

22 June 2020

Hon Christian Porter MP  
Attorney General, Minister for Industrial Relations  
PO Box 6022  
House of Representatives, Parliament House  
CANBERRA ACT 2600

**By email: [attorney@ag.gov.au](mailto:attorney@ag.gov.au)**

Dear Attorney General,

## **Better protections for vulnerable workers: Community legal centre input into the industrial relations reform process**

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Community legal centres provide vital education and legal services to some of Australia's most vulnerable workers, including young people, women experiencing family violence and newly arrived migrant and refugee communities.

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 work. 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.

Our reports and law reform submissions document widespread exploitation of vulnerable workers, legislative gaps and barriers to enforcement and compliance. Importantly, they also provide evidence-based recommendations for reform, including sample drafting.<sup>i</sup>

We would like to draw your attention to the work of community legal centres, and request that the working groups consider our findings and recommendations.

In particular, we consider the following key recommendations relevant to the Casual and Fixed Term; and Compliance and Enforcement working groups:

➤ **Ensure that the law provides certainty and protects the most vulnerable workers:**

- To stop sham contracting, introduce a reverse onus which provides minimum entitlements to all workers (including dependent contractors), but enables principals a defence when they engage genuine contractors (On Demand Submission, 27; Cleaners Inquiry, 24).
- To reduce exploitation, expand outworker protections to cover other key industries for vulnerable workers (On Demand Submission, 29, Cleaners Inquiry, 20).

➤ **Incentivise compliance through legislative reform:**

- To incentivise compliance, expand the accessorial liability provisions to require Directors and others to take positive steps to stop exploitation (On Demand Submission, 36; Cleaners Inquiry, 20).
- To increase accountability in supply chains, expand the responsible franchisor/holding company provisions to cover all responsible third parties (On Demand Submission, 30; Cleaners Inquiry, 19).
- Ensure workers receive superannuation owed to them by making it part of the National Employment Standards, providing independent contractors with a legislative mechanism to pursue unpaid superannuation directly and removing the minimum earnings threshold and minimum age restrictions (On Demand Submission, 39).

➤ **Effective enforcement is essential:**

- To assist vulnerable workers enforce underpayment claims, we need a simpler, faster, more accessible alternative than Court. This could include the establishment of a new independent or Fair Work Commission forum, and/or increasing Fair Work Ombudsman powers to promote the efficient resolution of disputes via Assessment or Compliance Notices (On Demand Submission, 61).
- Vulnerable workers are not always able to bring a complaint themselves. Regulators must be adequately resourced to identify systemic issues and respond proactively (On Demand Submission, 63).
- To ensure vulnerable workers are aware of their rights and able to enforce them, provide recurrent funding for community legal centres to deliver employment law services and education programs to complement and enhance the work of the regulator. In recognition of the particular needs of young people and international students, this includes specific education programs in schools, TAFEs and universities for international and local students (On Demand Submission, 46; Cleaners Inquiry Submission, 33).

Further detail and drafting is available in the **enclosed** submissions. We are happy to provide case studies, summaries and/or further information upon request.

We would also welcome the opportunity to meet and discuss our recommendations with the relevant working group(s), if this would be of assistance.

Yours sincerely,



**Catherine Hemingway** (Job share with Tarni Perkal)  
**Employment Program Director, WEstjustice**

supported by the following organisations:

- **Federation of Community Legal Centres, VIC**
- **HIV/AIDS Legal Centre, NSW**
- **Hunter Community Legal Centre, NSW;**

- **JobWatch Inc.**, VIC, QLD & TAS
- **JusticeConnect**, VIC & NSW
- **Kingsford Legal Centre**, NSW
- **North & North West Community Legal Service**, NSW
- **Migrant Employment Legal Service**, NSW
- **Marrickville Legal Centre**, NSW
- **Redfern Legal Centre**, NSW
- **Shoalcoast Community Legal Centre Inc.**, NSW
- **South West Sydney Legal Centre**, NSW
- **Springvale Monash Legal Service**, VIC
- **UMSU Legal Service**, VIC
- **Western NSW Community Legal Centre Inc.**, NSW
- **Youthlaw**, VIC

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<sup>i</sup> See for example, C Hemingway, *Not Just Work: Ending the exploitation of refugee and migrant workers*, [2016 \(Not Just Work\)](#); WEstjustice submission to the Inquiry into the Victorian On-Demand Workforce, February [2019 \(On Demand Submission\)](#); 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 \(Cleaners Inquiry\)](#).