

Submission to Commonwealth Senate Select Committee on Job Security

By

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We, Dr Michael James Rawling and Professor Joellen Riley Munton submit to the Senate Select Committee on Job Security the attached report we authored entitled “Proposal for Legal Protections of On-Demand Gig Workers in the Road Transport Industry”. This is a report prepared for the Transport Education Audit Compliance Health Organisation (TEACHO) completed in January 2021.

This report is especially pertinent to the Senate Select Committee on Job Security, established to inquire into and report on the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions. Specifically, the attached report pertains to one of the most exploitative and unsafe sub-sets of precarious work currently existing in Australia, being on-demand gig work in the road transport industry. It critically reviews the existing legal regulation in the road transport industry to ascertain whether these precarious workers are adequately protected. It finds that existing legal regulation does not adequately protect these workers. Consequently, the report proposes the federal Parliament legislate for improved legal protections for this sub-set of workers and indeed all road transport workers in Australia. Such regulation could serve as a model to be adapted and applied to other Australian industries within which precarious workers labour. As such the attached report is relevant to the Senate Select Committee on Job Security. It is especially relevant to the following aspects of that Committee’s terms of reference:

- Workplace and consumer trends and the associated impact on employment arrangements in sectors of the economy including the ‘gig’ and ‘on-demand’ economy; . . . and
- The effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies; . . .

Expertise

I, Michael James Rawling have been researching the adequacy of legal regulation of precarious/vulnerable work since 2005. Whilst this research has focussed at times on workers labouring at the base of supply chains, it also spans the legal regulation of precarious work more generally. I have secured at least 2 large Australian Research Council Grants relevant to this area of research. I have also published a significant number of peer-reviewed publications on legal regulation to protect workers. I have co-authored a consultancy paper for the International Labour Organisation in 2016 on legal regulation of the road transport industry to protect workers and appeared twice as an expert witness in the (now abolished) Road Safety Remuneration Tribunal. I have also made a number of submissions on relevant topics to Parliamentary Inquiries. I list directly relevant research and other outputs in Appendix 1 below.

I, Joellen Riley Munton, have been researching in the field of labour law generally since publishing a book on the *Workplace Relations Act* reforms in 1997. In addition to my academic work, I have acted as a part-time consultant to two boutique employment law practices. I list research publications that are specifically relevant to the subject matter of this enquiry in Appendix 2 below.

Appendix 1 – Evidence of Expertise, Dr Michael Rawling

Relevant Australian Research Council and other Grants

- (2012) (with Richard Johnstone and Igor Nossar) ‘Australian Supply Chain Regulation: Practical Operation and Regulatory Effectiveness’, Australian Research Council, Discovery Project DP120103162 (\$183,717). A large Australian Research Council grant to examine legal regulation of work in the Textile Clothing and Footwear and Road Transport Industries
- (2018) (with Sarah Kaine, Emmanuel Josserand, Valerie Gay and David Bedford and the Cleaning Accountability Framework Inc) ‘Enforcing Labour Standards in Supply Chains through Multi-Stakeholder Collaboration’, Linkage Project, Australian Research Council, LP170100291 (\$170,000 from ARC, \$60,000 from Partner Organisation). A large jointly funded linkage grant examining innovative regulation of the cleaning industry supply chain to improve compliance with minimum employment standards.
- (2018) (with Sarah Kaine and 4 others) Establishment of the Digital Platforms in the Australia Economy Research Network, August 2018 Centre for Business and Social Innovation UTS business school
- (2020) with Joellen Riley Munton, ‘Proposed regulatory framework for road transport workers in the on demand (GIG) economy’ Transport Education Audit Compliance Health Organisation (TEACHO) Limited

Relevant Books

- (with Richard Johnstone, Shae McCrystal, Igor Nossar, Michael Quinlan and Joellen Riley), (2012) *Beyond Employment: the Legal Regulation of Work Relationships*, First Edition, The Federation Press, Sydney, Australia

Relevant Peer Reviewed Articles

- (2021) ‘Multi-Stakeholder Frameworks For Rectification Of Non-Compliance In Cleaning Supply Chains: The Case Of The Cleaning Accountability Framework’ *Federal Law Review* (forthcoming)
- (With Eugene Schofield Georgeson) ‘Industrial Legislation in Australia 2019’ (2020) 62(3) *Journal of Industrial Relations*

- (with Eugene Schofield-Georgeson) 'Industrial Legislation in Australia in 2018', (2019) *Journal of Industrial Relations*
- (with Sarah Kaine) (2019) 'Strategic Co-Enforcement of Supply Chains -The Case of the Cleaning Accountability Framework' 31 *Australian Journal of Labour Law* 305
- (with Eugene Schofield-Georgeson) 'Industrial Legislation in Australia in 2017', (2018) *Journal of Industrial Relations*, vol. 60, no. 3, pp. 378-396.
- (with Richard Johnstone and Igor Nossar) 'Compromising Road Transport Regulation: The Abolition of the Road Safety Remuneration Tribunal', (2017) *Sydney Law Review*, vol. 39, no. 3, pp. 303-332
- (with Richard Johnstone and Igor Nossar), 'Regulating Supply Chains to Protect Road Transport Workers: An Early Assessment of the Road Safety Remuneration Tribunal', (2015) *Federal Law Review*, vol. 43, no. 3, pp. 397-421.
- 'Legislative regulation of global value chains to protect workers: A preliminary assessment', (2015) *The Economic and Labour Relations Review*, vol. 26, no. 4, pp. 660-677.
- 'Regulating Precarious Work in Australia', (2015) *Alternative Law Journal*, vol. 40, no. 40, pp. 252-257.
- (with Igor Nossar, Richard Johnstone and Anna Macklin) 2015, 'Protective legal regulation for home-based workers in Australian textile, clothing and footwear supply chains' (2015) 57 *Journal of Industrial Relations* 585-603
- 'Cross-Jurisdictional and Other Implications of Mandatory Clothing Retailer Obligations' (2014) 27 *Australian Journal of Labour Law* 191-215.
- (with Sarah Kaine) 'Regulating Supply Chains to provide a Safe Rate for Road Transport Workers' (2012) 25 *Australian Journal of Labour Law* 237-257.
- (with Sarah Kaine) 'Comprehensive Campaigning' in the NSW Transport Sector: Bridging the Distance Between Organising and Regulating' (2010) 52 *Journal of Industrial Relations* 183-200
- 'The Impact of Federal Legislation upon the Scope of State Jurisdictions to Regulate Outwork' (2009) 22 *Australian Journal of Labour Law* 147-160
- 'The Regulation of Outwork and the Federal Takeover of Labour Law' (2007) 20 *Australian Journal of Labour Law* 189-206
- 'Capital Reintegration into Supply Chains and its Implications for Labour Law' (2006) 6 *Employment Relations Record* 1-19.

Relevant Chapters In Books

- (with John Howe) 'The Regulation of Supply Chains: An Australian Contribution to Cross-National Legal Learning' in Katherine V.W Stone and Harry Arthurs (eds),

Rethinking Workplace Regulation: Beyond the Standard Contract of Employment (Russell Sage Foundation, New York, 2013) pp. 233-252.

- 'A Generic Model of Regulating Supply Chain Outsourcing' in Christopher Arup et al (eds) *Labour Law and Labour Market Regulation: Essays on the Construction, Constitution and Regulation of Labour Markets and Work Relationships* (Federation Press: Sydney, 2006) pp 520-541.

Relevant Working Papers

'Will The Rudd Federal Labor Government Abolish Key Legal Protections For Certain Exploited Vulnerable Workers?' Working Paper 64, National Research Centre for OHS Regulation, RegNet, The Australian National University, February 2009

Relevant Contributions To Commentaries

'Outworkers' in Chapter 1 of Joellen Riley and Kathryn Peterson, *Work Choices: A Guide to the 2005 Changes*, (Thomson, Sydney, 2006).pp33-35.

Submissions To Parliamentary Inquiries

- (2020) (With Kaine, S Josserand, E Boersma, M Johns, K) Written submission to Commonwealth Senate Standing Committee on Economics - Inquiry into unlawful underpayment of employees' remuneration
- (2019) Written Submission and Verbal Testimony to Commonwealth Senate Standing Committee on Rural and Regional Affairs and Transport - The Importance of a Viable, Safe, Sustainable and Efficient Road Transport Industry
- (2018) Written submission (with Sarah Kaine, Emmanuel Josserand, Martijn Boersma, Katie Johns and Rose Ryan) to Commonwealth Senate Education and Employment Committee 2018, '*Inquiry into the Exploitation of General and Specialist Cleaners Working in Retail chains for contracting or subcontracting cleaning companies*'
- (2018) Written Submission (with Rose Ryan, Emmanuel Josserand and Sarah Kaine) to the Commonwealth Senate *Select Committee on the Future of Work and Workers* 19 February 2018
- (2011) Written Submission to the Commonwealth Senate Inquiry into the *Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011* (Commonwealth)
- (2008) Written Submission to the Commonwealth Senate *Inquiry into the Fair Work Bill 2008* (Commonwealth)
- (2006) Written Submission and Oral Testimony (with Professor Ron McCallum) to the *Inquiry into Impact of Commonwealth WorkChoices Legislation* NSW Legislative Council, Standing Committee on Social Issues, Parliament House 20 June 2006. (including Answer to Question on Notice)

Consultancies

- (2016) (with Igor Nossar) Short Paper on Australian Safe Rates Approach for Tripartite Sectoral Meeting in the Road Transport Sector, International Labour Office, International Labour Organisation (ILO) (\$1500)

Appendix 2 – Evidence of Expertise, Professor Joellen Riley Munton

Relevant Books

- *Labour Law: An Introduction to the Law of Work*, forthcoming 2021, (Oxford University Press, Melbourne).
- (with Richard Johnstone, Shae McCrystal, Igor Nossar, Michael Quinlan and Joellen Riley), (2012) *Beyond Employment: The Legal Regulation of Work Relationships*, The Federation Press, Sydney, Australia.
- (with Rosemary Owens and Jill Murray), *The Law of Work*, 2nd edn (Oxford University Press: Melbourne, 2011).
- (with Rosemary Owens), *The Law of Work*, (Oxford University Press: Melbourne, 2007).
- *Independent Work Contracts*, (Thomson LBC, Sydney, 2007).

Relevant Peer-reviewed articles

- (with Troy Sarina) 'Recrafting the Enterprise for the Gig Economy', (2018) 43(2) *New Zealand Journal of Employment Relations* 27-35.
- 'Regulating for Fair Dealing in Work Contracts: A New South Wales Approach' (2007) 36 (1) *Industrial Law Journal* 19-34.
- 'A Fair Deal for the Entrepreneurial Worker? Self-employment and Independent Contracting Post Work Choices' (2006) 19(3) *Australian Journal of Labour Law* 246-262.
- 'The Evolution of the Contract of Employment, post Work Choices' (2006) 29 *UNSWLJ* 166.

Relevant Book Chapters

- 'Brand New 'Sharing' or Plain Old 'Sweating'? A Proposal for Regulating the New 'Gig Economy', in Ron Levy, Molly OBrien, Simon Rice, Pauline Ridge, Margaret Thornton (eds), *New Directions for Law in Australia: Essays in Contemporary Law Reform* (ANU Press, Acton, 2017) pp 59-69.
- 'Regulating Work in the 'Gig Economy'', in Mia Roennmar, Jenny Julen Votinius (eds), *Festskrift Till Ann Numhauser-Henning*, (Juristfoerlaget i Lund, Sweden, 2017) pp 669-683.
- 'The Definition of the Contract of Employment and its Differentiation from Other Contracts and Other Work Relations', in Mark Freedland, Alan Bogg, David Cabrelli, et al (ed.), *The Contract of Employment*, (pp. 273-295). (United Kingdom, Oxford

University Press, 2016) pp 273-295.

- 'Regulating the engagement of non-employed labour: A view from the Antipodes', in Douglas Brodie, Nicole Busby, Rebecca Zahn (eds), *The Future Regulation of Work: New Concepts, New Paradigms*, (United Kingdom, Palgrave Macmillan, 2016), pp 61-81.
- 'Regulatory responses to the blurring boundary between employment and self-employment: A view from the Antipodes,' in Gyorgy Kiss (ed), *Recent Developments in Labour Law*, (Budapest, Akademiai Kiado Rt, 2013), pp 131-149.
- 'Regulating unequal work relationships for fairness and efficiency: A study of Business Format Franchising' in Chris Arup, Peter. Gahan, John Howe, Richard Johnstone, Richard Mitchell and Anthony O'Donnell (eds), *Labour Law and Labour Market Regulation: Essays on the Construction, Constitution and Regulation of Labour Markets and Work Relationships* (Federation Press, Sydney, 2006).