



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.

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

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 callers and clients are not union members and cannot afford to get assistance from a private lawyer. See 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 4% of the student population. 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 4% of the student population.

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 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.

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.

RECOMMENDATIONS

[WEstjustice submission to the *Inquiry into the Victorian On-Demand Workforce*, February 2019](#)

f) Independent Contractors Act

The *Independent Contractors Act 2006* (Cth) should be reformed to:

make it unlawful to pay contractors, whose work is otherwise covered by an award, a rate of pay that

February 2021. This submission was endorsed by 6 other community legal centres

[Joint submission by WEstjustice, SMLS and JobWatch to the Senate Select Committee](#)

<p>d) Increase funding for community based legal assistance & 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><i>Ignorance is NOT Bliss Report, WEstjustice, September 2021</i></p> <p><i>Joint Submission by WEstjustice, SMLS and JobWatch on the Exposure Draft of the draft Migration Amendment (Protecting Migrant Workers) Bill 2021, 16 August 2021</i></p> <p><i>WEstjustice submission to the Senate Select Committee on Job Security, 30 March 2021</i></p> <p><i>Joint submission by WEstjustice, SMLS and JobWatch to the Senate Select Committee Inquiry on Temporary Migration, 30 July 2020</i></p> <p><i>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</i></p> <p><i>WEstjustice submission to the Inquiry into the Victorian On-Demand Workforce, February 2019</i></p> <p><i>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</i></p> <p><i>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</i></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><i>Joint submission by WEstjustice, SMLS and JobWatch to the Senate Select Committee Inquiry on Temporary Migration, 30 July 2020</i></p>

	<p>employers who become insolvent or who fail to respond to a court order.</p> <p>This process should be available</p> <p style="padding-left: 40px;">to a worker who has a court order confirming an underpayment has been made and the quantum of that debt, and where the employer is insolvent or bankrupt, or fails to engage with the court process, and as a result, the worker is unable to enforce their judgement and receive payment of monies owed.</p> <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>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</p> <p>WEstjustice submission to the Inquiry into the Victorian On-Demand Workforce, February 2019</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>Letter from ISEALS partners to the Minister for Employment dated 20 July 2022</p> <p>Ignorance is NOT Bliss Report, WEstjustice, September 2021</p> <p>JobWatch submission 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, 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.	Letter from ISEALS partners to the Minister for Employment dated 20 July 2022
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 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>	Letter from ISEALS partners to the Minister for Employment dated 20 July 2022
MIGRATION SETTINGS AS A COMPLEMENT TO THE DOMESTIC WORKFORCE (TOR item 5.4)		
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).

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.

[Joint Submission by WEstjustice, SMLS and JobWatch on the Exposure Draft of the draft Migration Amendment \(Protecting Migrant Workers\) Bill 2021, 16 August 2021](#)

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>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>Letter from ISEALS partners to the Minister for Employment dated 20 July 2022</p> <p>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</p> <p>Joint submission by WEstjustice, SMLS and JobWatch to the Senate Select Committee Inquiry on Temporary Migration, 30 July 2020</p> <p>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</p> <p>WEstjustice submission to the Inquiry into the Victorian On-Demand Workforce, February 2019</p> <p>JobWatch submission to the Inquiry into the Criminalisation of Wage Theft, October 2019</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</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>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</p> <p>Joint submission by WEstjustice, SMLS and JobWatch to the Senate Select Committee Inquiry on Temporary Migration, 30 July 2020</p> <p>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</p> <p>WEstjustice submission to the Inquiry into the Victorian On-Demand Workforce, February 2019</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>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</p> <p>Joint submission by WEstjustice, SMLS and JobWatch to the Senate Select Committee Inquiry on Temporary Migration, 30 July 2020</p> <p>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</p> <p>WEstjustice submission to the Inquiry into the Victorian On-Demand Workforce, February 2019</p> <p>Joint Submission by WEstjustice and SMLS to the Victorian Legislative Assembly Economy</p>

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- 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.

(For non-confidential submissions these may be published on the Treasury website)