

Please Reject 'Employee-Like' laws

**The laws will deny the right of
Australian's to be their own boss**

BUT

**More protections for self-employed
are needed**

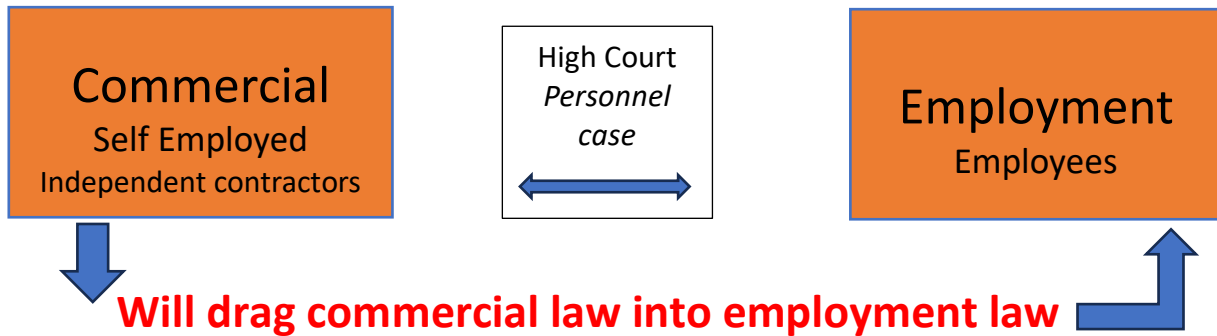
**This package shows how good
protections can and should be
implemented**

More info



What's wrong with 'Employee-Like' laws ?

Defies clear established law



- Clashes with commercial/competition law and ACCC.
- Breaches Aust ILO obligations endorsing self-employed.
- Subverts High Court self-employed ruling (Personnel Case).

Subvert/confuse current protections

- **Sham contracting** laws (possibly strongest globally).
- **Min-pay** security (via Independent Contractors Act).
- **Unfair contract** laws (Strengthened from Nov 2023).
- **Collective bargaining** for the self-employed (ACCC).
- **Dispute resolution** (Small business Commissioners).
- **OHS law** applies to the self-employed.

But there's a good model



A good Model

Victoria Gig Platform Code

The Victorian Code can be used federally

Vic Code has 6 standards under commercial law –Requires platforms to provide;

1. *Consultation* processes for on-demand workers.
2. *Bargaining Power*: Clear contracts that on-demand workers can understand.
3. *Conditions & Pay*: Key info to on-demand workers;
 - what they will earn & calculations
 - typical expenses
 - conditions of work
 - factors re how work is allocated
4. *Dispute Resolution*: Fair, Transparent, Independent.
5. *Collective Bargaining*: Free to pursue better terms.
6. *Safety*: Platforms comply with OHS duties OHS.

Extend protections - unfair contract laws to govt



Govt departments can do unfair contracts - Change needed

It's hard to believe. Government departments are not subject to unfair contract laws. This must be changed.

What applies to the private sector must apply to government.

Currently the Competition and Consumer Act does not apply to Commonwealth and State and Territory Governments unless they are considered to be carrying on a business (eg Australia Post).

The 2015 Harper Competition Report recommended extending competition laws to all government entities. This did not occur. The following is a modification of the Harper recommended amendment to the CCA. This would require all government entities (eg; departments etc) to comply with unfair contract laws.

Application of Act to Commonwealth and Commonwealth authorities

(1) Subject to this section and sections 44AC, 44E and 95D, this Act binds the Crown in right of the Commonwealth **in relation to the unfair contract provisions of the Act** in so far as the Crown in right of the Commonwealth engages in trade or commerce, either directly or by an authority of the Commonwealth **with a small business**.

Extended protections – Pay on Time



We need Pay on Time laws

**A huge issue for self-employed small business people is
being paid 'on time.'**

The Payment Times Reporting Act 2020 is currently being reviewed. This Act requires big businesses to record on a government platform their 'on time' payment history (of small business suppliers).

**It's time to provide self-employed small business people
protection from non or late payments.**

Statute models for this can include;

- Where govt has contracts with large businesses, contractually require the business to pay their small business suppliers 'on time.' Sanctions for not complying. This worked in construction with the ABCC.
- Adopt recommendations of the Murray Review 2017 for construction.
- Statutory requirement for maximum payment terms of (say 60 days from date of invoice) for standard form contracts. Statute modelling can be done around Unfair Contract laws.
- Statute required dispute mechanism for payment disputes to be inserted into standard form contracts.

Extend Protections – Dispute settling



We need Dispute Resolution

Australian small businesses have efficient, low cost small business dispute mediation processes available through the state Small Business Commissioners. This is supported by the federal Small Business Ombudsman.

It's time for efficient, low cost small business dispute settlement.

The Small Business Commissioners/Ombudsman are best placed to advise on progressing this. There are already concept proposals around a specialised Circuit Court.

**More Info – Unfair Contracts Brief
- Vic Gig Standards**



Unfair Contract laws for Small Business

Briefing Note August 2023

1. Overview Unfair Contract laws – small business

Unfair contract laws for small business people adapt unfair contract provisions for consumers to the small business situation. Application to small business started in 2016. The laws are administered/enforced by the ACCC and ASIC.

<https://www.accc.gov.au/about-us/publications/a-guide-to-the-unfair-contract-terms-law>

A review of the existing laws resulted in a 'beefing up' for small business, passed in 2022. The new laws start November 2023.

The laws do not apply to government departments only government owned businesses (eg Australia Post) The laws need to be applied to all government department, authorities and entities. See (4) below for draft legislative change.

2. Summary of the 'beefed up' Small Business Unfair Contract laws

The Act

- *Expands the definition of small business.* To apply to businesses up to 100 full or part time employees (excludes casuals) or less than \$10m in turnover. Currently only 20 employees
- *No limit on the value of the contract* (currently restricted to contracts up to \$300K)
- *A 'standard form' contract* is one if the contract has been used before.
- If *minor changes* have been made to a contract in negotiations this does not stop the contract being 'standard form.'
- *Imposes fines* for breaches (Up to \$2.5m for individuals. \$50m corporations). There are currently no fines.
- *A person breaches* the law if they propose to or seek to apply an unfair clause.
- *Multiple* unfair clauses create multiple breaches.

Court orders: (This will close lots of loopholes in the current laws)

- If a clause has been declared unfair by a court all similar clauses in other contracts are taken to be unfair. A party must disprove the unfairness if they want to use the clause.
- An order can be made to stop loss or damage from an unfair clause. Loss does not have to be proven but only that loss *may* occur. Such an order can apply to a 'class of persons' to stop loss.
- An order can be made to stop someone from engaging in contracts with unfair clause/s. A public warning can be issued about such a person.
- Persons can be disqualified from 'managing a corporation' due to use of unfair clauses.

Orders can be made within 6 years of a clause being declared to be unfair.

The Bill/Act Is enforced (proposed and currently) by the

- ACCC covering contracts for goods, services and sale of land

- ASIC covering financial products & services and insurance contracts (This started April 2021)

Excluded clauses: Any clause required by legislation is not 'unfair.'

From the Explanatory Memorandum

The rebuttable presumption therefore acts as a disincentive for companies to reuse terms they know are likely to be considered unfair.

The rebuttable presumption is intended to encourage contract-issuing parties to maintain thorough monitoring and record keeping of their contracts to ensure that unfair terms are removed from or not included in standard form contracts.

3. Examples of unfair contract clauses

The laws make it clear that a contract is 'unfair' if it gives one party, but not the other, the ability to:

- a) Avoid or limit the performance of the contract.
- b) Terminate the contract.
- c) Apply penalties against the other party for a breach or termination of the contract.
- d) Vary the terms of the contract.
- e) Renew or not renew the contract.
- f) Vary the price payable without the right of the other party to terminate the contract.
- g) Unilaterally vary the characteristics of the goods or services to be supplied.
- h) Unilaterally determine a breach or interpretation of the contract.
- i) Limit one party's vicarious liability for its agents.
- j) Permit one party to assign the contract to the other party's detriment without consent.
- k) Limit one party's right to sue the other party.
- l) Limit the evidence one party can adduce in legal proceedings in respect to the contract.
- m) Impose the evidential burden on one party in legal proceedings in respect to the contract.

4. Make government departments subject to unfair contract laws

Currently the Competition and Consumer Act does not apply to any governments entities unless they are considered to be carrying on a business (eg Australia Post)

In [2015 the Harper Report](#) recommended extending competition laws to all government entities. This did not occur. The following is a modification to a recommended Harper amendment to the CCA. This amendment would require all government entities (eg; departments etc) to comply with unfair contract laws.

Application of Act to Commonwealth and Commonwealth authorities

(1) Subject to this section and sections 44AC, 44E and 95D, this Act binds the Crown in right of the Commonwealth **in relation to the unfair contract provisions of the Act** in so far as the Crown in right of the Commonwealth engages in trade or commerce, either directly or by an authority of the Commonwealth **with a small business**.

Victorian Gig Platform Code

Standard 1

1 Consultation about work status and arrangements

- 1.1 Platforms and their representatives¹⁰ should consult and negotiate with non-employee on-demand workers and their representatives¹¹ on work-related matters, including major changes to work arrangements, work status or contractual terms.
- 1.2 Platforms should provide consultation processes, forums or committees to allow for discussions with non-employee on-demand workers and their representatives on work-related matters.
- 1.3 Platforms should not penalise non-employee on-demand workers for raising concerns regarding work-related matters.

Standard 2

2 Consideration of parties' relative ability to change outcomes or bargaining power

- 2.1 Platforms should ensure that the terms and conditions of the applicable contract are clear and able to be understood by non-employee on-demand workers. Platforms should also ensure that the terms and conditions are consistent with the nature of the actual engagement.
- 2.2 Platforms should establish a process with non-employee on-demand workers and their representatives to assess whether a work contract is fair, for example:
 - are the risks associated with platform work distributed fairly between the platform and non-employee on-demand workers?
 - is liability for damage arising in the course of the performance of work for platforms treated or distributed fairly?
- 2.3 After consulting with non-employee on-demand workers (and their representatives where applicable) on the fairness of existing work arrangements, platforms should consider amending the work contract or consider other ways to mitigate risk for both parties.
- 2.4 Platforms should set up processes so that non-employee on-demand workers and their representatives may challenge decisions made by platforms which affect their terms and conditions of work.
- 2.5 Platforms should provide non-employee on-demand workers a process for responding to an allegation or finding that a worker has breached terms and conditions of their contract.

Standard 3

3 Fair Conditions and Pay

- 3.1 To assist non-employee on-demand workers to make an informed decision about whether to accept work, platforms should provide them with key information in writing about:
- what they will earn should they complete a job, and how earnings are calculated
 - typical costs associated with the performance of work
 - their conditions of work
 - the factors that affect how work is allocated by the platform (such as customer ratings).
- 3.2 Platforms should commit to providing fair and decent remuneration and conditions for the performance of work. This might be implemented by, for instance, publishing typical average earnings, which are benchmarked against the applicable minimum wages or rates.
- 3.3 Platforms that apply penalties (including where non-employee on-demand workers accept work but do not complete the job or gig), should provide workers with clear and accessible information about when such measures might be taken.
- 3.4 Platforms should proactively review algorithms and work practices to ensure that they operate in a gender non-discriminatory way, for instance, by:
- reviewing women's and men's average hourly earnings or earnings per assignment (where the assignment is comparable) to identify if there is a gender pay gap, and if it is found, taking steps to close it
 - reporting publicly on the gender earnings gap for non-employee on-demand workers.
- 3.5 Platforms should implement policies and procedures to prevent discrimination (for example, on the basis of race, sex, disability) and
- take reasonable and proportionate measures to eliminate such discrimination, sexual harassment and victimisation and
 - provide clear support and complaints processes for non-employee on-demand workers who experience any such matters.

Standard 4

4 Fair and Transparent Independent Dispute Resolution

- 4.1 Platforms should provide non-employee on-demand workers with access to a clear and accessible procedure or mechanism for resolving performance concerns or disputes and allow them to be represented in those processes.
- 4.2 Platforms should afford non-employee on-demand workers procedural fairness and the opportunity to respond to complaints made about them (that is, show cause) before action is taken to restrict their access to work on the platform (including for example by suspension or deactivation of their account).
- 4.3 Platforms should set up processes so that non-employee on-demand workers may challenge decisions which affect their earnings or access to the platform, for example:
- when a worker is not paid for services performed
 - where a platform wishes to suspend or deactivate these workers from gaining work from the platform.
- 4.4 Platforms should not treat non-employee on-demand workers detrimentally if they choose to raise a concern via the dispute resolution process or challenge a decision made by the platform.
- 4.5 Platforms should keep confidential, matters raised in dispute resolution processes.
- 4.6 Platforms should permit non-employee on-demand workers to disclose information relating to their work contract or arrangements to obtain advice or support.
- 4.7 Platforms should acknowledge receipt of the notification of a dispute in writing (and if possible outline the steps to resolve a matter) within 7 days and deal with disputes in a reasonable time frame.
- 4.8 Platforms should notify non-employee on-demand workers of options to resolve disputes including Gig Worker Support Service contact details.

Standard 5

5 Non-employee on-demand worker representation, including the ability to seek better work arrangements

- 5.1 Platforms should not inhibit non-employee on-demand workers from freely associating to pursue improved terms and conditions relating to their work arrangements, where permitted by law.
- 5.2 Platforms should not inhibit non-employee on-demand workers from collectively discussing and advocating for changes or improvements to work arrangements, where such action is permitted by law.
- 5.3 Platforms should recognise and engage with non-employee on-demand workers and their representatives in good faith and collectively, where permitted by law.

Standard 6

6 Safety

Platforms must comply with their duties under the OHS Act.¹²

- 6.1 Platforms must, so far as is reasonably practicable, provide and maintain a working environment that is safe and without risks to health of non-employee on-demand workers, and others to the extent that the platform has control over those matters.¹³
- 6.2 Platforms must have policies in place to eliminate or minimise health and safety risks, so far as is reasonably practicable, including:
 - managing accidents and injuries
 - taking action to prevent gender-based violence.
- 6.3 Platforms should promote health and safety objectives and must provide information, instruction and training to their non-employee on-demand workers about health and safety policies and enable those workers to perform their work in a way that is safe and without risks to health, so far as is reasonably practicable.
- 6.4 Platforms must consult with non-employee on-demand workers and their representatives on safety matters over which the platform has control so far as is reasonably practicable.¹⁴