothers.... On average, OECD countries offer just under nine weeks of paid father-specific leave, either through paid paternity leave or paid father-specific parental or home care leave. Six OECD countries provide no paid father-specific leave at all, and 17 offer two weeks or less. At the other end of the scale, ten OECD countries reserve three months (13 weeks) or more paid leave just for fathers. At around 12 months (52 weeks), the two East Asian OECD countries – Japan and Korea – provide the longest paid father-specific leaves in the OECD.”<sup>10</sup>

Whilst the 10 days personal leave per year provided by the National Employment Standards may be sufficient for the average full-time permanent worker, (and pro-rata for part-time employees) for a carer, this is often insufficient when considering the greater demand on their time caring for children, the elderly or disabled. Covid19 has shown us how vulnerable our most vulnerable workers are. Whilst the Government has made some measures to protect casual workers, there was no meaningful change to protect permanent employees from the additional days off required to self-isolate under a government direction. Our lawyers have reported that clients often feel uncomfortable to ask for time off, pressured or forced to attend work whilst sick or after requesting time off to care for their dependents. Other clients have reported feeling pressured in staying in relationships where they need to remain a carer because the alternative is an uncertain future with a cut in carers payments and little to no job prospects as they have been out of work or have little work experience.

#### *Case study: Bianca and Xavier’s story*

*Bianca’s teenage son Xavier was an NDIS participant. He had a range of complex needs as a result of his disabilities. Xavier was living with cerebral palsy, an intellectual disability and autism. His functional*

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<sup>7</sup> World Health Organization (WHO) and United Nations Children’s Fund (UNICEF) “Maternity Leave Legislation in Support of Breastfeeding- Case Studies Around the World” November 2019

<sup>8</sup> Kristen Schultz Lee and Hiroshi Ono, The Conversation, “Paid family leave makes people happier, global data shows” <https://theconversation.com/paid-family-leave-makes-people-happier-global-data-shows-179539> 6 April 2022

<sup>9</sup> Organisation for Economic Co-operation and Development, “PF2.1. Parental leave systems” [https://www.oecd.org/els/soc/PF2\\_1\\_Parental\\_leave\\_systems.pdf](https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf) Updated: October 2021

<sup>10</sup> Organisation for Economic Co-operation and Development, “PF2.1. Parental leave systems” [https://www.oecd.org/els/soc/PF2\\_1\\_Parental\\_leave\\_systems.pdf](https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf) Updated: October 2021

capacity to meet his day-to-day living and personal care needs was equivalent to that of an 18 month to 3-year-old. Xavier also experienced complex behavioral challenges due to his comprehension and autism.

Xavier then developed a gastrointestinal condition, which was related to his cerebral palsy. Xavier became medically malnourished by this point and underwent surgery to treat his condition. Post-surgery, Xavier was no longer able to take food orally and instead required enteral feeding, a slow careful process that may take up to 90 minutes at a time and occurs four times per day. Xavier's reflex issues also meant that he needed close supervision during these feeds to ensure he remained safe during the process.

It was estimated Xavier's care needs would increase to at least an additional \$20,000 per year to cover the consumables alone.

Xavier had a range of specialists providing him with medical support, including a dietician, psychologist, senior occupational therapist, continence nurse, gastroenterologist, neurologist, urologist and physiotherapist.

Bianca applied to have a change to Xavier's NDIS plan to cover the significant cost increase for his health needs. Only a portion of Bianca's request was approved.

Bianca applied for an internal review of the decision. This was rejected.

Bianca then appealed to the AAT to have the matter reviewed.

Bianca was unable to afford a private lawyer and the protracted wait times to access legal aid assistance meant that Bianca had little chance of getting free legal help.

Fortunately, Bianca was able to access some support from a disability advocate. However, much of the gathering of supporting medical materials and preparation of appeal documents was left to Bianca to navigate on her own.

The NDIA on the other hand had the benefit of legal representation throughout the AAT appeal process.

Bianca spoke of the immense fatigue she felt having to attend a number of conferences with NDIA lawyers on her own. Bianca found the entire process incredibly time-consuming and took away critical time that she could otherwise spend caring for her son Xavier.

**During this time, without the vital additional NDIS support, Bianca felt she had no choice but to close her small business down and become Xavier's full-time carer. Bianca had spent the three years prior investing in that business. The financial strain arising from the loss of the business was further compounded by the family now becoming a single-income family, with Bianca's partner Joel becoming the sole breadwinner. The increased work demands also meant that Joel had reduced capacity to assist with the care of Xavier.**

The AAT ultimately found in favour of Bianca and Xavier.

The whole process took approximately 16 months – that being from the moment Bianca first applied to have the change to Xavier's NDIS plan up to the AAT decision which ultimately agreed that Xavier's NDIS plan should have been adjusted to fully account for the rise in Xavier's health expenses. If Bianca had early access to free legal assistance, Bianca feels the matter would have been resolved much earlier and would have been a less stressful experience.

We remain available for further consultation on any developments in relation to the Inquiry.

Ashleigh Newnham  
Director of Advocacy and Development  
**South-East Monash Legal Service Inc.**