REPORT ON VULNERABLE WORKERS IN VICTORIA

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RMIT ECP Fairer Start Restart Working Group on Sustainable and Inclusive Work

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INTRODUCTION

The COVID-19 pandemic has exacerbated existing vulnerabilities of insecure workers in Australia. Insecure work has been a driver of COVID-19 transmission, revealing the prevalence of vulnerable workers and its society-wide flow-on effects. In fact, 'individuals, families and communities experiencing disadvantage have borne the heaviest burden of the COVID-19 (C19) pandemic and its accompanying isolation restrictions on any measure of social, health and economic impact'.[1] Yet there have been recent initiatives to address insecure work including the Victorian Labour Hire and Wage Theft Acts, the 2017 Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 and Job Keeper and Seeker programs. Have these legal changes been making a difference to these workers? If they have not been reaching workers, then what are the blockers and barriers and how can they be overcome to foster more sustainable and inclusive work?

This report draws on the **Roundtable on Sustainable and Inclusive Work for Vulnerable Workers** on 3 December 2020 held by the RMIT University *Fairer Start* initiative and related literature (herein referred to as the Roundtable on Vulnerable Work). It addresses the nature of vulnerable work during the pandemic and highlights some existing services for fair and sustainable work in the Australia. It concludes by making recommendations to improve the lives of vulnerable workers and reduce insecurity, drawing on ideas and issues raised at the Roundtable and on recent Victorian inquiries and reports. During 2021, the *Fairer Start Restart Working Group on Sustainable and Inclusive Work* will build on this work to scope the broader range of issues and potential responses.

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[1] Conny Lenneberg. "Voices from the COVID-19 Frontline: Findings and recommendations about how we can minimise COVID-19's impact on people experiencing disadvantage.' Brotherhood of St Laurence. 2020, pg.1.

WHO ARE VULNERABLE WORKERS?

Vulnerable workers are those whose life experience and personal characteristics make them vulnerable or whose conditions of work are insecure or poor, resulting in heightened vulnerability to exploitation, injury, poverty, underemployment or unemployment. Factors that exacerbate vulnerability include being newly arrived to Australia or holding a temporary visa, as is the case for international students. According to West Justice:

> … recently arrived migrant and refugee workers face multiple unique barriers that prevent them from accessing mainstream services and therefore, obtaining and maintain sustainable employment. Low levels of awareness about their rights and of the employment services available, a language barrier, literacy issues, cultural differences and other practical considerations (such as the accessibility of transport, and recognition of prior skills and training) all form critical barriers to accessing mainstream employment and employment services.[2]

Other characteristics that exacerbate vulnerability include youth, suffering from mental health issues, experiencing family violence, parenting alone, and being elderly. Cleaning, care work and other service industries are good examples of where vulnerable workers find work.

The Fair Work Amendment (Protecting Vulnerable Workers) Act, which took effect in 2017, changed the Fair Work Act 2009 in recognition that exploitation of vulnerable workers is a serious and systemic issue in Australia's workplaces relations system that needs to be addressed.[3]

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2   West Justice. "2019 Inquiry into Sustainable Employment for Disadvantaged Jobseekers."
3   Fair Work Ombudsman. "Vulnerable and migrant workers." Annual Report 2017-2018.
    https://www.fairwork.gov.au/annual-reports/annual-report-2017-18/02-fwo-performance-report/proactive-activities/vulnerable-and-migrant-workers.

WHAT IS INSECURE WORK?

Insecure work is characterised by "uncertainty over the length of the job, inferior entitlements such as limited or no access to paid leave, irregular and unpredictable working hours, working hours that are too long or too few, unpredictable pay, and a lack of voice at work on wages, conditions, and work organisation."[4] The Victorian Labour Hire and Wage Theft Acts are intended to address some of this precarity as are recommendations of the recent *Inquiry into the Victorian On-Demand Workforce*.

Young people and recently arrived migrants often work in insecure work contexts. At the Round Table on Vulnerable Work Jenni Smith, CEO of Northern Community Legal Centre (NCLC) described how people working in the gig economy such as food delivery and ride sharing services are good examples of insecure workers who are easily exploited, and may have little or no support in their employment. Food and ride sharing platforms promote a narrative about gig workers as independent entrepreneurs who are flexible and adverse to conventional employment arrangements. Importantly, these precarious workers generally make less than the average minimum wage in Australia and are forced to take it or leave it when it comes to the amount of work they can access and the conditions under which they do so. They have no entitlements to sick leave, employer superannuation and other elements of the safety net that are linked to waged work.[5]

4   Lilian Alexander. "Understanding Insecure Work in Australia: A Discussion Paper." McKell Institute. n.d: https://mckellinstitute.org.au/app/uploads/McKell-Institute-Queensland-Understanding-Insecure-Work-in-Australia-1-2.pdf.
5   Anthony Forsyth. "Collectivising the gig economy: In the pandemic, it's a matter of life and death." Labour Law Down Under Blog. 26 October 2020.

HOW HAS COVID-19 AFFECTED THE CONDITIONS OF VULNERABLE WORKERS?

During COVID-19, a large number of low-paid workers in insecure work have experienced additional insecurity and heightened vulnerability, including through risks of exposure to the COVID-19 virus.

INCREASED VULNERABILITY TO THE VIRUS

As many vulnerable workers are employed in care and service industries, such as aged care and cleaning, they are at greater risk of catching the virus and/or passing it on to others. A recent survey noted three quarters of union respondents, despite being deemed "essential workers", said they did not have access to enough PPE at work. There's an enormous responsibility for these workers as well; keeping environments COVID free.[6] At the Round Table on Vulnerable Work, Miriam Thompson from the Cleaning Accountability Framework (CAF) cited industry sources reporting much higher rates of COVID among cleaners than the general population.

Gig workers such as drivers have also suffered because of risk of exposure and the reduced amount of work available. Not only are they put in more vulnerable positions in the type of work they do, but they have also been compromised economically.

INCREASED EMPLOYMENT INSECURITY AND JOB LOSS

Miriam Thompson described how cleaning services in office buildings had been cut and cleaners had experienced job and income losses. In a survey of cleaners in CAF buildings (a group likely to have better employment and working conditions than most other cleaners) 48% said their income had decreased due to COVID and 19% were stood down at the time of the survey. A third had their working hours reduced.

In social care jobs, such as aged care and disability support, frontline care workers and the vulnerable people they care for are placed at increased risk due to insecure work. Workers rely on multiple short hours jobs. In insecure work with low pay workers move between multiple work locations to earn a living. Home care and disability support workers, including gig workers employed through digital platforms, can be isolated from organisations and may receive little advice and support and no PPE from their employers.[7]

In the meat-packing industry, people work in close proximity, confined spaces, and suffer from a lack of PPE. The cool temperature working conditions makes for an environment

> Workers rely on multiple short hours jobs. In insecure work with low pay workers move between multiple work locations to earn a living.

[6] Shelley Marshall, Miriam Thompson, Carla Chan Unger. "You better hope your work cleaner is one of the few who has time to do a thorough job." *The Conversation.* 10 June 2020.

[7] Fiona Macdonald. Response to the Royal Commission into Aged Care Quality and Safety, *Home Care Hearing Draft Propositions 7 August 2020* https://agedcare.royalcommission.gov.au/system/files/2020-08/RCD.9999.0468.0001.pdf.

where the virus can spread rapidly; and these unhealthy working conditions have been cited as a contributing factor to the second wave of the pandemic in Australia. In Australia, Brazil, the US and parts of Europe, these conditions are amplified by the precarious nature of work in abattoirs; i.e., most employees are day labourers and most are migrants without employment entitlements and protections.[8]

LOWER ACCESS TO GOVERNMENT SUPPORT SCHEMES AND LEGAL PROTECTIONS

Eligibility criteria for Job Keeper schemes saw most casual workers excluded. Gabrielle Marchetti of JobWatch, an employment rights community legal centre, described the work JobWatch has done in relation to problems stemming from employers misusing the JobKeeper scheme. While the Job Keeper Scheme has supported many employers to stay afloat and keep their workers, it has also given more rights to employers to change worker's contracts. The JobKeeper Enabling Directions allow employers to give employees temporary directions to change the location of where they work, their hours, and their duties. While these types of changes are understandable during uncertain economic times, JobWatch received calls from workers to tell them employers have misused the scheme and as a consequence, employees have lost jobs or income. Workers in insecure situations feel they have no choice but to comply to sometimes unreasonable changes to their work schedule or location. They don't feel they can negotiate for fear of losing their livelihood.

Marchetti gave several examples of this misuse:

> *Karina was employed on a part-time basis as a pharmacist's assistant. When COVID-19 hit, Karina's hours were reduced and her employer encouraged her and others to apply for JobKeeper. Without Karina's knowledge, her employer started receiving and withholding JobKeeper payments intended for her. After*

the employees complained internally, the employer payed the withheld amounts, but he claimed that he had accidentally overpaid Karina. She disputed this. He withheld her subsequent wages and entitlements. When Karina refused to repay the employer for the alleged overpayment, she was dismissed effective immediately.

Liliana was a full-time worker in the aged care industry. Her job was to organize activities for clients in a day centre. When the centre closed due to COVID-19, in March 2020, Liliana was directed to work partly from home and partly from a different office space. Later she was directed to work in a residential care facility, performing different duties and in a different location. Liliana's family members had jobs working with members of the public so she was worried about risking the health of the residents. Liliana asked if she could be placed in an alternative role, or if she could use up her annual leave. Her employer refused her requests. Ultimately, Liliana refused to transfer so she was dismissed for failing to follow a lawful and reasonable direction.

The *Inquiry into the Victorian On-Demand Workforce* noted problems facing gig workers: "there are significant legal barriers to platform workers seeking to improve their pay and conditions by organising collectively. Their assigned contractor status excludes them from access to collective bargaining under the Fair Work Act, which is only available to employees."[9]

8   Shelley Marshall and Carla Chan Unger. "Treating workers like meat: what we've learnt from COVID-19outbreaks in abattoirs." *The Conversation.* 14 October 2020. https://theconversation.com/treating-workers-like-meat-what-weve-learnt-from-covid-19-outbreaks-in-abattoirs-145444.
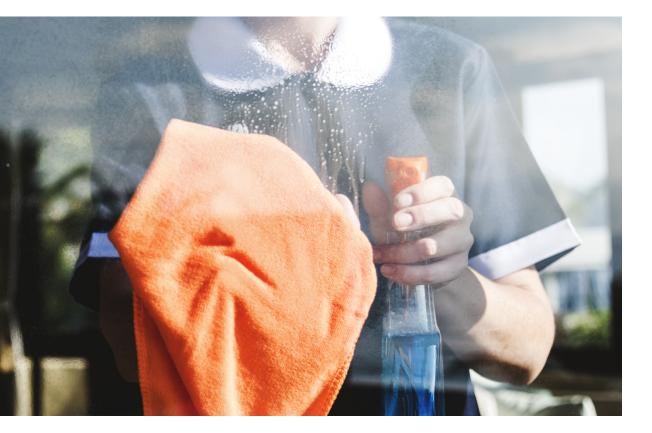9   Victorian Government. "Inquiry into the Victorian On-Demand Workforce." https://engage.vic.gov.au/inquiry-on-demand-workforce Cited in Anthony Forsyth. "Collectivising the gig economy: In the pandemic, it's a matter of life and death." Labour Law Down Under Blog. 26 October 2020.

> A lack of job security and the benefits that come with such security meant that workers were forced to attend work regardless of the risks of transmitting or catching COVID-19.

WHY HAS THE PANDEMIC AFFECTED CASUAL AND INSECURE WORKERS IN PARTICULAR?

Casual and insecure workers were most affected by the pandemic because many insecure workers juggle multiple jobs, must "take what they can get" and are not able to take time off. Many would simply work through, even if they developed symptoms, rather than being tested and self-isolating. It was this kind of dilemma which led Victorian Premier, Daniel Andrews, to describe the mounting COVID-19 infections in the state's 'second wave' as a phenomenon attributable in large part to insecure work."[10]

A lack of job security and the benefits that come with such security meant that workers were forced to attend work regardless of the risks of transmitting or catching COVID-19. Their lack of capacity to refuse to come to work was made worse by the likelihood that they don't have access to union representation. They have no real social safety net (no access to Job Keeper/Seeker schemes) or access to other more work. For example, those seeking asylum "are predominantly in industries that have been shut

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[10] Anthony Forsyth. "Collectivising the gig economy: In the pandemic, it's a matter of life and death." Labour Law Down Under Blog. 26 October 2020.

down, like hospitality and retail, in insecure work and/or in roles that can't be worked from home. They're in a desperate situation of taking any job available. Coupled with the lack of a safety net, this is representing a journey 'from joblessness to homelessness as they weigh the risks of employment against the threat of catching C19'.[11] This insecurity is seen in the case of international students who are often pushed into casual and informal work due to limitations on the amount of time they can work (only 40 hours per fortnight), and exclusion from safety nets such as Medicare (they can pay up to $80 to see doctor), compromising their ability to support themselves for even short periods of time if they are ill.

While insecure workers across all industries were affected by the pandemic, the pandemic has affected certain sectors worse, for example, care, tourism, hospitality, and other service industries, which are often those industries that employ seasonal, short-term and otherwise temporary, vulnerable, and insecure workers.

For the care sector, "COVID-19 has also highlighted the gaps and inconsistencies in care workers' access to appropriate training and professional development for their substantive role and in specific skills such as infection prevention and control."[12] The recent I*nquiry into the Victorian On-Demand Workforce* identified the issues facing the care sector and gig workers: what they can access or not, and the circumstances of their working conditions. The Inquiry notes the urgency for the care sector: "A safe workforce is a healthy workforce. COVID-19 has highlighted the heightened financial vulnerability of workers in the care sector, a lack of coordination and consistency in training, entitlements and protections, and the fragility of support systems in maintaining consistent, quality care." In addition, "COVID-19 has also highlighted the gaps and inconsistencies in care workers' access to appropriate training and professional development for their substantive role and in specific skills such as infection prevention and control."

11   "Voices from the COVID-19 Frontline: Findings and recommendations about how we can minimise COVID-19's impact on people experiencing disadvantage.' Brotherhood of St Laurence. 2020, pg. 16.
12   Victorian Government. "Inquiry into the Victorian On-Demand Workforce recommendations."

HOW HAVE SERVICE PROVIDERS ATTEMPTED TO SUPPORT VULNERABLE WORKERS DURING THE PANDEMIC?

Service providers and legal services were under great strain when the pandemic was at its worst in Victoria, Australia, as they attempted to meet the demand for advice and support from vulnerable workers.

Legal services organisations such as JobWatch work to support vulnerable and disadvantaged workers by providing information and referrals to workers from Victoria, Queensland and Tasmania; engaging in community legal education; representing and advising vulnerable and disadvantaged workers; and conducting law reform work with a view to promoting workplace justice and equity.[13] At the Roundtable on Vulnerable Work, Gabrielle Marchetti discussed how, during the pandemic, JobWatch has been dealing with JobKeeper scheme and worker exploitation. From March to November 2020, JobWatch assisted over 10,000 people, with a large proportion of calls related to COVID-19. There was a 63.3% increase in the number of calls during this period.

At the Roundtable on Vulnerable Work Shelley Mallet described a key vehicle to address youth unemployment led by the Brotherhood of St Laurence (BSL), a not-for-profit organisation working with young people and others marginalized in the workforce. Established in 2018, the National Youth Employment Body (NYEB) is designed to drive place-based approaches to services, skills and training and employment opportunities for young people across the country. Approaches include, for example: increasing local community capacity and productive collaboration; showcasing and scaling innovative local skills and employment solutions; amplifying young people and employers' leadership; facilitating national collaboration and co-design of employment.[14] One recent initiative is the Community Investment Committee (CIC) put together to work alongside local groups, including TAFEs, local government, and key employers in the area. CIC enables organisations to align existing jobs or promote job creation with the skills and needs of young people in the local area. Three demonstration sites, one in Shoalhaven, one in Logan-Beaudesert, and one in Adelaide North work to increase jobs for young people in services, care and agriculture industries. In Adelaide North the CIC assisted local disability and aged care providers address their workforce shortages through developing skills and pathways for local young people. As a local to national program,

> From March to November 2020, JobWatch assisted over 10,000 people, with a large proportion of calls related to COVID-19. There was a 63.3% increase in the number of calls during this period.

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13   Gabrielle Marchetti. Submission to the Senate Education and Employment Legislation Committee on Fair Work (Vulnerable Workers) Bill 2017. JobWatch.
14   The National Youth Employment Body. https://nyeb.bsl.org.au.

it aims to be responsive to local community needs and to address disadvantaged youth and underemployment.

Jenni Smith from NCLC, spoke at the Roundtable on Vulnerable Work about the vulnerability of recently arrived communities in the Hume-Moreland local government areas and Mitchell Shire in Melbourne's outer north, an area of considerable disadvantage. The NCLC supports a population of 420,000 members including newly arrived communities of refugees, victims of family violence, young people and people with mental illness. Smith described how people newly arrived in Australia receive little or no training about work and employment and many experience multiple barriers to employment.

She highlighted the vulnerability of newly arrived people who are often encouraged to participate in entrepreneurship training and/or set up small businesses, without having had any business experience that would make them successful as sole traders or in a small business. Smith outlined the absence of any forms of financial support for these groups, such as micro financing, which has worked well in international development contexts, and could help the small business owners flourish. Smith identified as a problem the pushing of newly arrived people to embark on self-employment and small business without a range of financial and other necessary supports, leading to business failures and further disadvantage.

...people newly arrived in Australia receive little or no training about work and employment and many experience multiple barriers to employment.

PROPOSALS AND INITIATIVES RECOMMENDED FOR IMPROVING THE EMPLOYMENT CONDITIONS OF VULNERABLE WORKERS

Addressing the growth of casual employment is critical to improving work for vulnerable workers to reduce economic insecurity. In Australia's recovery from the pandemic, to date, most employment growth has been in insecure casual work, while there is also evidence of growth of sham contracting.[15] Employment insecurity contributes to housing insecurity, poverty, and poor health outcomes. We need to rebuild security at work. A first step is addressing the growth of casual employment through building requirements for employment security in the Fair Work Act and ensuring that living wages are paid. People should not have to rely on multiple job-holding to make a living.

Legal reform to broaden the coverage of labour laws: The Fair Work Act needs to include protections and minimum pay and work standards for all workers. Law reform is required to provide gig workers and other contractors who are not running their own businesses with the same rights as employees. Unions have also lobbied for the Victorian Government to implement recommendations of the On-Demand Work Inquiry, which identifies "necessary and timely changes for systemic reform of an outdated industrial relations framework, and underline the importance and benefits of safe workplaces and high-quality services for workers, consumers and the community."[16]

Extend social safety nets so they are accessible for all workers: At the Roundtable on Vulnerable Work, Miriam Thompson reported

that among respondents to the survey of CAF cleaners, of those who were stood down, 71% had no access to government income support (i.e. JobKeeper or JobSeeker).

Greater support for those organising and representing vulnerable/workers: The Cleaning Accountability Framework (CAF) acts as a good model for empowering workers by bringing together employers at different levels of cleaning supply chain. These workers receive support and have peer representatives who monitor working conditions at their site with the support of the United Workers Union. CAF engages workers at the buildings and sites they certify and gets feedback about working conditions. CAF then works with relevant stakeholders to address labour rights violations. CAF seeks to empower workers to monitor their labour standards and feel confident to speak up. If workers are terrified of losing work for speaking up, then the problem will remain. Marshall et al. pinpoint one clear solution: "The best response is to take that responsibility seriously, more closely enforcing contracts and, if necessary, varying their terms, to allow for extra, safe and adequately paid and resourced cleaning."[17] Supply chain reform includes investors, property owners, and employers.

Government support for worker-driven approaches involving educating and empowering workers to know their rights and to feel safe to speak up to enforce those rights is crucial. In relation to actions for unions, the recent Inquiry

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[15]   Dan Nahum & Jim Stanford, Briefing Paper: 2020 Year-End Labour Market Review: Insecure Work and the Covid-19 Pandemic, December 2020, Centre for Future Work, The Australia Institute. https://d3n8a8pro7vhmx.cloudfront.net/theausinstitute/pages/3411/attachments/original/1609197941/Year-End_Labour_Market_2020.pdf?1609197941.

[16]   Victorian Government. "Inquiry into the Victorian On-Demand Workforce." https://engage.vic.gov.au/inquiry-on-demand-workforce
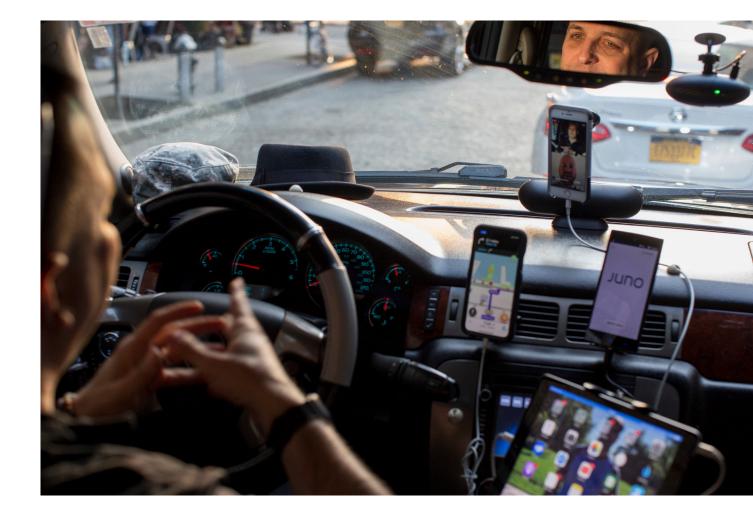
[17]   Shelley Marshall, Mariam Thompson, Carla Chan Unger. "You better hope your work cleaner is one of the few who has time to do a thorough job." *The Conversation*. 10 June 2020.

into the Victorian On-Demand Workforce report outlines the need for unions to support gig workers and sites examples from Unions NSW and Transport Workers Union who have been at the forefront of legal battles to gig workers' classification and have been instrumental in outlining the On-Demand Food Delivery Rider's Charter of Rights, published in late 2019.

Partnerships and coalitions are critical to positive action to support workers and create employment opportunities: Better partnership between civil society stakeholders are needed for systemic responses to improve conditions for temporary migrant workers, as called for by Miriam Thompson from CAF. Community legal centres and unions need to collaborate for collective, rather than individual, responses. Place-based coalitions can build opportunities for young people to align skills and work. Systemic organisational partnerships;

(e.g., community legal centres and unions) support worker education and empowerment. Shelley Mallet remarked at the Roundtable on Vulnerable Work, how developing intentional practices between organisations, building unlikely alliances and bringing people into conversation with each other would be key change. Unions and community organisations need to work in new ways.[18]

A suite of changes to stop migrant workers being forced into insecure work is needed: Targeted support for recent migrants is required to enable them to enter secure employment that aligns with their skills and experience. People require training and employment support to enable translation of experience and skills. Small business development assistance must include ongoing support. Reforms to employment conditions of visas for international students to address vulnerability to exploitation.

18   Victorian Government. "Inquiry into the Victorian On-Demand Workforce recommendations."