

15 May 2023

Department of Employment and Workplace Relations  
Australian Government

*Via email: [WRSubmissions@dewr.gov.au](mailto:WRSubmissions@dewr.gov.au)*



Chamber of Commerce  
and Industry WA

T: (08) 9365 7555

E: [membership@cciwa.com](mailto:membership@cciwa.com)

W: [www.cciwa.com](http://www.cciwa.com)

To whom it may concern

## **CCIWA submission to employee-like forms of work and stronger protections for independent contractors**

### **Introduction**

CCIWA is the peak body advancing trade and commerce in WA. We want the best for communities across the State. Our members are of all sizes and come from all industries and regions, from small early childhood education and care providers in regional towns, to medium sized manufacturers in the Perth metropolitan area.

At the outset, we wish to convey that the consultation surrounding these reforms is improved as compared to the rushed Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022. That said, the four-week turnaround time for the employee-like forms of work proposal, alongside the other significant and transformative reforms currently underway, is inadequate given the complexity and impact these reforms present.

Despite the short-time frame, we have engaged with the WA business community on this matter. We have also been working closely with the Australian Chamber of Commerce and Industry, and support its submission in full.

As in case of the Same Job, Same Pay proposal, we hold deep concerns that all independent contractors will be inadvertently captured within this proposal and subject to the Fair Work Commission's (FWC) unfettered powers.

If this is the intended purpose, we suggest this will be a costly impost, applying onerous administrative complexity and unwarranted expectations on business owners, particularly the small and family-run businesses. This would be especially damaging to the WA economy.

### **Independent contractors are businesses, not employees**

At the outset, it is necessary to address the differences between independent contractors and employees. Independent contractors and employees have long been two distinct categories of workers, with differing rights and responsibilities, with the former being engaged under a contract to perform services for individuals and/or businesses without the legal status of being an employee. The differences between employees and independent contractors can be articulated through a range of factors, including:

- the amount of control over how work is performed
- the level of financial responsibility and risk
- the ownership of tools and equipment
- the hours of work; and
- the expectations of ongoing work.

With the use of ‘employee-like’, it seems the Department and those developing this legislation are intent on blurring the lines between independent contractors and employees. This will give rise to significant and unwarranted regulatory creep and be the ‘thin edge of the wedge’ for the independence of independent contracting arrangements in Australia.

We suggest that if there is evidence to support policy intervention by the Australian Government, beyond what already exists within the *Fair Work Act 2009*, then this should be examined separately within the legislative regime that governs independent contractors, the *Independent Contractors Act 2006* (Cth).

### **Any employee-like minimum standards must be appropriately targeted and contained**

If the Department and those developing this legislation are intent on blurring the lines between employees and independent contractors, we suggest that the application of minimum standards within the gig economy should only be set for those high-risk industries, where there is a demonstratable case and support for policy intervention.

As we understand it, gig workers and businesses within the rideshare and food delivery industries are supportive of the introduction of minimum standards, and therefore, the Department should ensure that these legislative mechanisms are contained to these industries only. On this basis, the Government should not assume broad-support for minimum standards - by doing so, the Government silences the voices of many small and family-run business owners who operate as independent contractors within the gig economy.

We strongly advise against legislative reforms for the gig economy that seek to capture all ‘platform’ workers as employees. Further to this, given the rate of technological advancements and as businesses continue to evolve in this way, we do not support the use of digital ‘platforms’ as an effective instrument to determine coverage, as this may result in extensive and unwarranted regulatory creep.

### **The potential disruption of broad-scale reforms**

While we understand there is support for some regulatory intervention within the ride-share and food delivery industries, anything beyond this scope has the potential to give rise to significant impacts, most notably, increasing the cost and complexity of doing business in Australia — and particularly for Western Australia. Onerous compliance expectations and administrative complexity will only serve to limit the productivity benefits of this form of work.



Similarly, if the FWC was to impose minimum standards for pay on all employee-like forms of work, this would have the direct effect of driving the cost of doing business in Australia even higher. At present, businesses in WA are reporting difficult operating conditions, with profit margins getting tighter as the already high cost of doing business makes it challenging for businesses to stay financially viable.

In fact, CCIWA's most recent Business Confidence survey found that 75 per cent of WA businesses see rising operating costs as hurting their ability to do business over the next 12 months. This has also been reflected in CCIWA's profitability index, where our March quarter results show WA businesses are facing declining levels of productivity. Furthermore, it holds true that increased cost pressures, as well as onerous regulatory complexity, impact the smallest operators the most.

If the Government was intent on introducing minimum standards over rates of pay for the road transport industry for example, we hold deep concerns about the impact on domestic markets, particularly food and other consumer products, as businesses will be forced to pass these higher freight costs on to the customer. It is important to underline that Australians feel most insecure about the cost-of-living pressures at the moment, and increases in food prices as a result of these reforms, will have negative social consequences.

### **Concluding remarks**

We are concerned by the Federal Government ongoing agenda to blur the lines between independent contracting arrangements and employees. The *employee-like forms of work* reforms, if applied broadly, have the potential to create significant social and economic disruption, driving further cost-of-living pressures and reduced business profitability.

We therefore suggest that the Department and those who are intent on implementing this legislation should do so only by applying minimum standards to the ride-share and food service delivery organisations only.

We also suggest that if the Government is concerned about the rights of independent contractors, this should be examined separately through the *Independent Contractors Act 2006* (Cth), not the *Fair Work Act 2009*.

Yours sincerely,

Chris Rodwell

CEO CCIWA