

01 December 2022

Employment Taskforce  
Treasury  
Langton Cres  
Parkes ACT 2600

To the Chair of the Employment Taskforce

### **Employment White Paper – Terms of Reference**

Thank you for the opportunity to make a submission on the Terms of Reference for the Employment White Paper.

We welcome the Government's efforts to ensure that it consults widely on a range of employment and workplace relations topics that will lead to better living standards and fairer working conditions for all workers in Australia.

Our submission focuses on changes that should be made to the legislative and regulatory framework for employment and working conditions in Australia, in order to improve the lives of workers, create consistency and clarity in the legal position, and prevent the exploitation of workers experiencing disadvantage and intersectional vulnerabilities including their visa status, employment type, gender, age, disability and race.

This submission is jointly made by WEstjustice Community Legal Centre, South-East Monash Legal Service (**SMLS**), JobWatch Inc and University of Melbourne Student Union (**UMSU**) Legal Service. We are each members of Community Legal Centres Australia, the Federation of Community Legal Centres (Victoria) (**FCLC**) and the FCLC Victorian Employment Law Working Group (**VELWG**). This submission is also endorsed by VELWG members and other community legal centres listed at the end of the letter.

#### ***About our services***

WEstjustice, SMLS and JobWatch have partnered to deliver targeted employment law services to international students in Victoria as part of the International Students Employment and Accommodation Legal Service (**ISEALS**). Since 2016, we have supported over 1,150 international students to understand and enforce their work rights and responsibilities. As of July 2022, we have recovered more than \$867,000 in unpaid entitlements and compensation for our clients.

**WEstjustice** is a community legal centre providing free legal help, financial counselling and support to people in the Western suburbs of Melbourne. Our community is one of the fastest growing areas in Australia and is highly diverse, comprising many newly arrived refugee and migrant communities, significant representation from Asia, Africa and the Pacific Islands, and a growing Aboriginal and Torres Strait Islander community. WEstjustice believes in a just and fair society where the law and its processes don't discriminate against vulnerable people, and where those in need have ready and easy access to quality legal education, information, advice and casework services. The Employment and Equality Law Program at WEstjustice was established in 2014 and offers legal and work rights education to international students, young people, newly arrived migrants and refugees, and people experiencing family violence. See [www.westjustice.org.au](http://www.westjustice.org.au)

Established in 1973, **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 employment law advice in relation to the full range of employment issues, and 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. See [www.smls.com.au](http://www.smls.com.au)

**JobWatch** is an employment rights, not-for-profit community legal centre. We are committed to improving the lives of workers, particularly the most vulnerable and disadvantaged. JobWatch was established in 1980 and is the only service of its type in Victoria, Queensland and Tasmania. Our centre provides the following services:

- Information and referrals to workers from Victoria, Queensland and Tasmania, via a free and confidential telephone information service (TIS);
- Community legal education, through a variety of publications and interactive seminars aimed at workers, students, lawyers, community groups and other appropriate organisations;
- Legal advice and representation for vulnerable and disadvantaged workers across all employment law jurisdictions in Victoria; and
- Law reform work aimed at promoting workplace justice and equity for all workers.

The vast majority of JobWatch's callers and clients are not union members and cannot afford to get assistance from a private lawyer. See [www.jobwatch.org.au](http://www.jobwatch.org.au).

The **UMSU Legal Service** is a community legal centre that provides free legal advice, casework, representation and financial counselling services to current students of the University of Melbourne. The UMSU Legal Service assists with a wide range of areas of law, including employment law. We assist both domestic and international students, who often face substantial difficulties as young workers. International students represent approximately half of our client base and are particularly vulnerable to exploitation in employment owing to lack of familiarity with the Australian legal system, cultural and language barriers, and visa status. We regularly advise young workers on a range of issues including underpayment, workplace bullying, sexual harassment and discrimination, gig economy and sham contracting issues, and unfair dismissal. See [www.umsu.unimelb.edu.au/legal](http://www.umsu.unimelb.edu.au/legal)

### **Key areas for law reform**

Through the work of our individual legal services and our involvement in ISEALS, our centres have developed an intimate understanding of employment law and related legal issues facing the most disadvantaged workers in Australia. Our centres are active in making detailed, evidence-based law reform submissions to relevant inquiries.

This submission summarises the key areas for law reform that our centres have identified over the past three years and point to existing submissions on these topics that contain detailed analysis and supporting evidence for our recommendations in relation to four topics within the Terms of Reference:

#### **1) Job security, fair pay and conditions**

To improve job security, pay and conditions for all workers, Commonwealth workplace laws must

- have clear, fair definitions which remove legislative incentives to utilise insecure and precarious work arrangements which allow for worker exploitation;
- increase accountability by employers, principals and third parties in supply chains and franchise arrangements; and
- provide all workers who are not genuinely running their own business (including those in the gig economy) with enforceable fair wages and entitlements.

#### **2) Pay equity and equal opportunities for women**

To increase labour force participation and remove systemic barriers to employment, greater emphasis must be put on ensuring gender pay equity and creating equal opportunities for women. Pay equity and equal access to employment opportunities play a major role in women's mental and physical health.

Further reform is also needed in relation to the following:

- Childcare access and costs, as the cost of childcare is a major contributor to discouraging women from entering or re-entering the workforce;
- The period and amount of paid parental leave legislated for both parents; and
- Unpaid carer's leave entitlements (particularly in the context of the pandemic) to better protect workers or prospective workers who are carers.

3) ***Improving labour market outcomes for those who face challenges in employment***

Workers who experience disadvantage are often unaware of their rights, are at risk of workplace exploitation, and therefore have reduced or diminished labour market outcomes. To remedy this, workers must have free, efficient and accessible ways to recover unpaid wages and entitlements, including through:

- An efficient and accessible small claims process and/or a wages recovery scheme;
- Access to legal education programs; and
- Support from the Fair Work Ombudsman (**FWO**) and Community Legal Centres (**CLCs**) to enforce their rights and orders for repayment.

Timeframes for bringing dismissal-related claims must be increased to ensure workers can get appropriate advice and support before taking action. Workers who are disadvantaged often do not seek timely assistance because they are unaware of their rights and time limits.

4) ***Migration settings as a complement to the domestic workforce***

Systemic barriers must be removed to prevent exploitation of migrant workers including by ensuring that migrant workers are:

- Protected from deportation or visa cancellation (and threats of deportation by employers are punishable);
- Supported to report wage theft, underpayments and other breaches of the *Fair Work Act 2009* (Cth) (**FW Act**); and
- Encouraged to take action to recover wages and entitlements owed to them.

For example, abolishing the maximum working hours for international students, extending the Fair Entitlements Guarantee to temporary visa holders, and establishing an effective visa category and whistle-blower protections (such as a special bridging visa or strengthening the Assurance Protocol) are likely to facilitate this objective.

***Rationale for our recommendations***

As CLCs, many of our clients are in precarious or insecure jobs and working in low-paying industries. Fundamentally, in order to achieve social cohesion, we need to tackle the immense disparities in wealth and income in our society and we need to work harder at eliminating sexual harassment and all forms of unlawful discrimination in the workplace. Any reforms aimed at promoting job security, improvement of workplace relations and industrial relations process, migration law, gender equality, and social cohesion must also work towards removing systemically entrenched barriers for certain cohorts of workers from achieving secure, safe and decent work.

We regularly see at our legal centres that migrant workers, visa holders, women, young workers, workers who speak English as another language and workers with a disability are disproportionately over-represented in low-paying and precarious jobs. Their status as an employee is often in question, due to sham contracting arrangements (or at the very least unclear or unfair contracting arrangements). Where these workers lose their jobs, the loss of 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 FW Act should contain a statutory definition of employee, with a rebuttable presumption in favour of the employment relationship, and the definition of casual employee should be amended. These two changes would go a long way in preventing the entrenchment of insecure work.

Moreover, we need reform to ensure that employers, principals and other third parties such as directors, franchisor entities and supply chain leaders can more easily be held liable for wage theft or other breaches of the FW Act. We cannot allow our legal system to essentially incentivise insecure and precarious arrangements which undermine labour market outcomes for disadvantaged workers.

For those workers who have been underpaid their wages and other employment entitlements, or who have not been paid at all, the current court system for recovering those payments can be complex, slow, inefficient and

often fruitless. Even the current small claims mechanism can be challenging to navigate and often our clients are discouraged from issuing proceedings because of the time, emotional impact and effort required.

If an employee does overcome various obstacles and succeeds in obtaining a judgement for recovery of employment entitlements, it can be very difficult or impossible to enforce the court order. The costs of pursuing enforcement action and the fear of throwing good money after bad often dissuades our clients from taking action to enforce their court orders, so any court victory remains a pyrrhic one.

For migrant workers, the threat of visa cancellation or deportation, combined with a lack of certainty around protection available to them, is often enough to discourage them from making a complaint to the FWO or seeking to recover their unpaid wages and entitlements.

We support reducing the barriers to employment and raising labour force participation. However, the emphasis should be on improving working conditions and the standard of living and providing opportunities to participate in the workforce rather than a generalised push to full labour force participation. Greater emphasis must also be placed on the important role carers (for example carers of children, family members, the elderly and the disabled) have in our society and the importance of this unpaid labour force participation.

These are not new issues. We have been advocating for changes in these areas for many years and have repeatedly made calls for changes to employment and migration law to improve the situation for workers, particularly migrant workers and international students. In our recommendations below, we link to these past submissions for ease of access. Our past submissions (linked below) outline case studies from our clients and draws on our experience.

We therefore strongly recommend that this Government draws on our previous advocacy work and builds on this in its Employment White Paper. We also recommend learning from the Victorian experience in criminalising wage theft, regulating and licensing labour hire providers, and attempting to regulate the gig economy. We further call for a commitment to implementing the recommendations from the Commonwealth Senate Economics References Committee Report "*Systemic, sustained and shameful: Unlawful underpayment of employees' remuneration*" published in March 2022.

Please let us know if we can provide any further information or would like to discuss our recommendations.

Yours sincerely

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**This submission is endorsed by the following members of the Victorian Employment Law Working Group and National Employment Law Community Legal Centres Group:**

- Northern Community Legal Centre



- Youthlaw – Young People’s Legal Rights Service (Victoria)



- YouthLaw Australia



**RECOMMENDATIONS TO FOR THE EMPLOYMENT WHITE PAPER**

**WEstjustice, South-East Monash Legal Service, JobWatch and University of Melbourne Student Union Legal Service**

Issue	Recommendation	Submission / Letter
<b>JOB SECURITY, FAIR PAY AND CONDITIONS (TOR Item 3)</b>		
<p>a) Statutory definition of “employee”</p>	<p>Section 15 of the <i>Fair Work Act 2009</i> (Cth) (<b>FW Act</b>) should be amended to include a statutory definition of an employee.</p> <ul style="list-style-type: none"> <li>• This definition should presume workers are employees unless they are genuinely running their own business or on vocational placements.</li> <li>• A reverse onus should be established whereby the definition will apply unless the employer or principal contractor can prove the worker is genuinely running their own business.</li> </ul>	<p><a href="#">Open letter to the Prime Minister, Treasurer, and Ministers Gallagher, Burke, Rishworth, O’Connor, O’Neil and Husic regarding the Jobs and Skills Summit, from Community Legal Centres Australia, co-signed by WEstjustice, SMLS and JobWatch, dated 31 August 2022.</a></p> <p><a href="#">Letter from ISEALS partners to the Minister for Employment dated 20 July 2022</a></p> <p><a href="#">JobWatch submission</a> to the Senate on the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020, dated February 2021. This submission was endorsed by 6 other community legal centres.</p> <p><a href="#">WEstjustice submission to the Senate Select Committee on Job Security, 30 March 2021</a></p> <p><a href="#">Francesca Lai, <i>Ignorance is NOT Bliss: The barriers to employment outcomes for young people in Melbourne’s West and how to overcome them</i> (“Ignorance is Not Bliss Report”) WEstjustice, September 2021</a></p> <p><a href="#">Joint submission by WEstjustice, SMLS and JobWatch on the Report of the Inquiry into the Victorian On-Demand Workforce, October 2020</a></p> <p><a href="#">Joint submission by WEstjustice, SMLS and JobWatch to the Senate Select Committee Inquiry on Temporary Migration, 30 July 2020</a></p>

		<p><a href="#">Joint submission by WEstjustice, Migrant Employment Legal Service and Redfern Legal Centre to the Senate Standing Committee on Economics Inquiry into unlawful underpayments of employees' remuneration, March 2020</a></p> <p><a href="#">WEstjustice submission to the Inquiry into the Victorian On-Demand Workforce, February 2019</a></p> <p><a href="#">SMLS Submission to the Senate on the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020, dated 05 February 2021</a></p> <p><a href="#">SMLS Submission Federal to the Senate on the Inquiry into the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions, dated 31 March 2021</a></p>
<p>b) Statutory definition of “casual employee”</p>	<p>Section 15A of the FW Act should be amended, after further consultation with the community legal sector, employees and unions. The definition of casual employee should not incentivise insecure work. It should describe employees whose work is truly casual.</p> <p>Under the current definition, a person is a casual employee if, at the time they were offered the job, their employer made ‘no firm advance commitment to continuing and indefinite work according to an agreed pattern of work’.</p> <p>This allows employers to classify employees (e.g., as permanent part-time or full-time) even if this doesn’t accurately reflect the actual working relationship.</p>	<p><a href="#">Open letter to the Prime Minister, Treasurer, and Ministers Gallagher, Burke, Rishworth, O’Connor, O’Neil and Husic regarding the Jobs and Skills Summit, from Community Legal Centres Australia, co-signed by WEstjustice, SMLS and JobWatch, dated 31 August 2022.</a></p> <p><a href="#">Ignorance is NOT Bliss Report, WEstjustice, September 2021</a></p> <p><a href="#">SMLS Submission into the Select Committee on Work and Care Inquiry, 20 September 2022</a></p> <p><a href="#">JobWatch's submission</a> to the Senate Select Committee on Job Security, April 2021</p>



	<p>Many of our clients are unaware of what ‘casual employment’ actually entails and how casual employment differs from permanent employment. This makes them vulnerable to accepting and/or staying in insecure work arrangements.</p> <p>Proposals for improving the definition include the following:</p> <ul style="list-style-type: none"> <li>• There should be a statutory presumption that, in the absence of an express agreement between the employer and employee to the contrary, a person’s employment is on a permanent basis unless proven otherwise; and/or</li> <li>• Courts should not be statutorily barred from considering the subsequent conduct of either party beyond the initial offer of employment when considering claims for unpaid entitlements; and/or</li> <li>• Casual conversion provisions should be mandated after a shorter period of employment (e.g., 3 months).</li> </ul>	<p><a href="#">JobWatch submission</a> to the Senate on the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020, dated February 2021. This submission was endorsed by 6 other community legal centres</p> <p><a href="#">SMLS Submission to the Senate on the Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Bill 2020, dated 05 February 2021</a></p> <p><a href="#">SMLS Submission Federal to the Senate on the Inquiry into the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions, dated 31 March 2021</a></p>
c) Sham contracting	<p>Sham contracting should be tackled by creating a statutory definition of employee in the FW Act. The statutory definition should presume workers are employees unless they are genuinely running their own business or are on a vocational placement.</p> <p>The current defence for employers that they cannot be liable for misrepresenting employment as an independent contracting arrangement if they can prove that at the time of the representation they did not know and were not reckless as to whether the contract was an employment one needs to be amended.</p> <p>Employers should be liable if they fail to take reasonable steps to determine whether their workers are employees</p>	<p><a href="#">Open letter to the Prime Minister, Treasurer, and Ministers Gallagher, Burke, Rishworth, O’Connor, O’Neil and Husic regarding the Jobs and Skills Summit, from Community Legal Centres Australia, co-signed by WEstjustice, SMLS and JobWatch, dated 31 August 2022</a></p> <p><a href="#">Letter from ISEALS partners to the Minister for Employment dated 20 July 2022</a></p> <p><a href="#">Ignorance is NOT Bliss Report, WEstjustice, September 2021</a></p> <p><a href="#">WEstjustice submission to the Senate Select Committee on Job Security, 30 March 2021</a></p>



	<p>and recklessness should be enough for the purposes of establishing sham contracting.</p> <p>Furthermore, the <i>Independent Contractors Act 2006</i> (Cth) should also be amended so as to:</p> <ul style="list-style-type: none"> <li>• Make it unlawful to pay contractors, whose work is otherwise covered by an award, a rate of pay that is below the minimum wage under the award;</li> <li>• Introduce a better, accessible forum, such as a tribunal, to challenge unfair terms in contracts.</li> </ul>	<p><a href="#">Joint submission by WEstjustice, SMLS and JobWatch to the Senate Select Committee Inquiry on Temporary Migration, 30 July 2020</a></p> <p><a href="#">Joint submission by WEstjustice, Migrant Employment Legal Service and Redfern Legal Centre to the Senate Standing Committee on Economics Inquiry into unlawful underpayments of employees' remuneration, March 2020</a></p> <p><a href="#">WEstjustice submission to the Inquiry into the Victorian On-Demand Workforce, February 2019</a></p> <p><a href="#">SMLS Submission Federal to the Senate on the Inquiry into the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions, dated 31 March 2021</a></p>
<p>d) Accessorial liability of directors</p>	<p>Amend section 550 of the FW Act to:</p> <ul style="list-style-type: none"> <li>• remove the requirement for actual knowledge (recklessness should be enough);</li> <li>• require directors and other relevant third parties to take positive steps to ensure compliance with the FW Act within their business or undertaking; and</li> <li>• ensure that a failure to rectify a breach constitutes involvement in a contravention.</li> </ul>	<p><a href="#">Ignorance is NOT Bliss Report, WEstjustice, September 2021</a></p> <p><a href="#">WEstjustice submission to the Senate Select Committee on Job Security, 30 March 2021</a></p> <p><a href="#">Joint submission by WEstjustice, SMLS and JobWatch to the Senate Select Committee Inquiry on Temporary Migration, 30 July 2020</a></p> <p><a href="#">Joint submission by WEstjustice, Migrant Employment Legal Service and Redfern Legal Centre to the Senate Standing Committee on Economics Inquiry into unlawful underpayments of employees' remuneration, March 2020</a></p>

		<a href="#">WEstjustice submission to the <i>Inquiry into the Victorian On-Demand Workforce</i>, February 2019</a>  <a href="#">JobWatch submission to the <i>Inquiry into the Criminalisation of Wage Theft</i>, October 2019</a>
e) Increased accountability of franchisors, holding companies, labour hire operators and supply chain leaders	<p>Amend the FW Act to:</p> <ul style="list-style-type: none"> <li>• widen the definition of ‘responsible franchisor entity’ in s 558B of the FW Act by removing the requirement for having a significant degree of influence or control;</li> <li>• clarify the liability of franchisors and relevant third parties (including labour hire operators, holding companies and supply chain leaders) in s 558B of the FW Act. Third parties should be taken to have contravened a provision of the FW Act in circumstances where their franchisee entity/ subsidiary/indirectly controlled entity contravenes that provision of the FW Act, unless they can show they took reasonable steps to prevent that contravention (or a similar contravention) of the FW Act; and</li> <li>• clarify the ‘reasonable steps’ defence in s 558B of the FW Act to require franchisors, holding companies, labour hire operators and supply chain leaders to take proactive measures to monitor compliance with and prevent contraventions of the FW Act.</li> </ul>	<a href="#">Ignorance is NOT Bliss Report, WEstjustice, September 2021</a> <a href="#">WEstjustice submission to the <i>Senate Select Committee on Job Security</i>, 30 March 2021</a>  <a href="#">Joint submission by WEstjustice, SMLS and JobWatch to the <i>Senate Select Committee Inquiry on Temporary Migration</i>, 30 July 2020</a>  <a href="#">Joint submission by WEstjustice, Migrant Employment Legal Service and Redfern Legal Centre to the <i>Senate Standing Committee on Economics Inquiry into unlawful underpayments of employees’ remuneration</i>, March 2020</a>  <a href="#">WEstjustice submission to the <i>Inquiry into the Victorian On-Demand Workforce</i>, February 2019</a>  <a href="#">JobWatch submission to the <i>Inquiry into the Criminalisation of Wage Theft</i>, October 2019</a>  <a href="#">SMLS Submission Federal to the Senate on the <i>Inquiry into the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions</i>, dated 31 March 2021</a>

<p>f) Independent Contractors Act</p>	<p>The <i>Independent Contractors Act 2006</i> (Cth) should be reformed to:</p> <ul style="list-style-type: none"> <li>• make it unlawful to pay contractors, whose work is otherwise covered by an award, a rate of pay that is below the minimum wage under the award.</li> <li>• Introduce a better, accessible forum, such as a tribunal, to challenge unfair terms in contracts.</li> </ul>	<p><a href="#">Letter from ISEALS partners to the Minister for Employment dated 20 July 2022</a></p>
<p>g) Gig Economy - status as an employee</p>	<p>Gig economy workers should be covered by the presumptive definition of employee in the FW Act, unless the employer/principal can establish the worker was genuinely running their own business, as recommended above.</p> <p>If a gig economy worker is truly an independent contractor, this must be clear in both the terms of the agreement between contractor and principal, <u>and</u> in the true nature of the relationship, such as having a high control over the work, not presenting as part of the principal's business, invoicing for hours performed, the ability to subcontract or delegate work without prior permission, and ability to refuse work.</p> <p>While there may be benefits to someone working as an independent contractor under an ABN, contractors have significantly fewer rights and protections than employees. Many of our clients don't understand their legal status or obligations as a contractor and they have little choice but to accept contracting arrangements.</p>	<p><a href="#">Joint submission by WEstjustice, SMLS and JobWatch on the Fair Conduct and Accountability Standards for the On-Demand Workforce, 18 February 2022</a></p> <p><a href="#">Joint submission by WEstjustice, SMLS and JobWatch on the Report of the Inquiry into the Victorian On-Demand Workforce, endorsed by USMU Legal Service, October 2020</a></p> <p><a href="#">WEstjustice submission to the Inquiry into the Victorian On-Demand Workforce, February 2019</a></p> <p><a href="#">JobWatch submission to the Inquiry into the Victorian On-Demand Workforce, February 2019</a></p>
<p>h) Gig Economy - mandatory regulation framework</p>	<p>If gig economy workers are <u>not</u> considered employees, there must be a mandatory national framework to regulate the gig economy and protect workers.</p> <p>This framework must comprise:</p>	<p><a href="#">Joint submission by WEstjustice, SMLS and JobWatch on the Fair Conduct and Accountability Standards for the On-Demand Workforce, February 2022</a></p> <p><a href="#">Joint submission by WEstjustice, SMLS and JobWatch on the Report of the Inquiry into the</a></p>

	<ul style="list-style-type: none"> <li>• clear definitions of who is covered by the framework</li> <li>• enforceable standards including fair wages (at least comparable to minimum wage) and payment of superannuation and workers compensation</li> <li>• internal and external complaints process for workers to challenge unfair contracts or exploitative conditions, and</li> <li>• independent monitoring and oversight of the framework.</li> </ul>	<a href="#">Victorian On-Demand Workforce, endorsed by USMU Legal Service, October 2020</a>
<b>PAY EQUITY AND EQUAL OPPORTUNITIES FOR WOMEN (TOR item 4)</b>		
a) Childcare, paid parental leave and carers leave	The Government should investigate options for further reform in relation to childcare access and costs, the period and amount of paid parental leave legislated for both parents, and also personal leave to better protect workers or prospective workers who are carers.	<a href="#">SMLS Submission into the Select Committee on Work and Care Inquiry, 20 September 2022</a> <a href="#">JobWatch submission to the Senate Select Committee on Work and Care, September 2022</a> <a href="#">JobWatch submission to the Productivity Commission about unpaid carer's leave, August 2022</a>
<b>IMPROVING LABOUR MARKET OUTCOMES FOR THOSE WHO FACE CHALLENGES (TOR item 5.2)</b>		
b) Small claims process for recovery of unpaid wages and entitlements	<p>Implement an efficient, accessible and free small claims process, including a dispute resolution mechanism, for workers to promptly recover all unpaid entitlements including wages, leave and superannuation.</p> <p>This process could be a small claims Tribunal or court, co-located with the Fair Work Commission, as recommended by Recommendation 5 of the Senate Select Committee Report “<i>Systemic, sustained and shameful: Unlawful underpayment of employees’ remuneration</i>” published March 2022.</p>	<a href="#">Open letters (sent via email) to Prime Minister and Leader of the Opposition, from Redfern Legal Centre and co-signed by WEStjustice, JobWatch, SMLS, 9 May 2022</a> <a href="#">Eloise Cox, Genevieve Grant, Korina Leoncio and Catherine Zhou, <i>The Challenge of Recovering Underpaid Wages: Empirical Insights from South-East Monash Legal Service Inc.</i>, Report, SMLS, 2022</a> <a href="#">JobWatch submission to the Senate on the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020, dated</a>

		<p>February 2021. This submission was endorsed by 6 other community legal centres</p> <p><a href="#"><u>Joint submission by WEstjustice, SMLS and JobWatch to the Senate Select Committee Inquiry on Temporary Migration, 30 July 2020</u></a></p> <p><a href="#"><u>Joint submission by WEstjustice, Migrant Employment Legal Service and Redfern Legal Centre to the Senate Standing Committee on Economics Inquiry into unlawful underpayments of employees' remuneration, March 2020</u></a></p> <p><a href="#"><u>SMLS Submission Federal to the Senate on the Inquiry into the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions, dated 31 March 2021</u></a></p>
<p>c) Regulator enforcement of orders for recovery of unpaid wages and entitlements</p>	<p>The Government should empower and properly resource a regulator such as the Fair Work Ombudsman to take enforcement action against employers and accessories where there has been a judgement in favour of a worker.</p>	<p><a href="#"><u>Letter from ISEALS partners to the Minister for Employment dated 20 July 2022</u></a></p> <p><a href="#"><u>Joint submission by WEstjustice, SMLS and JobWatch to the Senate Select Committee Inquiry on Temporary Migration, 30 July 2020</u></a></p> <p><a href="#"><u>Joint submission by WEstjustice, Migrant Employment Legal Service and Redfern Legal Centre to the Senate Standing Committee on Economics Inquiry into unlawful underpayments of employees' remuneration, March 2020</u></a></p> <p><a href="#"><u>SMLS Submission Federal to the Senate on the Inquiry into the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions, dated 31 March 2021</u></a></p>

<p>d) Increase funding for community based legal assistance &amp; education</p>	<p>The Federal Government and/or Fair Work Ombudsman (FWO) should provide greater funding to community legal centres through its community engagement grants program to ensure that vulnerable workers are able to obtain legal advice and progress their claims to completion.</p> <p>The Government should fund specialist work rights education programs to raise awareness of workplace laws, rights, entitlements, and build trust and accessibility of services. Work rights training must be incorporated into schools, TAFE and university induction programs, for both international and local students.</p>	<p><a href="#"><u>Ignorance is NOT Bliss Report, WEstjustice, September 2021</u></a></p> <p><a href="#"><u>Joint Submission by WEstjustice, SMLS and JobWatch on the Exposure Draft of the draft Migration Amendment (Protecting Migrant Workers) Bill 2021, 16 August 2021</u></a></p> <p><a href="#"><u>WEstjustice submission to the Senate Select Committee on Job Security, 30 March 2021</u></a></p> <p><a href="#"><u>Joint submission by WEstjustice, SMLS and JobWatch to the Senate Select Committee Inquiry on Temporary Migration, 30 July 2020</u></a></p> <p><a href="#"><u>Joint submission by WEstjustice, Migrant Employment Legal Service and Redfern Legal Centre to the Senate Standing Committee on Economics Inquiry into unlawful underpayments of employees' remuneration, March 2020</u></a></p> <p><a href="#"><u>WEstjustice submission to the Inquiry into the Victorian On-Demand Workforce, February 2019</u></a></p> <p><a href="#"><u>SMLS Submission Federal to the Senate on the Inquiry into the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions, dated 31 March 2021</u></a></p> <p><a href="#"><u>Joint Submission by WEstjustice and SMLS to the Victorian Legislative Assembly Economy and Infrastructure Committee on the 2019 Inquiry into Sustainable Employment for Disadvantaged Jobseekers</u></a></p>
<p>e) Underpayments recovery scheme or wage insurance scheme</p>	<p>The Government should implement an underpayments recovery scheme, in order to address difficulties with recovering unpaid wages and entitlements from</p>	<p><a href="#"><u>Joint submission by WEstjustice, SMLS and JobWatch to the Senate Select Committee Inquiry on Temporary Migration, 30 July 2020</u></a></p>

	<p>employers who become insolvent or who fail to respond to a court order.</p> <p>This process should be available</p> <ul style="list-style-type: none"> <li>• to a worker who has a court order confirming an underpayment has been made and the quantum of that debt, and</li> <li>• where the employer is insolvent or bankrupt, or fails to engage with the court process, and</li> <li>• as a result, the worker is unable to enforce their judgement and receive payment of monies owed.</li> </ul> <p>A possible option to investigate is that the scheme could be similar to the Fair Entitlements Guarantee (FEG), or potentially be an extension of the FEG. Workers should have access to a central fund administered by the Commonwealth Government, where the worker can apply to have their court order for repayment of wages and entitlements honoured.</p> <p>Another possible option could be a wage insurance scheme, similar to workers compensation insurance.</p> <p>The recovery scheme could be funded through premiums payable by employers (or directors) or through recovery of money by the Commonwealth from entities such as the liquidator, bankruptcy trustee or other intermediary, in the same way as Part 5 of the FEG Act allows.</p>	<p><a href="#">Joint submission by WEstjustice, Migrant Employment Legal Service and Redfern Legal Centre to the Senate Standing Committee on Economics Inquiry into unlawful underpayments of employees' remuneration, March 2020</a></p> <p><a href="#">WEstjustice submission to the Inquiry into the Victorian On-Demand Workforce, February 2019</a></p>
<p>f) Removing 21-day timeframe for unfair dismissal and replacing it with a longer timeframe</p>	<p>Remove the 21-day timeframe to bring dismissal-related claims and replace it with a 12-month discretionary limit (based on the model in the <i>Equal Opportunity Act 2010</i> (Vic)), except in cases where the employee seeks reinstatement.</p> <p>The strict timeframe prejudices clients who are unaware of their rights and are unfamiliar with the Australian legal system. Given limited resources, high demand and eligibility requirements for community legal centres, it can</p>	<p><a href="#">Letter from ISEALS partners to the Minister for Employment dated 20 July 2022</a></p> <p><a href="#">Ignorance is NOT Bliss Report, WEstjustice, September 2021</a></p> <p><a href="#">JobWatch submission</a> to the Senate on the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020, dated February 2021. This submission was endorsed</p>



	<p>also often be difficult for workers to access legal advice urgently.</p> <p>An unemployed person may also be experiencing tenancy or mortgage stress or homelessness, family violence or other kinds of interpersonal violence, discrimination, illness or injury. All these matters can impact a person's ability to assess their options and seek legal advice in a timely way.</p> <p>A longer timeframe will therefore allow a worker who has been dismissed to have adequate time to seek legal advice, consider the most appropriate action and protect their legal interests. It will also ensure the needs of vulnerable employees are accommodated.</p>	by 6 other community legal centres (we called for the timeframe to be extended to at least 3 months)
g) Extension of time for Federal discrimination law claims	The limitation period for a claim for all forms of discrimination, including racial discrimination, should be extended to align with the 24-month period that is now applicable for claims of sex discrimination.	<a href="#">Letter from ISEALS partners to the Minister for Employment dated 20 July 2022</a>
h) Representation by Community Legal Centre lawyers	<p>Allow lawyers from community legal centres to represent clients in the Fair Work Commission and the Federal Circuit and Family Court of Australia's small claims jurisdiction without having to seek leave or permission to do so.</p> <p>Representation from CLC lawyers is important to protect vulnerable workers. Representation can also facilitate just and timely resolution of legal claims.</p>	<a href="#">Letter from ISEALS partners to the Minister for Employment dated 20 July 2022</a>
<b>MIGRATION SETTINGS AS A COMPLEMENT TO THE DOMESTIC WORKFORCE (TOR item 5.4)</b>		
a) Student visa settings	Permanently abolish condition 8105 of the <i>Migration Regulations 1994</i> (Cth), which prevents international students from working more than 40 hours per fortnight when their course of study or training is in session.	Letter from Redfern Legal Centre to the Minister for Home Affairs co-signed by WEstjustice, JobWatch, SMLS, dated 25 July 2022 (copy available on request).

	<p>This condition is regularly used by employers to exploit workers (including wage theft, discrimination, bullying and sexual harassment) and is used as the basis for threatening deportation of a worker for exercising their workplace rights and/or complaining about workplace conditions and entitlements.</p> <p>Condition 8105's suspension during the pandemic has worked well and its abolition would continue to assist during this time of economic recovery by encouraging international students to return to our shores.</p>	<p><a href="#">Joint Submission by WEstjustice, SMLS and JobWatch on the Exposure Draft of the draft Migration Amendment (Protecting Migrant Workers) Bill 2021, 16 August 2021</a></p> <p><a href="#">SMLS Submission to the Inquiry into the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions, 31 March 2021</a></p> <p><a href="#">Joint submission by WEstjustice, SMLS and JobWatch to the Senate Select Committee Inquiry on Temporary Migration, 30 July 2020</a></p> <p><a href="#">Joint submission by WEstjustice, Migrant Employment Legal Service and Redfern Legal Centre to the Senate Standing Committee on Economics Inquiry into unlawful underpayments of employees' remuneration, March 2020</a></p> <p><a href="#">SMLS Submission Federal to the Senate on the Inquiry into the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions, dated 31 March 2021</a></p>
<p>b) Fair Entitlements Guarantee</p>	<p>Extend the Fair Entitlements Guarantee (FEG) to all workers, including those on temporary visas, and ensure it covers superannuation.</p> <p>Despite paying taxes and performing work alongside Australian citizens, temporary migrant workers are excluded from many basic entitlements including access to the FEG and social security.</p>	<p><a href="#">SMLS Submission into the Select Committee on Work and Care Inquiry, 20 September 2022</a></p> <p><a href="#">Open letter to the Prime Minister, Treasurer, and Ministers Gallagher, Burke, Rishworth, O'Connor, O'Neil and Husic regarding the Jobs and Skills Summit, from Community Legal Centres Australia, co-signed by WEstjustice, SMLS and JobWatch, dated 31 August 2022.</a></p>

	<p>Many of our clients, including international students, are not eligible for FEG purely due to their temporary visa status. This discrimination must be addressed – all employees who reside in Australia and support the Australian economy should be able to access the FEG.</p>	<p><a href="#">Letter from ISEALS partners to the Minister for Employment dated 20 July 2022</a></p> <p><a href="#">Open letters (sent via email) to Prime Minister and Leader of the Opposition, from Redfern Legal Centre and co-signed by WEstjustice, JobWatch, SMLS, 9 May 2022</a></p> <p><a href="#">Joint submission by WEstjustice, SMLS and JobWatch to the Senate Select Committee Inquiry on Temporary Migration, 30 July 2020</a></p> <p><a href="#">Joint submission by WEstjustice, Migrant Employment Legal Service and Redfern Legal Centre to the Senate Standing Committee on Economics Inquiry into unlawful underpayments of employees' remuneration, March 2020</a></p> <p><a href="#">WEstjustice submission to the Inquiry into the Victorian On-Demand Workforce, February 2019</a></p> <p><a href="#">JobWatch submission to the Inquiry into the Criminalisation of Wage Theft, October 2019</a></p>
<p>c) Protected attribute of nationality and visa status</p>	<p>Amend the Fair Work Act and the <i>Racial Discrimination Act 1975</i> (Cth) to include protection from discrimination based on nationality and visa status.</p> <p>The current use of 'race' is narrow and out of step with modern human rights-based protections against racial discrimination of all forms, and provides loopholes for racial discrimination to occur.</p>	<p><a href="#">Letter from ISEALS partners to the Minister for Employment dated 20 July 2022</a></p> <p><a href="#">JobWatch submission</a> to the Senate on the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020, dated February 2021. This submission was endorsed by 6 other community legal centres</p>
<p>d) Effective visa and whistle-blower protection for migrant workers seeking redress from workplace exploitation.</p>	<p>Migrant workers must be protected from deportation or visa cancellation when they act against exploitative employers or report unlawful conduct.</p> <p>This includes protection when reporting wage theft or underpayments, and when seeking recovery of</p>	<p><a href="#">Open letter to the Prime Minister, Treasurer, and Ministers Gallagher, Burke, Rishworth, O'Connor, O'Neil and Husic regarding the Jobs and Skills Summit, from Community Legal Centres Australia, co-signed by WEstjustice, SMLS and JobWatch, dated 31 August 2022.</a></p>

	<p>underpayment of wages and entitlements through a complaint made to Fair Work Ombudsman or claim made in the courts.</p> <p>For example, workers could be provided with a bridging visa for the duration of their claim.</p>	<p><a href="#">Open letters (sent via email) to Prime Minister and Leader of the Opposition, from Redfern Legal Centre and co-signed by WEstjustice, JobWatch, SMLS, 9 May 2022</a></p> <p><a href="#">Joint submission by WEstjustice, SMLS and JobWatch to the Senate Select Committee Inquiry on Temporary Migration, 30 July 2020</a></p> <p><a href="#">Joint submission by WEstjustice, Migrant Employment Legal Service and Redfern Legal Centre to the Senate Standing Committee on Economics Inquiry into unlawful underpayments of employees' remuneration, March 2020</a></p> <p><a href="#">WEstjustice submission to the Inquiry into the Victorian On-Demand Workforce, February 2019</a></p>
<p>e) Assurance Protocol protections</p>	<p>Expand and strengthen the Assurance Protocol between the Department of Home Affairs and the Fair Work Ombudsman.</p>	<p><a href="#">Open letters (sent via email) to Prime Minister and Leader of the Opposition, from Redfern Legal Centre and co-signed by WEstjustice, JobWatch, SMLS, 9 May 2022</a></p> <p><a href="#">Joint submission by WEstjustice, SMLS and JobWatch to the Senate Select Committee Inquiry on Temporary Migration, 30 July 2020</a></p> <p><a href="#">Joint submission by WEstjustice, Migrant Employment Legal Service and Redfern Legal Centre to the Senate Standing Committee on Economics Inquiry into unlawful underpayments of employees' remuneration, March 2020</a></p> <p><a href="#">WEstjustice submission to the Inquiry into the Victorian On-Demand Workforce, February 2019</a></p> <p><a href="#">Joint Submission by WEstjustice and SMLS to the Victorian Legislative Assembly Economy</a></p>

		<a href="#">and Infrastructure Committee on the 2019 Inquiry into Sustainable Employment for Disadvantaged Jobseekers</a>
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## COVER PAGE FOR ONLINE SUBMISSION

Public submissions

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Location

Location

Australia

Other

Submitting on behalf of:

Submitting on behalf of:

Myself

Organisation

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What topics are covered in your submission?

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Future of work and the implications of structural change

Care economy

Energy transition and tackling climate change

- Building resilient supply chains
- Workforce adaptability and emerging industries
- Job security, fair pay and conditions
- Pay equity and equal opportunities for women
- Labour force participation
- Reducing barriers and disincentives to work
- Improving outcomes for those who face challenges in employment
- Skills, education and training, upskilling and reskilling
- Migration
- Collaborative partnerships and place-based approaches

Please provide a short summary outlining the key elements of your submission.

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