

13 October 2020

Industrial Relations Victoria
Department of Premier and Cabinet

By email: ondemandinquiry@dpc.vic.gov.au

Dear Sir/Madam,

Further Submission: Report of the Inquiry into the Victorian On-Demand Workforce

Thank you for the opportunity to make a further submission regarding the recommendations of the Report of the Inquiry into the Victorian On-Demand Workforce (**Report**).

We refer to our organisations' respective initial submissions to this Inquiry:

- WEstjustice Community Legal Centre (**Westjustice**): available [here](#) (**WEstjustice Submission**)
- JobWatch Inc. (**JobWatch**): available [here](#) (**JW Submission**).

In summary, we welcome the Report's recommendations, and broadly support each recommendation. However, we are concerned that community legal centres are not included in the recommendations as a key (or any) part of the enforcement process. We have documented this concern below (see Parts 1 & 2 of our submission below) and in Part 3 we have set out a table with further details in respect of each of the Report's recommendations.

Part 1. The vital role of community legal centres in reaching and assisting vulnerable on-demand workers (Recommendations 3, 9, 17, 18)

Community legal centres (**CLCs**) provide vital **advocacy, education and legal services** to some of Australia's most vulnerable workers, including international students,¹ young people,² women experiencing family violence³ and newly arrived migrant and refugee communities (including temporary visa holders).⁴

¹ WEstjustice, JobWatch and SMLS are currently funded by the Victorian Government to operate the *International Students' Work Rights Legal Service* in partnership with Study Melbourne Student Centre and Victoria Legal Aid.

² For example the WEstjustice *Youth Employment Project* delivers legal and education services to young people through our [School Lawyer program](#), youth hubs and key partner organisations. The School Lawyer Program framework is available [here](#). SMLS also has a School Lawyer program at three high schools, as well as youth programs at various youth outreach centres.

³ For example, JobWatch is currently funded by the Victorian Government to operate the *Family & Domestic Violence and the Workplace Project*. This is designed to assist Victorian workers by giving free and confidential legal advice in situations where family or domestic violence impacts on the worker's employment.

⁴ For example, SMLS has partnerships with ethno-specific associations where we empower migrants and temporary visa holders to make informed decisions about work by delivering regular employment law education programs. For more information about SMLS's employment legal services, for example see [here](#). See also C Hemingway, *Not Just Work*:

Leveraging our strong community connections, **we address a critical service gap** for those workers who:

- are not yet in a union; and / or
- cannot afford private legal assistance; and / or
- due to cultural, language, literacy and/or practical barriers, are:
 - not able to understand or enforce their workplace rights without support from a trusted community-based service ([Not Just Work](#), pp 86-91; Social Ventures Australia, [School Lawyer Program Framework](#), pp 5, 8-9 (**SLPF**))
 - unlikely to find or access a government agency's services without targeted education and ongoing support (Not Just Work, pp 129, 102-123)
 - unable to find or access a telephone information line or self-help-based website or who need more assistance than a telephone information or self-help-based advice service alone can provide (Not Just Work, pp 139-147), and
 - in need of in-situ, targeted and timely support to ensure early intervention and resolution of problems before they escalate.

The most vulnerable workers often aren't unionised and are not able to access the necessary level of support they require from the Fair Work Ombudsman (**FWO**) or other government agencies. CLCs are independent, trusted agencies, based in local communities that can provide support to vulnerable workers across a range of legal and non-legal issues in an effective way to improve employment outcomes and social cohesion, in partnership with local communities.

Due to our **ongoing engagement work** with communities and community stakeholders (including participation in community networks; delivering training to community leaders and agency workers so they can identify legal issues and refer clients to our service; and direct community legal education to target communities), we assist clients who would not seek help or enforce their rights without us (see our recent [Joint Submission to the Senate Select Committee on Temporary Migration](#) (p 22) (**Joint Submission**)).

Through our embedded and multidisciplinary service delivery models (for example, by having lawyers provide outreach services at Study Melbourne,⁵ the Fair Work Commission,⁶ in schools, youth hubs, hospitals and other community organisations; and by making warm referrals within generalist services and to our community partners), we provide high-quality, place-based and holistic services to our clients at convenient locations. We **offer a unique lens and strong understanding of the trends and common problems vulnerable workers face**. Importantly, in collaboration with our community partners, we **seek to address systemic issues** identified in our casework and education/education programs by drawing on both our technical expertise, and ground-level experience. Our reports and law reform submissions document common problems facing vulnerable workers, legislative gaps and barriers to enforcement and compliance. Importantly, they also provide evidence-based recommendations for reform, including sample drafting.⁷

Ending the exploitation of refugee and migrant workers, [2016 \(Not Just Work\)](#) for details of the WEstjustice migrant and refugee employment law service.

⁵ For the International Students' Work Rights Legal Service.

⁶ For the Workplace Advice Service which is delivered at the Fair Work Commission by JobWatch and SMLS.

⁷ See for example, Not Just Work; WEstjustice Submission; WEstjustice submission to the Senate Education and Employment References Committee Inquiry into the exploitation of general and specialist cleaners working in retail chains for contracting or subcontracting cleaning companies, July [2018 \(Cleaners Inquiry\)](#).

In 2009 the Fair Work Ombudsman conducted a review of the need for and provision of Community-Based Employment Advice Services (**CBEAS**) in the light of the introduction of the Fair Work regime (**Booth Report**). The Booth Report highlights the importance of CBEAS for vulnerable workers:⁸

Workers who are trade union members can go to their union, workers who can afford to do so can go to a lawyer and workers who are confident and capable can use the information provided by the government body to look after themselves. However, this leaves a significant group of workers with nowhere to go in the absence of community-based services.

These are the workers who because of their industry or occupation, employment status or personal characteristics are also more likely to be vulnerable to exploitation at work. They experience a 'double whammy' of vulnerability at work and an inability to assert their rights.

Our centres have a long history of improving employment outcomes for those most vulnerable.⁹ For example, as discussed in our Joint Submission (pp 20-26), since January 2018, WEStjustice, Springvale Monash Legal Service (**SMLS**) and JobWatch Inc. have partnered to deliver targeted employment law services to international students as part of the International Students' Work Rights Legal Service (**ISWRLS**):

The ISWRLS is funded by the Victorian Government and runs out of the Study Melbourne Student Centre. It has provided legal assistance to over 440 international students, successfully recovering nearly \$325,000 in unpaid wages and entitlements and compensation for unfair treatment at work. We have also delivered over 30 employment law community education sessions to hundreds of students, student leaders, ambassadors and intermediaries working with students from education institutions.

Exploitation is widespread. 70% of our clients were underpaid or not paid at all, and one fifth of our clients were in sham contracts. Our service plays a critical role in recovering wages and compensation, helping individuals to get their jobs back and keep their jobs, receive statements of service, letters of reference or retrospective resignation to assist with getting new jobs. Importantly we have also facilitated referrals to unions, regulators and support agencies for related and other issue assistance. We have made 113 legal referrals and 20 non legal referrals.

At a workplace and industry level we have helped to bring multiple workers together, and refer them to the Migrant Workers Centre for collective assistance. We have also reported 38 cases to the Fair Work Ombudsman. We have also assisted a number of clients with WorkCover claims and referrals.

Importantly, From the client survey feedback we have received, nearly all of the clients (between 98-100%) report that the service contributes to giving them a positive experience as an international student; that they felt well supported and heard; and would return to use the service and recommend the service to others.

Specifically they report that after seeing a lawyer they understand their work rights better; they feel better prepared for future jobs in Australia; and have improved their ability to enforce their rights and/or make informed decisions about work related matters (96-100%).

⁸ Anna Booth, 'Report of the review of community-based employment advice services', Report to the Fair Work Ombudsman, 30 September 2009, 14.

⁹ See for example Not Just Work.

In addition, nearly all clients (between 96-100%) also report that the legal service was easy to access; and that an individual service (either virtual or face to face) was better than other ways of getting assistance (because they felt more confident and comfortable, can explain and ask questions properly, and more clear and helpful responses). 25% of the clients reported that without ISWRLS, they would have not have gotten any help with their work rights problem.

We would like to draw your attention to the work of CLCs, and request that the Victorian Government provide resources and recognition to better facilitate our integral role in the pursuit of decent, secure work for all Victorians.

In respect of the Report recommendations, **we specifically recommend that the Government:**

- **Include CLCs in any consultations and collaborations to implement change** (Recommendation 3): Along with Justice Connect, our centres Co-Convene the Victorian Employment Law Working Group, where participation in relevant processes could be coordinated;
- **Consider how to leverage and support CLCs** (alongside unions and industry) to help workers understand and resolve questions about work status (Recommendation 9 V6): This work is already being done by our sector, however we cannot meet demand with current resources.
- **Utilise CLCs to collaborate with and support both existing and new government agencies** (including any new Streamlined Support Agency) to clarify/enhance/streamline unfair contracts remedies and assist workers to resolve work status issues (Recommendations 17 & 18).

Part 2. The time to act is now: increasing unmet need (Recommendation 2)

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, identified as particularly vulnerable to exploitation in the Inquiry Report,¹⁰ 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.¹¹ Combined with the lack of access to minimum protections such as sick leave, many vulnerable gig economy workers have ‘little choice but to continue working regardless of COVID-19 symptoms.’¹²

In accordance with TOR 3, the Inquiry reported that platforms are deliberate in framing their arrangements to avoid creating an employment relationship and the operation of labour regulation.¹³ With migrant workers and international students excluded from government financial support, this highlights the urgency of enacting reform to close the ‘gap in the floor [of protections] ... through which... workers [are] allowed to fall’.¹⁴

¹⁰ Report, pp 44-45.

¹¹ Report, p 54.

¹² 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.

¹³ Report, p 138.

¹⁴ Ruth Dukes, ‘Regulating Gigs’ (2019) 83 *Modern Law Review* 217, 255.

In addition to the case studies set out in our respective submissions, the following de-identified case studies, taken from JobWatch's telephone information service and legal practice databases, reflect the kinds of queries JobWatch has received from on-demand workers in the context of COVID-19:

Nathan worked as an Uber driver for over 5 years. He had an excellent record with over 8000 rides before his account was suddenly deactivated in July 2020, after a passenger complained that he had made racist remarks when discussing a political issue in the context of the COVID19 restrictions. Uber asked him about the incident and Nathan denied saying anything racist. Uber upheld the cancellation of his account, and Nathan has repeatedly requested to speak to a supervisor or an Uber team member, but has only been put in contact with the operations team. As an independent contractor, Nathan has no rights to have the decision reviewed, and is unable to make an unfair dismissal claim.

Sam was working for Uber Eats when he had an accident on his push bike. He fell over a car door that was open in front of him. He was thrown onto tram tracks and his bike was crushed. The owner of the car was not identified. Police and ambulance were called and Sam was taken to hospital with injuries. Apart from his medical expenses and his lost wages, Sam's expensive bike was severely damaged and it was not insured.

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 – 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 Jose (name changed):

Jose was a Latin American migrant 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. Concerned by this, our client contacted ISWRLS for assistance and became an ongoing case for SMLS.

SMLS sent the other party letters of demand requesting our client be paid according to the award rate and as an employee. 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.

Given that the Federal Government is not currently proposing any specific actions to better protect on-demand workers, we support Recommendation 2 and call on the Victorian Government to act now. We support the Inquiry’s ‘six reasons to act now to revise our current system’:

1. **The inherent uncertainty of the work status test**
2. **The fragmented and limited nature of advice and support about work status**
3. **Inaccessible resolution pathways to determine work status**
4. **The emergence and conduct of platforms**
5. **High incidences of low-leveraged workers accessing work via platforms and working under ‘borderline’ work status**
6. **Inadequate protections for non-employee ‘small business’ platform workers**

We recommend that the Government recognise one further reason to act now: the ‘fragmented and limited nature of advice and support for vulnerable workers to enforce their rights and entitlements once status is determined.’

Part 3. Table of recommendations / specific comments:

In addition to the above we make the following specific comments:

Recommendation	Comments
<p>RECOMMENDATION 1</p> <p>The Inquiry recommends that the Commonwealth Government, in collaboration with state governments and other key stakeholders, lead the delivery of the recommendations in this report regarding the national workplace system.</p>	<p>Agree.</p>
<p>RECOMMENDATION 2</p> <p>The Inquiry recommends that, if the Commonwealth does not act, Victoria, in consultation and collaboration with other states, should pursue administrative and legislative options to improve choice, fairness and certainty for platform workers that:</p> <ul style="list-style-type: none"> • are constitutionally available • align with its broader priorities 	<p>Agree. As discussed above and in our Joint Submission, COVID-19 has both highlighted and exacerbated the precarious situation of many workers. There is an urgent need for the State Government to act now to address insecure, precarious work and focus the COVID recovery on promotion and attainment of decent work for all (not protecting business at all costs).</p>

<ul style="list-style-type: none"> • are appropriate in the current regulatory landscape, and • meet the needs of the current and future workplace. 	
<p>RECOMMENDATION 3</p> <p>The Inquiry recommends governments should, in implementing change, consult and collaborate with stakeholders; including platforms, employees, industry groups and unions.</p>	<p>Agree but we would add that CLCs should also be key stakeholders for consultations and collaborations due to our unique perspective and experience (see for example, regarding our work with newly arrived migrants and refugees –Not Just Work; regarding our work with temporary visa holders including international students – Joint Submission).</p>
<p>RECOMMENDATION 4</p> <p>The Inquiry recommends governments cost the changes and consider those costs alongside the transferred costs of the current systemic uncertainty around work status – the impacts on workers, businesses, the economy and community more broadly.</p>	<p>Agree. We suggest that such costing include the flow on impacts including health, housing and social inclusion – particularly for those most vulnerable (for example refugees, where meaningful employment is consistently regarded as a key part of successful settlement – Not Just Work).</p>
<p>RECOMMENDATION 5</p> <p>The Inquiry recommends appropriate government funded surveys and evidence-based research to ensure policy makers are aware of critical developments in platform work.</p>	<p>Agree.</p>
<p>RECOMMENDATION 6</p> <p>The Inquiry recommends that the FW Act be amended to:</p> <p>(a) codify work status on the face of relevant legislation (rather than relying on indistinct common law tests)</p> <p>(b) clarify the work status test including by adopting the ‘entrepreneurial worker’ approach (per On Call Interpreters and Translators Agency Pty Ltd v Commissioner of Taxation (No 3) [2011] FCA 366; Fair Work Ombudsman v Quest South Perth Holdings Ltd [2015] FCAFC 37) so that those who work as part of another’s enterprise or business are ‘employees’ and autonomous,</p>	<p>Agree. We recommend adding to this list:</p> <ul style="list-style-type: none"> - an express presumption of an employment relationship, unless proven otherwise: introduce a reverse onus which provides minimum entitlements to all workers (including dependent contractors), but enables principals a defence when they engage genuine contractors (see WEstjustice Submission, p 27 (including drafting suggestions at p 69); JW Submission, p7-8).

<p>'self-employed' small business workers are covered by commercial laws.</p> <p>(c) provide that the:</p> <ul style="list-style-type: none"> (i) provision of safety protections and entitlements such as superannuation, training, occupational health and safety and worker consultation is not disincentivised because of the potential impact on work status (ii) party asserting a worker is not an employee, bears the onus of proving work status, and (iii) the relative bargaining positions of each party are expressly considered when determining work status. 	
<p>RECOMMENDATION 7</p> <p>The Inquiry recommends that governments review the approach to 'work status' across work laws (e.g. Independent Contractors Act, superannuation, workplace health and safety, tax) with the purpose of more closely aligning them, specifically, considering:</p> <ul style="list-style-type: none"> (a) the need for clarity, consistency and simplicity (b) the policy imperatives of each regulatory framework (c) appropriate coverage for low-leveraged workers (d) the need to appropriately protect platform workers. 	<p>Agree provided that no definition is amended to provide less protection to vulnerable workers.</p>
<p>RECOMMENDATION 7 CONT</p> <p>Victoria should:</p> <p>V1. Encourage and work with the Commonwealth to amend the FW and IC Acts to clarify and codify the work status test.</p> <p>V2. Review and align as far as possible state laws that extend entitlements, obligations and protections based on 'work status' (like payroll tax, workplace health and safety), taking into account:</p>	<p>Agree. In particular, we consider that in Victoria our OHS Act 2004 and accompanying Regulations should impose obligations on both employers and any person conducting a business or undertaking in the gig economy. The protections need to extend to all vulnerable gig workers and WorkSafe should be empowered to investigate alleged breaches and enforce the law with respect to vulnerable gig workers. In addition to this, the State Government should actively consider incentives (tax or</p>

<ul style="list-style-type: none"> • the need for clarity, consistency and simplicity, • the policy imperatives of each regulatory framework, • appropriate coverage for low-leveraged workers, • the need to appropriately protect platform workers. <p>V3. Resolve the current ambiguity around the operation of existing health and safety and accident insurance laws to ensure that platform workers' health and safety is appropriately protected and they may be appropriately compensated for work based injuries. The model WHS laws require close consideration in this context.</p>	<p>otherwise) to promote direct engagement, formal employment and secure, decent work (WEstjustice Submission, p 45).</p>
<p>RECOMMENDATION 8</p> <p>The Inquiry recommends there be a clear primary source of advice and support to workers to help them understand and use dispute resolution or other informal options to resolve their work status.</p> <p>RECOMMENDATION 9</p> <p>The Inquiry recommends that a Streamlined Support Agency (whether stand alone or incorporated into the functions of an existing suitable body) should:</p> <ul style="list-style-type: none"> (a) have dedicated and sufficient resources (b) be accessible to and prioritise platform workers, particularly low-leveraged workers (c) help resolve work status through advice and dispute resolution (d) help workers understand the entitlements, protections and obligations of their work status (e) where work status is borderline, escalate the question to Fast-tracked Resolution (see 	<p>Agree. We welcome the recommendation to create an accessible Streamlined Support Agency to provide information to workers and help resolve work status. As set out in the WEstjustice Submission, one option would be to establish an Office of the Contractor Advocate to assist vulnerable contractors. We would also welcome this function being performed by the Victorian Wage Inspectorate, if appropriate.</p> <p>In relation to the Report's reference to unions and Industry groups playing a complementary role in enforcement (p 194), we wish to emphasise the need for and unique role of CLCs working alongside these groups to reach the most vulnerable workers and to complement/enhance the work of regulators, unions and industry.</p> <p>As discussed above, CLCs assist workers that nobody else sees. Union density has fallen to less than 15% in Australia.¹⁵ Young workers and those in insecure work (including casualised and/or part time roles) are even less likely to be union members.¹⁶ Our on-demand worker clients are</p>

¹⁵ Parliament of Australia, [Parliamentary Library Statistical Snapshot](#), October 2018

¹⁶ Parliament of Australia, [Parliamentary Library Statistical Snapshot](#), October 2018

<p>Recommendation 10) prioritising a determination.</p> <p>Victoria should:</p> <p>V4. Encourage the Commonwealth to establish and appropriately resource advice and support to parties seeking to resolve work status across all frameworks. Necessary complementary administrative arrangements should also be created to allow this.</p> <p>V5. In the absence of Commonwealth action, collaborate with other states and stakeholders to establish and resource streamlined support for parties to resolve work status as set out in Recommendation 10:</p> <ul style="list-style-type: none"> • the arrangements should strive to deliver consistent advice and • appropriate support, especially for low-leveraged platform workers • the Streamlined Support Agency could liaise with other relevant state and federal regulators and agencies and attempt, as far as possible, to provide consistent and fast advice • sufficient funding and clear direction to prioritise resolving work status would be essential to success. <p>V6. Consider how to leverage and support industry organisations and unions to help presumed self-employed workers understand and resolve questions about work status.</p>	<p>often young; in highly fragmented and insecure work; geographically dispersed; and unlikely to be union members due to a range of cultural and practical barriers.</p> <p>The value of community organisations in collaborating with unions, industry, regulators and government to reach and assist these vulnerable workers has been widely recognised (see WEstjustice Submission, pp 48-51).</p>
<p>RECOMMENDATION 10</p> <p>The Inquiry recommends that a fit-for-purpose body provides a mechanism for accessible, fast resolution of work status that:</p> <ul style="list-style-type: none"> (a) produces authoritative and binding determinations for all parties (b) is available to all workers and businesses (c) is as informal as possible 	<p>Agree. As set out in the WEstjustice Submission, one option would be for the Fair Work Commission to be given the power to make status determinations and Minimum Entitlements Orders (p 29). In the absence of Commonwealth action, we would welcome a State-based approach. There should be a statutory presumption in favour of the employment relationship until a determination is made. Moreover, we ask that the Government</p>

<p>(d) is appropriately funded so as to provide access</p> <p>(e) has decision makers with appropriate expertise</p> <p>(f) allows for resolution from the outset of the work arrangement</p> <p>(g) allows groups of workers under similar arrangements to seek resolution</p> <p>(h) is inexpensive and helps fund applications and costs of low-leveraged workers</p> <p>(i) operates in a coordinated way with the Streamlined Support Agency, enabling seamless referrals and support.</p> <p>V8. In the absence of Commonwealth action, collaborate with other states to set up state- based mechanisms to fast-track resolution of work status under the ‘common law’ test applied under the FW Act and specified Victorian laws.</p> <ul style="list-style-type: none"> • Work status determinations could be made by an existing tribunal like VCAT, the Magistrates’ Court of Victoria or a purpose-built body. • Work status determinations should be accompanied by written reasons going over findings of fact and law and, in the absence of a formal challenge, constitute prima facie evidence of status. • Decision makers must have appropriate expertise and funding and the capability to make fast decisions. • Encourage platforms to seek a determination. 	<p>consider the enforceability of any determination (our centres are able to provide further commentary on this issue if it would assist) and make any process as simple as possible for workers, noting our general recommendations regarding the inaccessibility of regulators/court or tribunal processes for CALD/other vulnerable workers and the need for targeted, ongoing help for the most vulnerable. We note that even with a significantly simplified process, some workers will still need targeted help.</p>
<p>RECOMMENDATION 11</p> <p>The Inquiry recommends that governments encourage platform businesses with significant non-employee, on-demand workforces to seek a work status determination.</p>	<p>Agree.</p>

<p>RECOMMENDATION 12</p> <p>The Inquiry recommends that, if platforms do not voluntarily seek a proactive determination, governments consider requiring platforms to initiate a determination process, or governments could facilitate this.</p> <p>(a) Proactive work status determinations should be targeted at enterprises of an appropriate size, maturity and number of workers and consider the costs for businesses, particularly small and emerging businesses.</p> <p>(b) Platforms should be given appropriate timeframes to apply and react to potential consequences and effect any changes.</p>	<p>Agree.</p>
<p>RECOMMENDATION 13</p> <p>The Inquiry recommends that platforms should be transparent with workers, customers and regulators about their worker contracts. Arrangements should be fair and consider the nature of the work and the workers.</p>	<p>Agree.</p>
<p>RECOMMENDATION 14</p> <p>The Inquiry recommends that governments lead a process to establish Fair Conduct and Accountability Standards or principles, to underpin arrangements established by platforms with non-employed on-demand workforces.</p>	<p>Agree but we would go further, recommending the introduction of a licensing scheme, similar to the Victorian Labour Hire Licensing Scheme, to protect vulnerable gig workers and achieve more effective enforcement. The regulator should be empowered to revoke licenses, issue fines, and prosecute for non-compliance and acting without a license (see WEstjustice submission p 41).</p>
<p>RECOMMENDATION 15</p> <p>The Inquiry recommends Commonwealth competition laws remove barriers to collective bargaining for non-employee platform workers and ensure workers may access appropriate representation in dealing with platforms about their work arrangements.</p>	<p>Agree.</p> <p>Further – Fair Work Act barriers to multi-enterprise agreements and collective bargaining for dependent contractors should be removed (more details can be provided upon request).</p>
<p>RECOMMENDATION 16</p> <p>The Inquiry recommends that the FWC work with relevant stakeholders, including platforms and representatives of workers and industry, about the application of modern awards to platform workers,</p>	<p>Agree.</p>

<p>with a view to ensuring fit-for-purpose, fair arrangements that are compatible with work enabled by technology.</p>	
<p>RECOMMENDATION 17</p> <p>The Inquiry recommends that governments clarify, enhance and streamline existing unfair contracts remedies so that they:</p> <ul style="list-style-type: none"> (a) are accessible to low-leveraged workers (b) enable system-wide scrutiny of platforms' arrangements (c) introduce penalties and compensation to effectively deter unfair contracts (d) allow materially similar contracts to be considered together and orders made with respect to current and future arrangements. 	<p>Agree, noting collaboration with the CLC sector is an effective strategy to achieve this.</p>
<p>RECOMMENDATION 18</p> <p>The Inquiry recommends that the Streamlined Support Agency be responsible for and sufficiently resourced to provide effective support to self-employed platform workers and to prioritise actions against systemic deployment of unfair contracts involving these workers.</p>	<p>Agree but we would add that unconscionability should be added as a ground on which service contracts may be reviewed. We also note that collaboration with the CLC sector is an effective strategy to achieve the objectives of recommendation 18.</p>
<p>RECOMMENDATION 19</p> <p>The Inquiry recommends strengthening provisions to counter sham contracting to:</p> <ul style="list-style-type: none"> (a) reflect the recommendations of previous reviews including the Black Economy Taskforce and the Productivity Commission, to capture conduct where it would be reasonable to expect the employer knew, or should have known, the true character of the arrangement was 'employment', and apply appropriate penalties to this conduct (b) require a court to consider each party's relative bargaining position and how much genuine choice a worker has over their presumed work status. 	<p>Agree. See comments regarding recommendation 6 above.</p>

<p>RECOMMENDATION 20</p> <p>The Inquiry recommends that regulators proactively intervene to resolve cases of ‘borderline’ work status, especially where it is occurring at a systemic level and impacts on low-leveraged workers, including by initiating test cases.</p>	<p>Agree. Again, we consider that CLCs should be regularly consulted and treated as key partners in achieving the objectives of recommendation 20.</p>
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It is essential that the voices and experiences of vulnerable workers are heard as part of this reform process, and that protection of those most in need forms a core consideration of any reform agenda.

Further detail and drafting is available in our earlier submissions (**enclosed**). Our centres are able to provide further case studies, summaries and/or information upon request.

We would also welcome the opportunity to meet and discuss our recommendations with the relevant staff, if this would be of assistance.

Yours sincerely,

**Catherine Hemingway &
Tarni Perkal** (job share)

Legal Directors, Employment
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**WEstjustice Community Legal
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Gabrielle Marchetti

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Supported by the following members of the **Victorian Community Legal Centres Employment Law Working Group**:

- **Federation of Community Legal Centres, VIC**
- **Eastern Community Legal Centre, VIC**
- **Fitzroy Legal Service Inc., VIC**
- **Justice Connect, VIC & NSW**
- **UMSU Legal Service, VIC**
- **Victorian Aboriginal Legal Service, VIC**
- **Youthlaw, VIC**