Mr. Gerry McInally
Committee Secretary
Education and Employment Legislation Committee
PO Box 6100, Parliament House
Canberra ACT 2600

Sent by email only: eec.sen@aph.gov.au

Dear Committee Secretary

RE: Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 – WWC SA Submission

We refer to previous correspondence in relation to the Minister for Employment and Workplace Relations review of the Fair Work Act 2009 (Cth).

Please find ***enclosed*** the WWC SA's submission on the proposed reforms.

Should you have any questions in relation to our submission, we welcome the opportunity to discuss the proposed reforms further.

Yours faithfully

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Working Women's Centre SA Inc

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Senate Education and Employment Legislation Committee

Working Women's Centre, S.A.

Submission to the Senate Education and Employment Legislation Committee

Introduction

The Working Women's Centre S.A **('WWC SA')** welcome the opportunity to make this submission to the Senate Education and Employment Legislation Committee in relation to the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023.*

The WWC SA is a not-for-profit advocacy, legal and industrial relations centre that provides free legal and industrial advice, information, support, and representation to vulnerable, non-unionised workers about their rights at work. We provide community education, policy advocacy and workplace training. We predominately service people identifying as women, and we are experts in gender-based workplace issues.

The WWC SA has been advocating for and responding to the serious and complex issues faced by workers in South Australia for over 44 years. In this time, we have seen the passing of the *Fair Work Act 2009 (Cth).* It is our view that workers are significantly impacted by loopholes that facilitate exploitation, inequity, and a lack of fairness. In particular, casual, and precarious workers, migrant workers, labour hire workers, small business employees and workers experiencing family and domestic violence.

The Working Women's Centre SA endorses the following reforms to the Act.

1. Improving job security by replacing the definition of 'casual employee'.
2. Redundancy provisions for small businesses.
3. Protecting bargained wages in enterprise agreements from being undercut by the use of labour hire workers who are paid less than those minimum rates.
4. Supporting workplace delegates by providing them with a framework of rights, as well as workplace protections for delegates when they seek to exercise these rights.
5. Establishing a new protected attribute in the Fair Work Act to improve workplace protections against discrimination for employees who have been, or continue to be, subjected to family and domestic violence.
6. Changing the defence to misrepresenting employment as an independent contractor arrangement, known as 'sham contracting ', from a test of 'recklessness' to one of 'reasonableness'.
7. Enabling a registered organisation to obtain an exemption certificate from the Fair Work Commission to waive the 24 hours' notice requirement for entry if they reasonably suspect that a member of their organisation has been or is being underpaid.
8. Empowering the Fair Work Commission to take action in relation to the future issue of such exemption certificates if those rights are misused (for example by imposing conditions or banning their issue for a specified period).
9. Increasing maximum penalties for underpayments by amending the civil penalties and serious civil contravention frameworks and adjusting the threshold for what will constitute a serious contravention.

10. Clarifying that Fair Work Ombudsman **('FWO')** compliance notices can require an employer to calculate the amount of an underpayment that is owed to an employee, and that a court can order that the recipient of the notice to comply with its terms.
11. Introducing a new criminal offence for wage theft, which applies to intention conduct.
12. Inserting into the Fair Work Act an interpretive principle for determining the ordinary meanings of 'employee' and 'employer' for the purposes of the Fair Work Act. This would enhance fairness by requiring consideration of the real substance, practical reality, and true nature of the relationship by reference to the totality of the relationship between the parties.
13. Allowing the Fair Work Commission to set fair minimum standards for 'employee-like' workers, including the gig economy.
14. Allowing the Fair Work Commission to set fair minimum standards to ensure the Road Transport industry is safe, sustainable, and viable.
15. Allowing the Fair Work commission to deal with disputes about unfair terms in service contracts to which an independent contractor is a party.
16. Aligning the Work Health and Safety Act 2011 offence framework with recent changes to the model WHS Law by indexing penalties for existing offences to the consumer price index.

Further to endorsing the reforms above in full, we make the following further submissions:

1. <u>Replacing the definition of 'casual employee'.</u>

The WWC SA support the replacement of the casual employee definition within the Act.

The current definition of a casual employee under section 15A of the Act defines a causal relationship between an employee and an employer as being one where there is no firm advance commitment to ongoing work, and there is a regular pattern of work for the employee.

In *WorkPac Pty Ltd v Skene [2018] FCAFC 131 (Skene)* the Full Court assessed the substance of the relationship between parties as opposed to the contractual terms that bound them. This approach is favoured. In this decision the Court supported precedents that consider whether an employee is casual based on the following factors[1]:

- What the parties intended the relationship to be.
- Any commitment made by the employer or the employee in relation to ongoing employment.
- The regularity of the workers hours.
- How the worker is notified of work.
- <u>Whether the hourly rate paid to the worker was intended to encompass the annual leave, sick leave, and payment for public holidays that the worker would be entitled to if they were engaged as a permanent employee.</u>
- The basis on which the employer and employee could offer, accept, or reject work.

The WWC SA strongly suggest that the legislation ensure that the payment of a casual loading does not carry more weight than other factor. More often than not, a 25% loading does not replace the benefits and entitlements associated with ongoing and permanent employment.

[1] WorkPac Pty Ltd v Skene [2018] FCAFC 131 [60].

As outlined in Skene the totality of the employment relationship should be considered when considering whether an employee is a casual employee or a permanent employee.

Case Study – Gina's Story

> *Gina* was a casual van driver for a mobile food service business. She had worked for the business in the same capacity for over 17 years, with the same pattern of regular shifts on the same days for many years. Despite being a casual worker, Gina's length of service and regularity of shifts meant that, she was a casual worker in all but name with a reasonable expectation of ongoing work. Gina was also paid a casual loading.*
>
> *However, this year the business she worked for was sold whilst Gina was on leave. Several days before she was due to return to work, she received a text message from the business owner advising her that the business had sold and that after almost 18 years of loyal, reliable service, Gina suddenly had no work to return to. She was offered no notice and no redundancy pay.*
>
> *Gina filed a claim for redundancy pay with the South Australian Employment Tribunal, on the basis that she was a regular and systematic casual. On Gina's behalf, we name and, after almost two decades of regular and systematic work, Gina was a casual worker only in name, and was accordingly deserving of a notice period payout. Instead, the old owner refused to pay Gina a dollar because of her casual status.*
>
> *Cases like Gina's show in stark relief how important it is for the status and rights of regular and systematic casual employees to be better recognised and upheld in practice and at law.*
>
> *Pseudonym

2. <u>Redundancy provisions for small businesses.</u>

The WWC SA support that employees working in a small business should be entitled to the redundancy provisions within section 119 of the Act.

South Australian employees are more likely to be employed in small to medium businesses, as businesses with between 0-19 employees make up 43% of the South Australian employment market.[2] The employees that we advise are often made redundant in stages, with the last 14 employees often told they are ineligible to claim redundancy payments under section 119 of the Act.

The intent of the legislation was to identify that small businesses may not have the same resources as those of a large company. Therefore, small businesses were exempt from redundancy obligations to limit the financial impacts to their viability and sustainability.[3] The redundancy exemption within section 121 (1)(b) of the Act was not intended to create a loophole for large-scale businesses to exploit in order to avoid paying out redundancy entitlements.

[2] Government of South Australia, Department of the Premier and Cabinet, *Economic Insight, Series 2022-01.*

[3] Explanatory Memorandum, Fair Work Bill 2008 (Cth).

Case Study – Amanda's Story

Amanda contacted the WWC SA for advice on her redundancy entitlements. She had been working for a large South Australian business for just over 10 years. She did some research and thought that she was entitled to at least 12 weeks redundancy pay. She was shocked when she received a redundancy letter thanking her for her service and advising her that she was not entitled to redundancy pay. As the business made employees redundant in stages, and Amanda was the 14th employee to be made redundant, she was not entitled to redundancy pay under section 119 of the Act.*

*Pseudonym

3. Protecting bargained wages in enterprise agreements from being undercut by using labour hire workers who are paid less than those minimum rates.

The WWC SA support the introduction of protections for labour hire workers, as well as access to Award wages or bargained wages in enterprise agreements.

2.3% of Australian workers are part of the labour supply services industry.[4] This accounts for 327,100 workers. Of these workers, 81% work full time and 84% do not have paid leave entitlements.[5] Labour hire workers are predominant in the mining, transport, cleaning, agriculture, horticulture, and hospitality industries. They are often not provided with overtime, annual leave, sick leave, and long service leave entitlements, although they often work full-time hours on a permanent basis. They are often not guaranteed hours.

In our experience, labour hire workers are often not paid minimum entitlements under Awards or Enterprise Agreements by their host employers. Our laws should protect workers from employers contracting out their minimum employment obligations. W

Following the High Court decisions in *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd [2022] HCA 1 (Personnel Contracting)* and *ZG Operations Australia Pty Ltd [2022] HCA* 2 (Jamsek) the contract of engagement is looked at to assess the nature of the relationship between the parties. In most cases workers are unaware of their minimum entitlements when they enter into contracts. A majority of our client's face multiple and intersecting vulnerabilities and are unable to negotiate equitable contracts. They often enter contracts without the understanding that there is a national minimum wage, or modern awards that set out basis minimum standards.

The Act should be amended to specify that labour hire workers must be paid in accordance with the rates in their respective Awards or enterprise agreements and be paid no less than an employee conducting the same work and or duties in the workplace and or enterprise.

Case Study – Giana's Story

Giana contacted the WWC SA for advice about her wage entitlements. She had been working as a cleaner in a hotel for 18 months, courtesy of her agency finding her work.*

[4] Australian Bureau of Statistics, Labour Hire Workers – released 15.09.2023.
[5] Ibid.

She overheard some employees talking about their pay in the staff room. She was paid almost $10.00 less per hour than her colleagues. As Giana signed a contract that labelled her as a contractor, even though she thought she was an employee. Giana did not understand the difference between a contractor and an employee. She was not entitled to the minimum entitlements under the Hospitality Industry (General) Award 2020.

*Pseudonym

Host employers and labour hire workers should be included in the Act. Further, the jurisdiction of the Fair Work Commission should be expanded to include the power to regulate the relationship between host agencies and contract workers. Labour hire workers should be afforded the same minimum entitlements as stipulated in the relevant Award, or enterprise agreement.

Case Study – Arvin's Story

Arvin contacted the WWC SA for advice about his wage entitlements. Arvin is from a non-English speaking background and is living in Australia on a student visa. Arvin was a worker at Trucking Around Aus1 Pty Ltd and he was being paid a flat rate of $22.00 per hour, irrespective of when he worked. He had not been paid for the last two weeks of work. When he contacted his employer to ask about his wages, he was told that Trucking Around Aus1 Pty Ltd would be keeping his money, as he had damaged one of their trucks. We looked at the Award and based on truck Arvin was driving and the work he was doing, he should have been classified as a Transport Worker Grade 7 under the Road Transport and Distribution Award 2020 and paid $26.16 per hour (excluding penalties). Arvin sent through what he though was his employee contract, however we could see that he had signed a contract with an agency, and was "contracted out" as an independent contractor to work for Trucking Around Aus1 Pty Ltd. We provided Arvin with advice on independent contracting.*

*Pseudonym

4. **<u>Supporting workplace delegates by providing them with a framework of rights, as well as workplace protections for delegates when they seek to exercise these rights.</u>**

The WWC SA is extremely supportive of the introduction of a framework of rights for workplace delegates, as well as protections for delegates who exercise their rights.

Workers face significant risks to their employment conditions when they make the decision to be workplace delegates. Workplace delegates need to be afforded appropriate protections, to ensure that there will be no adverse action against them in response to exercising rights as a delegate.

5. **<u>Establishing a new protected attribute in the Fair Work Act to improve workplace protections against discrimination for employees who have been, or continue to be, subjected to family and domestic violence.</u>**

The WWC SA strongly advocates for the addition of family and domestic violence as a protected attribute in the Act.

1 in 4 women living in Australia experience violence by an intimate partner.[6] Violence against women is a gendered issue and accordingly disproportionately affects working women. Many workers experiencing domestic and family violence are unaware that they have access to special family and domestic violence leave. The workers who are aware and attempt to access leave are often faced with adverse action after taking family and domestic violence leave.

At present, victims of domestic violence are unable to make a discrimination claim on the basis that they are experiencing family or domestic violence. The case law indicates that courts are unwilling to accept claims made under the *Sex Discrimination Act 1984 (Cth)* on the basis that domestic and family violence is a gendered issue.

As the law is currently, unless a worker has "raised a right" in relation to experiencing domestic violence, for example to take leave either unpaid or paid, then they do not have a basis to make a claim.

Case Study – Susan's Story

> *Susan* is a migrant worker who was working as a casual chef since February 2023. When she made enquiries on modified duties to accommodate her pregnancy, her employer told her that they "needed someone to do the work regardless of their condition" or words to that effect. Susan also experienced family domestic violence while in employment and put her employer on notice of her situation. She had a panic attack at work a short time after her FDV incident. As a result, she was then directed to take unpaid leave for three days of which she was rostered to work. After returning to the workplace from this unpaid leave, her employer told her they were reorganising the business, which would involve her having a reduction in hours from 30 hours per week to 5. The reasons provided were that due to her "legal ongoing situation" and "clear mental health issue". A short time after this reduction, she stopped receiving rostered shifts. She has not been rostered for a shift since 7 June 2023. The WWC represented the client in a general protection not involving dismissal matter on the basis of disability and pregnancy discrimination for the multiple adverse actions she experienced in her employment.*
>
> *At the time the employer took adverse action against Susan, of which her experiencing FDV was a large factor, FDV was not a protected attribute under discrimination legislation. Therefore, Susan's case was framed around her raising a workplace right and other forms of coinciding discrimination. The WWC strongly welcomes the upcoming amendments to the Equal Opportunity Act 1984 (SA) which will recognise discrimination based on experiencing FDV as unlawful, and therefore be a protected attribute under the Fair Work Act.*
> *Pseudonym

Often our clients are not aware of their rights to take family and domestic violence leave. Prior to 1 August this year, if you were an employee of a small business you did not have a right to take paid family and domestic violence leave.

[6] Australian Bureau of Statistics 2021-2022.

Case Study – Maria's Story

The Working Women's Centre SA was recently approached by Maria Maria was working at a petrol station as a casual employee for two and a half years. Maria experienced domestic violence which resulted in her having a black eye. She notified her employer that due to having a black eye she was unable to work the following day. Her employer directed her to take the week off. They did not disclose to Maria that she was entitled to domestic violence leave. The employer continued to stand her down for the following weeks and failed to provide her with any shifts. She has not received any FDV paid leave despite being entitled to this.*

Section 106C of the Fair Work Act expressly states that where an employee discloses FDV for the purpose of accessing FDV leave, that "an employer must not use such information to take adverse action against an employee". The WWC has filed a General Protections Application on the basis that by cutting her regular and systematic shifts as a result of her providing notice of her FDV, for the purposes of accessing FDV leave, they have caused her financial injury. At the time of Maria's shifts being cut, experiencing domestic violence was not a protected attribute within discrimination legislation. The General Protections claim was made on the basis of Maria raising her workplace rights. The WWCSA will represent Maria at conciliation at the Fair Work Commission.

*Pseudonym

The Act should be amended to identify domestic and family violence as a protected attribute. Further, it is essential that the Act provides greater protection to employees, by specifying that an employer must not take adverse action against an employee if the employee is temporarily absent from work due to domestic or family violence.

Recently, the *Equal Opportunity Act 1984 (SA)* was amended to prohibit discrimination on the basis of domestic abuse, with the amendments to come into force from 1 September 2023. Section 85T(1)(g) of the *Equal Opportunity Act 1984 (SA)* ***('EOA')*** *defines discrimination as meaning to discriminate on this basis as being, or having been, subjected to domestic abuse. Division 2 applies to discrimination against workers, and states that it is unlawful for an employer to discriminate against an employee:*

(a) In the terms or conditions of employment; or
(b) By denying or limiting access to opportunities for promotion, transfer, or training, or to other benefits connected with employment; or
(c) By dismissing the employee; or
(d) By subjecting the employee to other detriment.

The WWCSA supports an amendment in the Fair Work Act, and Sex Discrimination Acts which makes domestic violence a protected attribute, aligned with the new protected attribute in the EOA.

Case Study – Ellena's Story

Elena was experiencing domestic violence at work, and she contacted the WWC SA for advice. She was previously in a relationship with a colleague and when the relationship ended he began stalking and harassing her at work and at home. She*

made several complaints to management about this and they decided to undertake an investigation. The outcome of the investigation was that the employer decided not to implement any safeguards, because Ellena and the perpetrator were in a consensual relationship prior to the domestic violence occurring. We looked at relevant case law, whereby general protections claims were made under section 5 of the Sex Discrimination Act 1984 (Cth). These claims were rejected on the basis that while domestic violence is a gendered issue, domestic violence was not considered to be a characteristic of being a woman. We sought further advice from a barrister, and they confirmed that making a claim under the Sex Discrimination Act 1984 (Cth) would not succeed.

*Pseudonym

The case law in relation to domestic violence, being a sex discrimination claim is scarce. In the case of Wright v Bishop [2018] QIRC 7 the worker called in sick, after a domestic violence incident. The worker explained what had happened to her boss, and she was dismissed the following day. She made a complaint arguing that domestic violence is an attribute of "sex" under the Act. The Judge dismissed this argument on the basis that it was "not accepted that being a victim of domestic violence is a feature or quality of being a woman that serves to identify the person as being a woman".[7]

6. Changing the defence to misrepresenting employment as an independent contractor arrangement, known as 'sham contracting ', from a test of 'recklessness' to one of 'reasonableness'.

The WWC SA support changing the test from recklessness to reasonableness.

The current defence to misrepresenting a contract, that the employer can prove that they were unaware of their obligations and and/or were reckless as to whether the contract was a contract of employment rather than a contract for services, negates the intention of the misrepresentation breach. This reform will attribute more responsibility to an employer to be aware or reasonably aware of their obligations the laws they employ or contract people under. This is a minimum standard.

The Working Women's Centre often has client's approach us where they are in a sham contracting arrangement.

Case Study – Paula's Story

Paula contacted the WWC SA when she noticed that her wages were being paid differently. Paula is from a non-English speaking background and had limited understanding of her rights as a worker in Australia. She had been working in a physiotherapist practice for almost 7 years, under a series of employment contracts. She was 6 months away from being eligible for long service leave and her employer presented her with another "employment contract" she was told that this "employment contract" was new because she now has a degree in movement. She was told that if she did not sign the new "employment contract" she could not continue to work at the practice. She signed this contract immediately, before seeking legal advice. In the next pay cycle, she started

[7] Queensland Tribunal *Wright v Bishop [2018] QIRC 7* [44].

being paid on a commission basis. She realised that she had in fact signed a contractor agreement, not an employment contract. As a result, she was paid less, had stopped accruing leave entitlements as and was no longer being paid superannuation. Paula made a General Protections claim to the Fair Work Commission.

*Pseudonym

9. **Increasing maximum penalties for underpayments by amending the civil penalties and serious civil contravention frameworks and adjusting the threshold for what will constitute a serious contravention.**

The WWC SA strongly support the increase of maximum penalties for underpayments.

It is regularly the experience of the Working Women's Centre SA that often any agreements in relation to pecuniary penalties and orders in relation to pecuniary penalties are often well below the maximum. We are very supportive of an increase in pecuniary penalties which references the value of the underpayment, when making an order for pecuniary penalties.

Further we are supportive of the amendment of the scheme for serious contraventions. As the scheme exists currently, serious contraventions are very difficult to successfully prove. In the experience of the WWCSA, this is often because of the vulnerability of workers, often migrant workers where many are hesitant to stand up for their rights. In workplaces where there are multiple workers being underpaid, often only one worker will come forward to raise their rights about underpayment of wages and entitlements. As a result, it is difficult to prove the seriousness and widespread nature of the contraventions. Amending the way in which serious contraventions is determined, will hopefully result in more employers having serious contraventions found against them and higher pecuniary penalty orders.

10. **Clarifying that Fair Work Ombudsman (FWO) compliance notices can require an employer to calculate the amount of an underpayment that is owed to an employee, and that a court can order that the recipient of the notice to comply with its terms.**

The WWC SA support the enforcement of FWO compliance notices in court. Further, in our experience workers make an underpayment complaint to FWO, and FWO investigate whether an underpayment has occurred. In some cases, FWO rely solely on an employers calculations. In many cases this undercuts the payments employees are paid.

The WWC SA strongly recommends that:

- FWO undertake calculations in relation to employee underpayments, and they issue a compliance notice based on their calculations.
- If an employer fails to comply with a FWO compliance notice that the power of the FWO be expanded to allow them to enforce the compliance notice.

11. **Introducing a new criminal offence for wage theft, which applies to intentional conduct.**

The WWC SA support the introduction of new criminal offences for intentional wage theft.

Many workers are intentionally underpaid and are not remunerated in accordance with the minimum entitlements in their respective Awards. The WWC SA represent employees who are often paid below the minimum wage, or below the lowest rate in their respective Awards.

This also involves employers failing to pay employees overtime rates, leave entitlements, superannuation contributions and penalty rates.

The WWC SA represents underpaid workers, and in most cases employers:

- Dishonestly withhold the entitlements that are owed to our clients,
- Withhold records that relate to our clients' entitlements, and
- Fail to keep accurate employee records in accordance with the Act.

The new criminal offences within the Act should specify that the above conduct are wage theft offences, as stipulated in the *Wage Theft Act 2020 (VIC).*[8] The addition of wage theft provisions to the Act should not adversely affect progressive state-based wage theft laws.

Case Study – Harsha's Story

Harsha holds a temporary visa and works 25-30 hours per week as a waitress at a local restaurant. One of her visa conditions is to maintain employment. Most other waitstaff at this restaurant are international students also on temporary visas.*

Harsha and her coworkers are severely underpaid because they receive a flat rate of $20 per hour for their work, which is paid in cash. They do not receive payslips, annual and/or sick leave, superannuation or any other entitlements.

Under the Restaurant Industry Award, Harsha's position has a minimum hourly rate of $23.23 for full-time and part-time workers, and a minimum hourly rate of $29.04 for casual workers. These rates are even higher for shifts during the evening, weekends and public holidays.

We advised Harsha that she is eligible to make an underpayment claim in the South Australian Employment Tribunal to recover stolen wages. However, Harsha was reluctant to proceed with a claim because she did not want to lose her job and breach her visa condition to maintain employment. Harsha said she would prefer to find another job first and then pursue an underpayment claim. We let Harsha know that she has 6 years from the date of underpayment to make the claim.

Given that her employer seems to be deliberately exploiting migrant workers with restrictive visa conditions who are reluctant to raise their rights, we encouraged her to report her employer to the Fair Work Ombudsman.

*Pseudonym

12. <u>Inserting into the Fair Work Act an interpretive principle for determining the ordinary meanings of 'employee' and 'employer' for the purposes of the Fair Work Act. This would enhance fairness by requiring consideration of the real substance, practical reality, and true nature of the relationship by reference to the totality of the relationship between the parties.</u>

The WWC SA support an interpretive principle for determining the ordinary meanings of "employee" and "employer". Section 11 of the Act fails to address the inherent complexity of what it means to be an "employee" and an "employer" in 2023.

Ordinary meanings of employer and employee are required to ensure the whole nature of the relationship between parties are considered by the courts. The WWCSA has seen a noticeable

[8] Wage Theft Act 2020 (VIC) s. 6 – s.8.

increase in employers/respondents arguing that the employee is a true contractor, in response of the High Court's decisions in *Personnel Contracting* and *Jamsek*.

It is necessary to amend the legislation to ensure that the multi-factorial test[9], previously applied by the courts be reinstated.

Case Study – Chery's Story

Cheryl's story – shortly after the *Jamsek* decision the WWC SA assisted Cheryl with a sham contract, underpayment of wages and entitlements enquiry. Chery was a legal secretary, who also did personal assistant support and some social media for a local law firm. In response to the WWCSA writing to the employer to raise her entitlements, they provided a copy of a sham Service Agreement, which Chery had not seen before and had not signed. The Respondent argued in light of *Jamsek*, and because of the existence of this service agreement, Chery was not an employee and not entitled to her employment entitlements.

If the Courts do not look at the entirety of the relationship between an employer and employee to see what the true nature of the relationship is, then it will continue to lead to vulnerable worker's rights being exploited, as Chery's were.

13. Allowing the Fair Work Commission to set fair minimum standards for 'employee-like' workers, including the gig economy.

The WWC SA support the introduction of fair minimum standards for the workers in the gig economy.

Workers that are engaged via applications, such as Uber, Deliveroo, and Mabel for example, are often engaged on a contractor like basis. While these workers may tick a box or complete an online contract that defines the arrangement as being that akin to an independent contractor the nature of the engagement is similar to that of an employee and employer.

The workers that contact the WWC SA are often only paid a small percentage of a sale or service, although they wear a company uniform, drive a motor vehicle marked with the company logo, are directed to work through the application and are not engaged to work with any other company.

Irrespective of whether these workers are to be classified as employees, independent contractors, or gig economy workers they should be afforded a set of minimum standards. If workers are expected to pay for their own insurances, superannuation, and taxes they should be in receipt of a minimum commission/base rate.

15. Allowing the Fair Work commission to deal with disputes about unfair terms in service contracts to which an independent contractor is a party.

The WWC SA support the expansion of the Fair Work Commission's jurisdiction to deal with disputes about unfair terms in services contracts. The Fair Work Commission should be empowered to resolve issues arising from service contracts, in a similar way as they would issues arising from an Award or Enterprise Agreement.

[9] Hollis v Vabu (2001) HCA 44.

If an independent contractor has a dispute regarding unfair terms in their service contract they will need to take the matter to Court. This is often costly, onerous, and inaccessible.

The WWC would support a further amendment the FWC to be provided with powers to consider stand-alone dispute to make a decision if the worker was an employee or contractor.

Case Study – Arthur's Story

> *Arthur* was working as a truck driver. He contacted the WWC SA because not only was he being underpaid, but he had also not received any money for almost 3 months. He was being paid below the hourly rate in the Road Transport and Distribution Award 2020. Arthur was unaware that he had signed a contract identifying him as an independent contractor and not an employee. We advised Arthur that in order to claim unpaid monies, he would need to file a claim in the Magistrates Court, as the South Australian Employment Tribunal only have the jurisdiction to hear matters in relation to the employee and employer relationship.*