SUBMISSION

Prepared by Springvale Monash Legal Service Inc for the

Federal Senate Select Committee on job security

Inquiry into the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions

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Our organisation

Established in 1973, Springvale 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 within the City of Greater Dandenong, the City of Casey and the Shire of Cardinia.

SMLS operates a duty lawyer service at various courts in Victoria, including Dandenong Magistrates Court, the Children's Court and provides legal representation at courts and tribunals such as the Victorian Civil and Administrative Tribunal, Fair Work Commission, Federal Circuit Court, Family Court and Victims of Crime Assistance Tribunal.

For most of the 40 years in operation, SMLS has been running a clinical legal education program in conjunction with Monash University's Faculty of Law, whereby law students undertake a practical placement at the legal service as part of their undergraduate degree.

SMLS has an extensive community legal education program that is developed in response to feedback from the range of community engagement and community development activities that we are and have been involved in.

SMLS also has a significant policy, advocacy, and law reform program. We contribute to reforms in family violence laws and practices, access to civil procedure reforms, discrimination towards young community members in their use of public space and their interactions with the criminal justice system, as well as in highlighting the needs of refugees and people seeking asylum, particularly unaccompanied humanitarian minors and women escaping family violence.

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, 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.

TERMS OF REFERENCE

These submissions seek to address the following terms of reference:

a. the extent and nature of insecure or precarious employment in Australia;
b. the risks of insecure or precarious work exposed or exacerbated by the COVID-19 crisis;
c. workplace and consumer trends and the associated impact on employment arrangements in sectors of the economy including the 'gig' and 'on-demand' economy;
d. the aspirations of Australians including income and housing security, and dignity in retirement;
e. the effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies;
f. any related matters.

ENDORSEMENTS

SMLS endorses the submissions made by Westjustice for this Inquiry.

Acronyms:

CLC	community legal centre
FWC	Fair Work Commission
FWO	Fair Work Ombudsman
SMLS	Springvale Monash Legal Service Inc
VCAT	Victorian Civil and Administrative Tribunal

**All client names have been change to protect confidentiality*

SUMMARY OF RECOMMENDATIONS

1. That there be a statutory definition of an employee, with a presumption that all workers are employees unless proven otherwise.

2. 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.

3. Amend the Migration Regulations 1994 (Cth) to remove condition 8105, which currently requires international students to limit their work hours to 40 hours per fortnight when their course is in session.

4. 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.

5. That there be statutory entitlements for casual workers to convert their employment to a permanent position, and if applicable, that the employer bears the onus of proving that there were reasonable grounds not to offer casual conversion.

6. That labour-hire companies and host workplace be equally obliged to ensure the worker receives their minimal entitlements and works in a safe environment.

7. That there be effective regulation and monitoring of digital platform operators to ensure workers receive a decent income and have safe working conditions.

8. That this inquiry considers the views of all workers in Australia, including those who are not Australian citizens.

9. To consider the extent that the Fair Work Commission ('**FWC**') and the Fair Work Ombudsman ('**FWO**') may offer a fast-tracked and low-cost option to determine disputes regarding entitlements and that they be properly resourced to do so.

10. To give enforcement provisions meaningful effect, disadvantaged workers must have access to free legal assistance and legal education.

11. That the community legal centre ('**CLC**') sector be supported to explore the potential to convert its administrative data into data that could be used for research purposes, for the ongoing evaluation of the existing laws, regulations, the industrial relations system and other relevant policies related to workers.

Introduction

We thank the Select Committee for Job Security for the opportunity to make these submissions.

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[1]

Many of our clients are in precarious or insecure jobs and working in low-paying industries.

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. 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.

We refer to and endorse in full, the submissions of WEstjustice, in particular its recommendations relating to:

- Sham contracting
- Extending liability of labour hire hosts
- Government procurement policies; and
- Increased funding to CLCs.

[1] 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

The extent and nature of insecure or precarious employment in Australia

For the purpose of this inquiry, we have taken insecure and precarious employment to include:

- Casual workers;
- 'Gig economy' or on-demand workers and other workers who find work through digital platforms such as Gumtree or Facebook;
- Workers employed by labour-hire companies placed on short-term or non-ongoing assignments; and
- Employees on fixed-term contracts.

The industries we most commonly see our clients in insecure or precarious work include:

- cleaning;
- construction;
- demolition;
- hospitality;
- flyer distribution;
- car-washing;
- food delivery;
- waste management;
- passenger transport; and
- commercial transport.

We acknowledge that permanent part time workers may not experience the same risks or disadvantages as workers in insecure or precarious jobs. We do highlight that some permanent part time positions may nonetheless constitute 'under-employment' and the significant financial implications for the worker in the short-term (ability to meet daily expenses) and long-term (impact on superannuation) basis should not be overlooked.

We consider that any reforms regarding insecure or precarious employment must include the creation of a statutory definition of an employment. Currently, an individual's employment status is determined by the court through the common law 'multi-factor test'. This test is complicated and ambiguous, and leaves employees with little clarity as to what their employment status and legal entitlements are. Additionally, clients who are new arrivals or speak limited English are especially vulnerable to be subjected to sham contracting arrangements. They may not appreciate the distinction between being an independent contractor and an employee.

There is also a need to introduce a clear statutory definition of what constitutes casual employment. We see there is indeed 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 and the conduct of the parties is not necessarily consistent with either type of employment.

Given the immense power imbalance that often exists between the employer and a vulnerable employee, we reiterate our recommendations that there be a statutory presumption of an employment relationship and that the employment is on a permanent basis. 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.

Recommendation one: That there be a statutory definition of an employee, with a presumption that all workers are employees unless proven otherwise.

Recommendation two: 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.

Removing legal barriers so temporary migrant workers can enforce their rights

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. Anecdotally, we see visa holders, new arrivals, migrant workers, workers who do not speak English as a first language are particularly vulnerable to accepting precarious or insecure work due to limited options.

Recently arrived migrant and refugee workers face multiple unique barriers that prevent them from accessing mainstream services and therefore, obtaining and maintaining sustainable employment. Low levels of awareness about their rights and of the employment services available, a language barrier, literacy issues, cultural differences and other practical considerations (such as the accessibility of transport, and recognition of prior skills and training) all form critical barriers to accessing mainstream employment and employment services. Accordingly, newly arrived migrants, refugees and people seeking asylum are an important segment of the labour market to be considered as part of the Inquiry.

Visa restrictions pose challenges for many types of migrants. For example, temporary visa holders like international students have restrictions on their ability to work.

International students are especially vulnerable to working in insecure or precarious jobs. From 2019 to 2021, of the approximately 104 international students we assisted:

- 91% arrived in Australia within the last 5 years
- 80% indicated their main language was a language other than English
- 15% required an interpreter
- 32% were casual workers
- 25% did not know whether they were a casual worker, permanent worker or independent contractor
- Most commonly worked in construction, demolition, cleaning and hospitality.

In addition, some companies entrench the existing level of disadvantage experienced by certain groups, such as companies whose policies explicitly exclude the employment of visa holders. These restrictions, combined with other challenges that migrants face often force this cohort into unsafe work, where they are at a higher risk of discrimination and exploitation.

We refer to WEstjustice, SMLS and Jobwatch's submission to the Senate Select Committee into Temporary Migration, pages 27-28 (see attached):

International students on a subclass 500 or 574 student visa are subject to visa condition 8105,17 which prohibits them from working more than 40 hours per fortnight when their course is in session (Work Limitation). If an international student is found to have breached this condition, the Department of Home Affairs (DHA) may cancel their visa.[2] We have had numerous clients visit our service to request help for significant underpayment issues and other unlawful treatment. However, some clients may have breached the Work Limitation, inadvertently or accidentally. As a result, clients do not pursue their claims and employers take advantage.

We saw one client who worked for one extra hour in breach of his 40-hour limit, on one occasion. However, the risk of visa cancellation was still real—and he did not pursue his employer, who owed him thousands of dollars.

[2] Migrations Regulations 1994 (Cth) (Migration Regulations) sch 8 cl 8105

International students have reported that unscrupulous employers have threatened to fire them if they don't work hours which are in breach of their visa conditions. Other employers threaten to report fabricated or minor breaches of work conditions to the DHA to silence international student complaints about underpayments and stop our clients from taking legal action to enforce their legal rights.

It is essential that exploited workers are encouraged to report illegal behaviour. Therefore, penalties for employees working in breach of their visa should be reconsidered in light of the public interest in deterring rogue employers. If the employment visa condition 8105 was removed, international students would be able to work in the same way as local students. These students would not need to risk breaching their visas in order to support themselves financially. Other conditions on their visas would ensure that students focus on the object of their visa: their studies.
These conditions require students to attend 80% of their classes and achieve satisfactory course results.[3] The elimination of condition 8105 would also remove an obstacle to international students taking legal action against wage theft. Employers would no longer be able to use the threat of visa cancellation over international students who complain of such conduct at work as a way of avoiding liability for wage theft. It is unfair and disproportionate for an exploited international student to face deportation for infringing their visa restrictions in a minor way, for example by working an additional few hours. Indeed, if they were paid properly, such additional hours are unlikely to be necessary in the first place. If condition 8150 is not removed, it is likely international students will continue to not report their experiences of work exploitation.

Recommendation three: Amend the Migration Regulations 1994 (Cth) to remove condition 8105, which currently requires international students to limit their work hours to 40 hours per fortnight when their course is in session.

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

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

In times of economic downturn, such as that brought on by the pandemic, it is no surprise that those 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. Out of 2447 clients we assisted between 2016 and 2020 regarding an employment matter, approximately 24% reported they received no income at all.

Long-term casuals whose employers keep poor employee records are also vulnerable to being found ineligible for Jobkeeper payments if the employer is unable to show an employee is a regular and systematic casual.

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 the JobKeeper or 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

[3] Migration Regulations, sch 8 cl 8202

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.' [4]

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.

Among those that SMLS assisted in this time was Arjun*. Arjun was studying in Melbourne on a student visa. Whilst here he was employed by a new gig-economy operator. Their business model involved receiving contracts from other groups to hand out flyers and cards at major intersections then hiring people like our client to do the actual work. Our client worked for them at a flat rate of $19.00 an hour for about a year on the basis that he was a sub-contractor and not able to receive to entitlements or award rates. Given the terms upon which Arjun performed his work, it appeared that the gig-economy operator was engaging in a sham contracting arrangement. We then assisted the client, sending letters demanding payment to the other party on the basis that our client was an employee, however, the other party did not respond.
SMLS then filed a small claim in the Federal Circuit Court. At this point the other party agreed to negotiate and we concluded a settlement of $3,000.00.

As Arjun's case exemplifies, there is a risk that gig-economy operators are in effect engaging in sham contracting arrangements. Again, this is relevant to our recommendations above that there be statutory clarity regarding the definition of an employee, with the presumption of an employment relationship unless proven otherwise.

The sudden loss of income for vulnerable or disadvantaged workers may lead to a real risk of homelessness, spiralling debts and may impact significantly on mental health. This may have particularly serious implications for clients with dependent children or other dependents. 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 over the age of 50, 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.

Recommendation four: 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.

4 Van Barneveld et al., 'The COVID-19 pandemic: Lessons on building more equal and sustainable societies' (2020) 31(2) The Economic and Labour Relations Review 133, 147

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.[5]

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.

We note the recent Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2021 which will introduce a (limited) casual conversion clause into the Fair Work Act. We are concerned that the new provisions and employer controlled conditions (as currently drafted at the time of making this submission), may further entrench casualisation. Under the proposed Bill, it is overly simple for an employer to engage any worker as a casual employee. This limited focus on the offer/acceptance stage of employment is inherently unfair due to the extreme imbalance of power between employers and prospective employees.

Recommendation five: That there be statutory entitlements for casual workers to convert their employment to a permanent position, and if applicable, that the employer bear the onus of proving that there were reasonable grounds not to offer casual conversion.

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 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.

Sara* had newly arrived to Australia, together with her family. As new migrants, they struggled to find work and learn a new culture and language.
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. After the first few weeks of employment, Sara's boss stopped

[5] Jack Kerr, ABC News 2018, 'What the figures reveal about poverty and domestic violence - ABC News', 18 September, viewed 31 March 2021, <https://www.abc.net.au/news/2018-09-19/domestic-violence-and-poverty-statistics/10108140>.

paying her. Sara kept working because her boss was promising to pay her soon, and because it was so hard for her to find work the first time. She also had limited English and was not aware of where to get help.
Sara found out about SMLS through a friend and contacted us for an appointment. We calculated that Sara had been unpaid for about 6 months and 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 damages of more than $50,000. During the time waiting for the hearing date, the company that employed Sara was de-registered 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 to attend a mediation. With pro-bono barrister assistance, the matter settled in favour of our client.

SMLS also assists international students who are often unwilling to ask employers for their legal entitlements due to a fear of losing their job and facing destitution, an inability to pay course fees and the possibility of losing their visas as a result. This is a common scenario where the threat of being without employment is so significant that people accept discrimination, exploitation and unsafe working conditions.

Between 2019 and 2021, the most common legal issue affecting the approximately 104 international students we assisted, related to wage recovery (approximately 46%).

Jose* was an international student. He found cash-in-hand work as a delivery van driver on gumtree. The client was issued with a delivery van which was in very poor condition. When the van broke down, the contractor withheld two weeks' pay from the client. The client came for advice on how to recover the two weeks' pay.
We assisted the client with preparing his documents for legal proceedings at the Victorian Civil and Administrative Tribunal ('**VCAT**'). Even though the VCAT is designed for self-litigants, there are many administrative and procedural factors involved that are not outlined in their how-to guides. Legal assistance was critical for Jose to navigate the legal system.

Many of our clients are unwilling or unable to advocate for themselves due to a range of complex and interconnected reasons. Employment relationships usually 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.

Jack* worked for a company installing ABN infrastructure in residential neighbourhoods. He was a labourer and worked alongside a small team. When he originally got the job, he was required to obtain an ABN in order to start work. Jack had no idea what the difference between an employee or a contractor was but was desperate for work so he followed the instructions. He was offered to be paid around $19 per hour.

He worked for the same person, who provided all the equipment and tools. He worked regular full-time hours and had no say in how much he was paid per site. All the other labourers were employed the same way. Jack attended a community legal education session one day and started to learn about his rights at work. He also learnt about workplace safety and realised

that as a contractor, he was not necessarily covered by his bosses' work place insurance. He subsequently asked his work place to clarify his role and was told not to come back to work.

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. 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.

Recommendation six: That labour-hire companies and host workplace equally share the legal obligations to ensure the worker receives their minimal entitlements and works in a safe environment.

Recommendation seven: That there be effective regulation and monitoring of digital platform operators to ensure workers receive a decent income and have safe working conditions.

The aspirations of Australians including income and housing security, and dignity in retirement

We highlight that the aspirations of all residents of Australia be considered and not be limited to Australian citizens.

Recommendation eight: That this inquiry consider the views of all workers in Australia, including those who are not Australian citizens.

The effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies

Anecdotally, we see there are limits to the extent that clients are able to recover payments for unpaid entitlements. The processes in place just take too long and enforceability once an order is made is a further saga. Visa holders in particular feel discouraged by the prospect of protracted litigation, with the very real possibility that they will have left Australia before proceedings are finalised or perhaps even commenced.

Especially for those working in the gig/on demand/digital platform economy, the cost of pursuing a claim through legal proceedings often far outweighs the quantum of the client's claim. But to a visa holder who has no entitlement to Centrelink payments and little social network support, the loss of those wages may have an immense impact. Many international students for example have reported to us that due to the economic crisis brought on by COVID-19, they have been unable to afford even the basics such as food.

What is particularly concerning is that some employers appear to deliberately exploit our clients' disadvantage as part of their business model. For example, in our work assisting international students, we frequently see that the employer is relying on our client's ignorance of the law and/or our client's urgent need to acquire an income as a means to offer less than the client's statutory entitlements. In many instances, our clients report that their employer has a tendency to predominantly recruit international students. In our view, the law does not do enough to prevent and respond to this kind of malicious exploitation.

Even in the absence of this form of outright and deliberate exploitation by the employer, when the employer breaches its obligations under the Act, it may in effect be undeservingly profiting from our clients' disadvantage. To us, the government carries a moral imperative to prevent the intolerable result of employers effectively benefiting from the social and economic disadvantage of some workers.

As many of our clients do not have the means or confidence to enforce their rights without support, we prioritise any measures which as far as possible, relieves workers of the burden of enforcing statutory rights and entitlements. Any legislative reforms need to acknowledge the power imbalances between our clients and employers and the resultant inequality of bargaining power. We support measures which maximises the employee access to justice. We see opportunities for the FWO, the FWC and the CLC sector to promote access to justice to the most vulnerable and disadvantaged workers.

We also support any moves to allow the FWC to arbitrate claims for unpaid or underpaid entitlements. It is not unusual for example that we assist a client with a dismissal claim at the FWC and that same client also has a claim for unpaid entitlements against the employer. For the sake of efficiency and increasing access to justice, we see the benefit of permitting the FWC to deal with both matters concurrently. Alternatively, given that the FWO already has the skills to handle claims for unpaid/underpaid wages, the FWO may also be well placed to give binding determinations regarding entitlements.

We see these as good low-cost options for our clients. It is not uncommon that our client opts not to pursue wage recovery given the risks and costs associated with litigation at the courts. The option of pursuing underpaid or unpaid wages through the FWC or the FWO may promote greater access to justice.

Recommendation nine: To consider the extent that the FWC and the FWO may offer a fast-tracked and low-cost option to determine disputes regarding entitlements and that they be properly resourced to do so.

For workers experiencing disadvantage, the effectiveness of enforcement mechanisms cannot be done without access to independent legal assistance and legal education. Many of our clients do not have the means or confidence to self-advocate and certainly are not in a position to engage a private solicitor. Many opt not to join a union as the cost of the fees is prohibitive.

Some clients may not even be aware that they have a claim against an employer. The CLC sector also plays a critical role in ensuring that the most vulnerable and disadvantaged workers are empowered with knowledge of their workplace rights and responsibilities. SMLS for example engages in community legal education and is a trusted source of help for some of the hardest to reach members of the community. Our embedded and multidisciplinary service delivery models (for example, by having lawyers provide outreach services at Study Melbourne, the Fair Work Commission, in schools, youth hubs, hospitals and other community organisations) also optimises our accessibility to the community.

Recommendation ten: To give enforcement provisions meaningful effect, disadvantaged workers must have access to free legal assistance and legal education.

Any related matters

The laws, regulations and policies must be continually monitored and evaluated to ensure that it keeps evolving with contemporary issues, particularly for those workers who are most disadvantaged.

CLCs have the potential to contribute to ongoing review of the existing industrial relations law through its administrative data. As outlined by McDonald et al (2020:10) '*[a]dministrative data is information collected and stored as part of the everyday functions of organisations.'* It is data which is '*… not primarily collected for research purposes'* but may offer an efficient and cost-effective way to build evidence and gain insights to inform policy. (McDonald et al, 2020: 14) In 2017, the Australian Productivity Commission's *Data Availability and Use report* recommended increased use of administrative data to improve the delivery of government services and policy. (Productivity Commission, 2017:111 and 113)

We highlight that SMLS is currently undergoing a research project mapping out the client journey in recovering income from unpaid work. The research will also consider the extent that our administrative data can be used for research purposes.

Recommendation eleven: That the community legal centre ('**CLC**') sector be supported to explore the potential to convert its administrative data into data that could be used for research purposes, for the ongoing evaluation of the existing laws, regulations, the industrial relations system and other relevant policies related to workers.