



**Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600**

19 February 2018

Dear Committee Secretary,

RE: Inquiry into the exploitation of general and specialist cleaners working in retail chains for contracting or subcontracting cleaning companies

The Centre for Business and Social Innovation (CBSI) welcomes the opportunity to make a submission to the Inquiry into the exploitation of general and specialist cleaners working in retail chains for contracting or subcontracting cleaning companies.

CBSI operates as an interdisciplinary hub that works closely with practitioners, business and the community to shape the future of our society. It provides a unique perspective on innovation research that integrates the technological, the economic, the environmental and the social. The Centre focuses on the changing and significant role of business in transforming the economies and societies in which we live.

The Terms of Reference for the Inquiry are closely aligned to the research interests and current research projects of our members.

A growing body of evidence indicates there is a need for a consistent industry-wide approach to issues of employment standards for cleaners and the viability of business models in the cleaning industry. These issues can disrupt tenant operations; and lead to worker underpayment and the loss of superannuation payments, sham contracting arrangements and uncertainty and financial hardship for cleaners. Non-compliance with current regulation results in cost pressures right across the supply chain. Our submission recommends strengthening enforcement of existing regulations and promotion of alternative models for business and employment, in line with the recommendations the Black Economy Taskforce.

Yours sincerely,

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Inquiry into the exploitation of cleaners: Submission of the Centre for Business and Social Innovation - UTS Business School

Sarah Kaine and Michael Rawling, Emmanuel Josserand, Martijn Boersma, Katie Johns and Rose Ryan.

Executive summary

1. A growing body of evidence indicates the need for a consistent industry-wide approach for employment standards for cleaners; and the consideration of alternative business and employment models for the cleaning industry. Non-compliance with existing regulations right across the supply chain, have been found to disrupt tenant operations, and have resulted in negative outcomes for cleaners.¹ These have included underpayments, the loss of superannuation payments, sham contracting arrangements, uncertainty and financial hardship. Addressing these issues will require a range of solutions, both regulatory and non-regulatory. While improved enforcement will address some issues, alternative business models and support for voluntary frameworks to establish industry-wide frameworks for employment standards pertaining to cleaners also have a role to play.

About the Centre for Business and Social Innovation

2. The Centre for Business and Social Innovation (CBSI) provides a unique perspective on innovation research that integrates the technological, the economic, the environmental and the social. Our focus includes the role of organisations in changing society and the future of work, organising and enterprise.

3. Operating as a multi-disciplinary hub of engagement and collaboration between practitioners, businesses and the community, our purpose is to foster innovative practices across sectors in Australia, including in relation to the changing nature of work, leading to a more equitable and inclusive society.

4. The Terms of Reference for the Inquiry are closely aligned to the research interests of our members. Member research interests include:

- a. Investigating how fairness, inclusiveness and productivity are maintained in the face of innovation and disruption
- b. The future of work and professions
- c. Maintaining labour standards in supply chains in the face of innovation and disruption
- d. New forms of voice and employee representation.

¹ See S Holley and A Rainnie, 'Who Cleans Up? The Declining Earnings Position of Cleaners in Australia' (2012) 23 *The Economic and Labour Relations Review* 143, 155

5. Members of the Centre for Business and Social Innovation are also currently involved in an Australian Research Council Linkage Project which fosters the development and assesses the efficacy of the Cleaning Accountability Framework (CAF), a multi-stakeholder initiative in improving labour standards in the cleaning supply chain (*Enforcing labour standards in supply chains through voluntary frameworks*).

Exploitation in supply chains and the necessity for strengthened supply chain regulation

6. There is now substantial evidence showing that the conditions for the delivery of production and services (notably times and costings) by commercial entities is dictated at or near the top of supply chains. This has contributed to poor working conditions for workers employed by companies at the bottom.² In light of the serious policy issues regarding the role that supply chains play in influencing the working conditions of supply-chain labour, it is now widely accepted that strengthened regulation of supply chains is needed³, together with enforcement of regulatory standards. Research has concluded that mandatory regulation of supply chains is necessary to address poor working conditions in some sectors.⁴ However, regulation is not sufficient on its own. For some time now, researchers have highlighted how supply chains have the potential to counter adverse outcomes by harnessing the influence of dominant business entities at or near their apex to address low pay and poor working conditions further down.⁵ Supply chains can also be used to positively influence employment standards, by leveraging external pressures from wider social, political and regulatory sources.⁶

Features of the Australian cleaning industry which indicate that strengthened regulation of that industry is needed

7. It is clear that there are problems of cleaner exploitation in the retail sector cleaning industry (as evidenced by a recent Fair Work Ombudsman (FWO) Inquiry into Woolworths in

² M Quinlan 2011 Supply Chains and Networks Report, Safe Work Australia 4

³ See, for example, J Bair, 'Global Capitalism and Commodity Chains: Looking Back, Going Forward' (2005) 9 *Competition and Change* 153, 161; S Barrientos et al, 'Decent Work in Global Production Networks' (2011) 150 *International Labour Review* 297, 306; OECD, WTO and UNCTAD, 'Implications of Global Value Chains for Trade, Investment, Development and Jobs', prepared for the G20 Leaders' Summit, Saint Petersburg, September 2013, 7.

⁴ See for example, M Rawling, 'Cross-Jurisdictional and Other Implications of Mandatory Clothing Retailer Obligations' (2014) 27 *Australian Journal of Labour Law* 191.

⁵ See, for example, I Nossar, R Johnstone and M Quinlan, 'Regulating Supply chains to Address the Occupational Health and Safety Problems Associated with Precarious Employment: The Case of Home-Based Clothing Workers in Australia' (2004) 17 *Australian Journal of Labour Law* 137; I Nossar, *The Scope for Appropriate Cross-Jurisdictional Regulation of International Contract Networks (Such as Supply Chains): Recent Developments in Australia and their Supra-National Implications*, Keynote Presentation to ILO Workshop, Canada, 17 April 2007; D Walters and P James, 'What motivates employers to establish preventive management arrangements within supply chains' (2011) 49 *Safety Science* 988; C Wright and W Brown, 'The Effectiveness of Socially Sustainable Sourcing Mechanisms: Assessing the Prospects of a New Form of Joint Regulation' (2013) 44 *Industrial Relations Journal* 20; D Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It*, Harvard University Press, Cambridge, MA, 2014; T Hardy and J Howe, 'Chain Reaction: A Strategic Approach to Addressing Employment Non-compliance in Complex Supply Chains' (2015) 57 *Journal of Industrial Relations* 563; P James et al, 'Regulating the Employment Dynamics of Domestic Supply Chains' (2015) 57 *Journal of Industrial Relations* 526; C Wright and S Kaine, 'Supply Chains, Production Networks and the Employment Relationship' (2015) 57 *Journal of Industrial Relations* 484.

⁶ M Quinlan 2011 Supply chains and Networks Report, Safe Work Australia 3–4.

Tasmania)⁷. Exploitation is not confined to the retail cleaning sector but extends across all parts of the commercial and government cleaning.

8. The Construction and Property Services Industry Skills Council segments the cleaning sector in Australia in 2014/15 into seven services: residential cleaning; industrial cleaning; exterior building and window cleaning; washroom services; street and road cleaning; interior cleaning services; and 'other cleaning services'. Of these, interior building cleaning (offices, shopping centres and universities) represents 42% of total cleaning services.⁸ This is the largest portion of the cleaning market (31% of industry revenue estimated in 2016/17). It is known to be highly price competitive and is one in which property owners pursue lower contract pricing and better service levels.⁹ Overall, the commercial cleaning industry in Australia had an anticipated revenue of \$8.6 billion (and a profit of \$1 billion) in 2016/17. With annual growth estimated to reach 2.7% in the next five years, that revenue is predicted to reach \$9.8 billion in 2021/22. Part of this growth is driven by the continuing outsourcing of cleaning, not only by households, but also by businesses.¹⁰

9. The industry overall employs around 122,900 workers. Cleaning work is low-paid with the vast majority of workers relying on minimum award pay and conditions. The sector is characterised by aggressive price competition. The work involved has minimal skill requirements and there are low barriers to new business entrants. All of these factors combine to result in downward pressure on wages and conditions. Non-compliance with award conditions is common, and it is evident that some business practices have been designed to avoid minimum pay and conditions. In 2011, the FWO found that 21.5% of businesses engaged in sham contracting by misclassifying employees as contractors. Similarly, audits uncovered a significant proportion of cleaning business that underpaid their employees, and did not make required superannuation payments.

10. Wages and conditions in the industry are poor. Wages are estimated to comprise just over 42% of industry revenue in 2016/17. However, average wage growth has lagged behind revenue growth over the past five years and is predicted to decline as a proportion of revenue. There is quantitative evidence of the increasing gap between the pay of full-time employee cleaners and other full-time employees in Australia¹¹. Underemployment is also an issue, with some cleaners working as little as two hours per day. In addition, cleaning work is characterised by compressed work schedules, large workloads and increased work intensity, with a high incidence about musculoskeletal injuries.¹² Union density rates amongst cleaners remain low, with the industry being difficult to organise due to its fragmented nature.

⁷ Woolworths contractors underpaying cleaners in 'serious exploitation' across Tasmania, inquiry finds
http://www.abc.net.au/news/2018-02-14/woolworths-cleaners-underpaid-tasmanian-inquiry-finds/9444916?WT.ac=statenews_tas

⁸ The Construction and Property Services Industry Skills Council (CPSISC), *Cleaning Services Sector Snapshot: Environmental Scan 2015–2016*, at

<http://www.cpsisc.com.au/resources/CPSISC/Industry%20Snap%20Shot/Cleaning%20Industry%20Snapshot.pdf>

⁹ A Allday, *IBIS World Industry Report N7311: Commercial Cleaning Services in Australia*, November 2016.

¹⁰ Ibid.

¹¹ Holley and Rainnie, above n 1.

¹² Weigell et al cited in I Campbell and M Peeters, 'Low Pay, Compressed Schedules and High Work Intensity: A Study of Contract Cleaners in Australia' (2008) 11 *Australian Journal of Labour Economics* 27–37

The cleaning supply chain: root causes of cleaner exploitation

11. It has been argued that cost-cutting and the lowering of work standards are embedded in the structure of the cleaning industry.¹³ A major restructuring of the cleaning industry from the late 1980s onwards involved the outsourcing of work in both the private and public sectors. As a result, the commercial cleaning industry is fragmented and characterised by a contractual pyramid or supply-chain structure. At the apex of this structure in the private sector are the building owners and their tenants. In the retail sector shopping mall owners predominate; in central business districts (CBDs) owners include retail banks, investment banks and property development and construction companies,¹⁴ and tenants are often powerful business entities. Building owners and their tenants rarely have any direct responsibility for the working conditions of cleaners, instead outsourcing cleaning services to businesses that specialise in offering cleaning contracts. Larger cleaning firms may outsource work to smaller ones,¹⁵ with a growing number of franchise operators¹⁶ and small cleaning contractors.¹⁷ At the bottom end of these supply chains lies a workforce of cleaners who are low-paid, award-reliant and largely unorganised. The workforce largely comprises 'international students or middle-aged immigrant workers attempting to get a foothold in the Australian job market and/or women with domestic duties that limit their ability to work in other positions.'¹⁸

12. Competition amongst cleaning contractors is fierce, with the business offering the lowest price frequently having the greatest success in being awarded contracts.¹⁹ As many clients of the industry view cleaning as a necessary cost to be minimised, there is considerable supply chain pressure on contractors to reduce costs.²⁰ Moreover, the few large cleaning contractors, who set the tone and pace of competition, frequently bid for contracts at a loss to squeeze out competitors.²¹ Given that labour is the main cost of a cleaning business, those large contractors then attempt to mitigate any losses by subcontracting work to cheaper providers, thereby reducing labour costs.²²

13. Direct competition between firms, leading to (labour) cost-cutting practices have spread throughout the cleaning industry²³ with poor outcomes for businesses and workers alike. For cleaning contractor businesses, competition and supply-chain pressures have led to unreasonably low contract prices and profit margins.

¹³ I Campbell and M Peeters, 'Low Pay, Compressed Schedules and High Work Intensity: A Study of Contract Cleaners in Australia' (2008) 11 *Australian Journal of Labour Economics* 27, 28.

¹⁴ See Clean Start, *About* <<http://www.cleanstart.org.au/category/main/about>> last accessed 16 December 2008. There are also building owners from the public sector, such as public bodies that own schools, at the apex of supply chains. It appears this supply chain information is no longer available on the Clean Start campaign website.

¹⁵ S Ryan and A Herod, 'Restructuring the Architecture of State Regulation in the Australian and Aotearoa/New Zealand Cleaning Industries and the Growth of Precarious Employment' (2006) 38 *Antipode*, 486, 492.

¹⁶ FWO National Cleaning Services Compliance Campaign 2014/15 Report, March 2016, Commonwealth of Australia.

¹⁷ 97.4% of contract cleaning firms employed 19 or fewer employees or were non-employers (Allday). Fewer than 10 people and 48% of contract cleaning firms are sole proprietors or partnerships: Ryan and Herod, above n 15., 491–2; see also Holley and Rainnie, above n 1, 147, where they state that 'small firms that employ less than five people constitute 60% of the firms in the industry, but only employ 10% of the industry workforce'.

¹⁸ Holley and Rainnie, above n 1, 148–49.

¹⁹ Campbell and Peeters, above n 13, 29.

²⁰ Ryan and Herod above n 15, 495–96. Using a survey conducted by the Property Council of Australia, United Voice indicates that cleaning contract prices fell by as much as 21% in real terms between 1998 and 2006 (<http://www.unitedvoice.org.au/tender/fact-sheets/subcontracting-and-illegal-practices>).

²¹ Ryan and Herod, above n 15, 491–92.

²² United Voice, *Subcontracting and Illegal Practices* <<http://www.unitedvoice.org.au/tender/fact-sheets/subcontracting-and-illegal-practices>>, last accessed 20 January 2017.

²³ Holley and Rainnie, above n 1, 144 see the poor wages paid to cleaners in Australia as a result of the 'dual impacts of industrial relations decentralisation and outsourcing of cleaning services'.

14. For workers, the 'intensely competitive' nature of the cleaning industry can 'encourage or even necessitate' reductions in pay and conditions.²⁴ Rates of pay, which are already low, have been cut at the same time as workloads have increased, cleaning jobs have become more insecure, work rosters have become less predictable and the incidence of work-related injuries in the cleaning industry has increased to more than twice the national average.²⁵ The impact of cost reduction on labour standards has been exacerbated by the increased emphasis on enterprise bargaining in Australian labour law.²⁶ Also, one result of outsourcing is reduced paid working hours but with cleaners 'expected to do at least as much work – often more work and harder work – in less time'.²⁷ Cost pressures also create incentives to circumvent award standards through sham contracting arrangements or underpayment.²⁸

15. To summarise, the supply-chain operating in the industry has resulted in high levels of regulatory and award non-compliance, intensified exploitation of cleaning workers and poor outcomes for businesses.²⁹

Improving the employment standards of cleaners

16. There are a range of mechanisms which could be adopted to reduce exploitation of cleaners. Increased regulation, and enforcement of both legislative and award conditions is one of these mechanisms.

17. The (FWO) has undertaken important work in recent years to highlight the exploitation of cleaners in both retail and other cleaning services. Of notable mention is their recent Inquiry into the procurement of cleaners in Tasmanian supermarkets, which highlighted non-compliance by cleaning contractors at 90% of Tasmanian Woolworths sites³⁰ and more than \$64,000 in underpayments³¹.

18. The FWO has attempted to build in risk for all levels of businesses through the use of 'accessorial liability' provisions of the Fair Work Act 2009 (section 550). These provisions ensure that 'a person who is involved in a contravention of the Act is held responsible for that contravention'³². In doing so FWO creates an environment where companies cannot outsource their non-compliance and risk punishment for non-compliance throughout their supply chain. This is intended to motivate firms to take action to address non-compliance in their supply chain. The extent to which the law will be enforced, however has been questioned. The FWO

²⁴ Holley and Rainnie, above n 1, 155.

²⁵ Liquor Hospitality Miscellaneous Union, *Clean Start Campaign Fact Sheet*, at <http://svc033.wic567dp.server-web.com/_dbase_upl/Clean%20Start%20Facts.doc> (accessed 17 December 2008); see also Herod and Aguiar at 42.

²⁶ Peetz describes this as a bargaining model of labour law D Peetz 'Coming Soon to a Workplace Near You: The New Industrial Relations Revolution' (2005) 31 *Australian Bulletin of Labour* 90 at 91.

²⁷ Holley and Rainnie, above n 1, 48.

²⁸ Campbell and Peeters above n 13, 39–41.

²⁹ Cleaning Accountability Framework, *About* <<http://www.cleaningaccountability.org.au/about>> Last accessed 29 March 2018.

³⁰ See Fair Work Ombudsman *Inquiry into the Procurement of Cleaners in Tasmania Supermarkets* <<https://www.fairwork.gov.au/reports/inquiry-into-the-procurement-of-cleaners-in-tasmanian-supermarkets>> last accessed 11th July 2018.

³¹ See Fair Work Ombudsman *Inquiry uncovers rampant exploitation of Woolworths cleaners* <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/february-2018/20180214-ww-cleaners>> last accessed 11th July 2018.

³² See Fair Work Ombudsman *August 2016 newsletter*. <https://www.fairwork.gov.au/about-us/news-media-releases/newsletter/august-2016/what-is-accessorial-liability> last accessed 22 August 2017.

is relatively small and under resourced so is unlikely to be able to identify and prosecute all breaches of compliance in the retail cleaning or wider cleaning industry³³.

19. Researchers have recognised the limited resources available for enforcement and accepts that public agencies, or isolated actors, cannot address non-compliance except on a case-by-case basis.³⁴ It is also the case, however, that regulation (and its enforcement) must be accompanied by non-regulatory mechanisms. The recent report from the Federal Black Economy taskforce (2017) notes the need for a new social contract, based on a firm commitment from business and community about the necessity of good employment standards. The strategy recommended by the Task Force includes a number of initiatives that, if implemented, would go some way to reducing exploitation in the cleaning industry. These include, for example, having a dedicated social norm agenda that includes education and public awareness, and pursuing a new responsible supply chain agenda; and tougher penalties for phoenixing, ABN fraud and sham contracting.

20. Internationally, a range of other options are being pursued. For example, worker co-operatives, including in the form of platform IT enabled, are re-emerging as an alternative business model to protect those working in the gig economy.

21. There are other possibilities for leveraging the potential of the platform enabled economy for better regulation of gig-work by communities, local authorities and or other stakeholders. An example is Hilfr, a Danish on-line platform through which 1,700 households contract for domestic cleaning services. Hilfr has recently negotiated a collective agreement that applies to its 450 members, which confers worker status and guarantees minimum wages and conditions. Another example is Smart, a Belgium based start-up, that manages contracts with clients for its members and provide them with an employment contract. They thus consolidate gigs into one overarching employment contract.

22. There are also Australian examples of non-regulatory mechanisms for greater protection for workers. In particular, we draw the Committee's attention to the Cleaning Accountability Framework, a project with which CBSI researchers are involved and which forms a key focus of the ARC Linkage Grant.

The Cleaning Accountability Framework: Protecting Workers from Harm

23. The Cleaning Accountability Framework (CAF) is an independent, not-for-profit, multi-stakeholder entity run by a steering committee. It comprises representatives from across the cleaning supply chain, including property owners, property investors, property managers, cleaning businesses, United Voice and industry associations. The FWO is also represented on the steering committee. Not every business within the cleaning supply chain is a member of the CAF; but lead property owners and other businesses constitute a significant proportion of its membership. The objectives of the CAF are to recognise stakeholders that have

³³ T Hardy and J Howe 'Partners in Enforcement? The New Balance Between Government and Trade Union Enforcement of Employment Standards in Australia.' (2009) 22 *Australian Journal of Labour Law* 306-336

³³ See Sydney Morning Herald *Fears some franchisors will get around new vulnerable worker laws* <https://www.smh.com.au/business/workplace/fears-some-franchisors-will-get-around-new-vulnerable-worker-laws-20170905-gyb4up.html> last accessed 11th July 2018.

³⁴ T Hardy and J Howe 'Chain Reaction: A Strategic Approach to Addressing Employment Non-compliance in Complex Supply Chains' (2015) 57 *Journal of Industrial Relations* 563-584.

implemented standards of best practice, approaches to tendering and compliance that promote fair wages and conditions, and quality-focused cleaning services. A feature of the CAF which distinguishes it from some other multi-stakeholder frameworks is robust worker engagement, which legitimises the audits undertaken for CAF of cleaning supply chains³⁵.

24. The CBSI research team is working closely with CAF to understand how a voluntary multi-stakeholder collaboration can facilitate a strategic enforcement approach to improving observance of labour standards across a supply chain. Key questions being considered in the research include:

- a. What are the key multi-stakeholder practices that lead to effective implementation?
- b. What are effective tools for stakeholder-led compliance auditing and monitoring within supply chains in large and diverse industries with well-documented labour-standard issues?
- c. What role will workers need to play in the compliance auditing and monitoring of labour standards?
- d. How can best practices be formalised and operationalised in a certification scheme transferable to other industries?

25. A crucial element of our work with CAF is the development of a tool to encourage direct worker input. Literature has highlighted the need for union monitoring and worker engagement, and effective operation of measures designed to regulate supply chains for employment policy purposes. Worker verification and union monitoring play an important role in preventing workplace violations in some such schemes especially where small businesses typically act as the direct employer³⁶. The research team is focusing on developing a mobile application that would allow workers to both increase their knowledge of their rights and report non-compliance. Such an application used more widely in the cleaning industry would provide effortless and immediate access to information for workers and could prove a useful tool to identify exploitation of cleaners in retail chains and other sections of the cleaning industry. Government promotion of the CAF and support for its extension across the cleaning industry (and other parts of the economy) would go some way to promote the new social contract recommended by the Black Economy task force; and reduce the exploitation of cleaners working for cleaning contractors.

³⁵ See Cleaning Accountability Framework *Worker Engagement Protocol* <<https://d3n8a8pro7vhm.cloudfront.net/cleaningaccountability/pages/23/attachments/original/1485231193/CAF-WorkerEngagementProtocol-web1.pdf?1485231193>> last accessed 6th July 2018.

³⁶ See P James and D Walters, 'What Motivates Employers to Establish Preventative Arrangements? An Examination of the Case of Supply Chains' (2011) 49 *Safety Science* 988 at 993; James, Johnstone, Quinlan and Walters, above n39, 185; Nossar, Johnstone and Quinlan MG, above n 4, 160.

Recommendations

26. We recommend that the Committee:
 - a. Require all Government Departments and agencies ensure that cleaning contracts for government building comply with the CAF
 - b. Promote the extension of the CAF model to other sectors of the economy where worker exploitation is common; or where supply chains are extended
 - c. Promote alternative business models (such as platform-based organisations and cooperatives) as a mechanism for reducing worker exploitation
 - d. Consider the extent to which the recommendations of the Black Economy Taskforce would also assist in reducing worker exploitation in the cleaning industry.