



Ensuring Just Treatment in Employment – Closing Employment Loopholes

Issued November 2023

Look! The wages you failed to pay the workers who mowed your fields are crying out against you. The cries of the harvesters have reached the ears of the Lord Almighty.

James 5:4

In August 2022, we requested that you write to the Commonwealth Government asking that they introduce laws to protect people working in the on-demand gig economy, such as Uber drivers and food delivery riders. We followed that up with a postcard campaign.

At least 13 people working in the gig economy have died on Australian roads in the last few years, including nine Uber Eats riders. In 2021, Uber Eats claimed food delivery rider Burak Dogan was not working for them when he was run over by a truck. At the time, his phone was receiving job requests from Uber Eats and continued to do so as he lay dead on the road. There is a direct link between low pay rates and safety in employment. Where people struggle to make enough to live on, they take more significant risks in their work.

The McKell Institute surveyed 1,036 people in the food delivery, parcel delivery and rideshare sectors of the gig economy and published their results in April 2023. They found:

- 45% struggle to afford everyday items like groceries and to pay their household bills;
- 45% reported earning less than the minimum legal wage that would apply to employees;
- 57% of food delivery drivers reported earning less than the minimum wage;
- 79% reported they use multiple apps, and 74% of these said they did so to be able to earn enough to live off. Separately, Menulog admitted that 75% of food delivery riders using their app used other apps to make ends meet. Menulog's business model depends on riders having to use multiple platforms;
- Over half reported experiencing work-related stress, anxiety or mental health issues related to their work; and,
- 95% supported the government regulating the on-demand gig economy.

A study by the Australian National University released in September 2022 found one in three couriers had sustained injuries on the job. Many were forced to continue working while injured to make ends meet.

The Commonwealth Government has responded with the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023*. The new law, if passed by the Parliament, would:

- Criminalise wage theft;
- Introduce minimum standards for workers in the on-demand gig economy;
- Address the ability of employers to use labour hire businesses to undercut the wages and conditions of their existing employees;
- Address misuse of classifying ongoing employees with fixed hours as casuals so the employer avoids giving them security in their employment;
- Allow the Fair Work Commission to set minimum standards for people working in the road transport sector;
- Introduce an offence for industrial manslaughter, where employer negligence has led to a person being killed doing their work;
- Better support for people working in emergency services when they have post-traumatic stress disorder;
- Expand the role of the Asbestos Safety and Eradication Agency to eliminate silica-related diseases;
- Strengthen protections against discrimination by employers against an employee who is experiencing family and domestic violence;



- Introduce measures to crack down on unfair employment contract terms and sham employment contracts; and,
- Expand the powers of the Fair Work Commission to allow it the ability to grant unions the right to investigate cases of suspected wage underpayment.

Wage Theft

If an employee steals from their employer, it is a crime. If an employer steals from the pay of their employees, it is not treated as a criminal matter. The Bill makes it a crime to steal from employees by deliberately underpaying them. The maximum penalty will be ten years in prison and fines up to \$7.8 million, or three times the stolen amount. The penalties do not apply to employers that make honest mistakes. In addition, there will be pathways for employers to self-report underpayment of wages and repay the correct amount.

Wage theft disproportionately is targeted at people in the workforce who have less power to stand up for their rights, such as women in low-paying professions, younger people and people on temporary visas.

In the 2022-2023 financial year, the Fair Work Ombudsman recovered \$509 million for 251,475 employees who had been underpaid. While much of the underpayment was related to honest mistakes by employers, some were deliberate wage theft. For example, in mid-October 2023, the Fair Work Ombudsman secured \$558,190 in penalties involving Hong Kong-owned company Winit. The management of Winit had engaged in deliberate and systematic wage theft against 400 of its employees from migrant backgrounds over five years. The company stole more than \$3.6 million from its employees.

Opposition from Business Groups

Business groups have vehemently opposed the reforms and continue to campaign against all the reforms in the Bill. Multinational mining corporations are running a \$24 million advertising campaign to try and stop the implementation of the reforms contained in the Bill. Coal mining corporation Glencore is one of the key funders of the campaign. The amount being spent is more than the mining corporations spent to defeat the Rudd Government's attempt to introduce a super profit tax on the mining industry to benefit the community.

The Bill is also opposed by One Nation, the Palmer United Senator and the Coalition in the Senate. The Bill has the support of the Greens and Senator Lidia Thorpe. Thus, the passage of the Bill into law now depends on the votes of Senators Jacqui Lambie, Tammy Tyrrell and David Pocock. As our Synod covers Tasmania, we request that you write to Senators Lambie and Tyrrell urging their support to pass the Bill.

What You Can Do

Write polite and respectful letters to:

Senator Jacqui Lambie

PO Box 6100
Senate
Parliament House
Canberra ACT 2600

Salutation: Dear Senator

Senator Tammy Tyrrell

PO Box 6100
Senate
Parliament House
Canberra ACT 2600

Salutation: Dear Senator



Points to make in your letters:

- Express deep concern at the exploitation of people in the on-demand gig economy.
- Also note that currently, young people, women and people on temporary visas are vulnerable to wage theft and other exploitative employment arrangements in Australia.
- Ask that they support the passage of the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023*.