

Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024

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Submission

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Compensation and Other
Legislation Amendment Bill
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Our purpose

To enable the pursuit of a good life for everyone

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Executive summary

Hireup is supportive of workers compensation being provided to 'gig workers', or contractors performing work through online gig platforms. As an unusual mix of online platform and employer, Hireup is sharply aware of the importance of workers compensation for platform workers, particularly in the the disability and aged care sectors in which we operate.

However, we believe the *Workers' Compensation and Other Legislation Amendment Bill 2024* will fail to protect most gig workers if left unchanged from the current version.

From our reading, the approach to workers compensation for gig workers taken in the Bill is based on out-of-date information and a consultation process and respondent feedback that do not reflect the gig economy in 2024.

Work in the gig economy has skyrocketed since the original consultation that underpins the gig worker provisions of the Bill, especially in the care sectors. Tens of thousands of support workers — all of whom would have been employees, covered by workers compensation, just a few years ago — are now working through gig platforms and also contracting directly with clients, with no workers compensation.

This isn't just a problem for these workers and their clients if an injury should occur at work, but it is a significant problem for state financial liabilities, federally-funded service programs, and the wider cohort of responsible employers and providers in the care sectors.

The Queensland Government has the opportunity to protect workers and regulate the labour market as it truly is, while safeguarding it for the future. To do this, the Government must widen the scope of its definitions of worker and employer, and make its own determination about workers who deserve workers compensation. It should also consider prescribing types of workers, for example NDIS support work, as a worker who should be entitled to the protections of workers compensation insurance.

About Hireup

Hireup is a national, NDIS-registered provider of disability support services. Through a secure online platform, Hireup provides people with disability the tools to find, hire and manage their own support workers who fit their needs and share their interests, enabling the principles of choice and control that underpin the NDIS.

As an online platform for support work, Hireup is a rarity: we operate a contractor-free model and directly employ our support workers. This allows Hireup to offer its support workers a range of entitlements such as above-award wages, superannuation, workers compensation insurance and return to work services for anyone injured on the job. In the past year, more than 10,000 people with disability were actively using the Hireup platform, with a similar number of support workers providing support.

Hireup's submission at a glance

- **The gig economy has grown rapidly and encompasses many sectors, including care sector workers**
- **The Bill as proposed will fail to provide adequate coverage to gig workers and contractor care sector workers**
- **Gig platforms are absolutely capable of facilitating and paying for workers compensation**
- **Support workers deserve workers compensation coverage, with high injury rates across the care sectors**
- **Support workers who are directly contracted by individuals should also have access to workers compensation**
- **The costs and consequences of inaction for Queensland are substantial, with costs shifted onto individuals and the public purse**
- **Recommendations:**
 1. Under Section 11, prescribe gig workers who are in a contract for service as 'workers', or similarly within Schedule 2 Part 1 under 'Who is a worker in particular circumstances', prescribe gig workers who are in a contract for service as a worker in that particular circumstance.
 2. Correspondingly, under Section 20, prescribe gig platforms that supply labour for services as 'employers', or prescribe them within Schedule 3 'Who is an employer in particular circumstances' (note: useful identifying features are available in the Federal *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*, at 'Subdivision B—Digital platform work, 15L Meaning of digital labour platform').
 3. A more comprehensive solution is to prescribe workers in certain types of work, such as the approach in WA that deems all NDIS support workers as 'workers' covered by workers compensation insurance. This approach has the benefit of covering deserving workers regardless of the type of engagement, whether it is through a gig platform or a direct arrangements as an individual — it recognises that it is the *type and nature of the work* that matters when it comes to the need for workers compensation, and it is agnostic as to the mode of engagement. This provides for the widest coverage and the least ability for gig platforms and others to avoid their obligations.

Background: gig work in the care sectors

As Hireup's expertise and experience falls within the care sectors, mostly in the NDIS and also in aged care, we will describe our position from the perspective of these sectors.

According to a McKell Institute report released in April 2023, it is estimated that around 250,000 individuals currently operate as gig workers across Australia.¹ The report does note, however, that there is no official data to quantify the true breadth or extent of work in the Australian platform sector. Given that approximately 230,000 people were classified as 'gig workers' in the Victorian workforce in 2019,² it is likely the total number far exceeds the 250,000 estimate made by McKell in 2023. Based on population size, Queensland would have at least 51,000 gig economy workers of McKell's estimated 250,000. Given that gig economy workers tend to operate in more densely populated areas, an estimate of 100,000 is probably more likely to reflect the current market reality.

While the true number of gig-workers operating across Australia may be severely underrepresented, what is evident is a rapid increase in the number of workers acting as so-called 'independent contractors' under the banner of an online platform. Platforms exert significant control over these workers, yet insist they are merely intermediaries with little or no obligation owing to their workers or governments.

Due to the nature of direct funding to individuals for care and support services, it is now a straightforward process for recipients, such as NDIS participants, to directly engage individual support workers using those funds. This is commonly arranged by engaging workers as independent contractors/sole traders, either in a direct contract, or a contract facilitated through an online 'gig' platform.

The ability to contract workers, instead of employing them, can be attractive due to the possibility of reducing costs and therefore the price of services. Cheaper services means more hours of support can be purchased.

However, these lower costs are often directly brought about by avoiding paying for the entitlements, conditions, and protections of employment — for example, penalty rates, superannuation, or workers compensation insurance.

This is one of the incentives that has led to the huge popularity of digital labour or gig platforms, which provide a connection point for participants and workers, as well as providing the service contract between them, all communications, shift bookings, and invoicing and payments related to the work performed on those shifts.

There are now up to 20 such platforms in the care sectors, and there are likely to be 30,000 - 50,000 support workers engaging in work in this manner in the NDIS (e.g. the single largest platform has 18,000 workers).

¹ <https://mckellinstitute.org.au/wp-content/uploads/2023/03/McKell-Tough-Gig-Report.pdf>

² <https://agedcare.royalcommission.gov.au/system/files/2020-08/RCD.9999.0361.0062.pdf>

Most, if not all, of these platforms are private, for-profit companies. We estimate that, collectively, platforms offering support workers to NDIS participants have raised more than \$200 million of private investment between them, and some platforms have company valuations of more than \$100 million. Platforms are no longer small, innovative start-ups, uncertain of their future — platforms have grown to be very large, very dominant forms of support service delivery. And they are here to stay.

Why have platforms become so popular in the care sectors?

Platforms present many positive elements — for clients, platforms are a way of fully embracing the ideals of choice and control, and person-centred care. They assemble a large, diverse cohort of support workers from which participants can find the specific people who best fit their needs and meet their interests. From there, platforms offer a flexible, efficient way to book services that can be done from anywhere, on a host of different devices, and with in-built accessibility features.

Platforms can empower clients to achieve the full autonomy and dignity that was historically missing from aged care and disability services, as well as helping to form better connections to their local communities through local support workers.

For workers, too, platforms present the option of greater flexibility in working arrangements, as well as the same level of choice as clients in terms of who they work with. Platforms allow workers to make choices about their work that are not commonly available in care sectors, while presenting easy systems of arranging shifts at the tap of a keyboard or a smartphone. Workers can arrange shifts to suit their availability and lifestyle, as well as creating new connections and support relationships locally, in their own communities.

Working conditions for contractors on gig platforms

Almost all care and support work platforms, and the workers providing services on them, currently operate virtually unregulated by industrial relations laws and minimum working standards. There are limited external safety and quality oversight checks on services, and no set working conditions or standards for the workforce.

This phenomenon has always been challenging, but it has been magnified by the rapid rise of platform marketplaces, which generate hundreds of millions of dollars in revenue from NDIS and aged care funding by engaging and deploying tens of thousands of ‘independent contractor’ support workers. The platforms are perceived to represent all of the benefits of a large organisation, yet in reality they have none of the usual obligations to workers, or clients.

Under this rapidly growing contracting model, there are compelling marketing messages to lure workers: ‘be your own boss’ and ‘set your own rates’. But in reality, there is no minimum wage, no workers compensation if an injury occurs, no

superannuation payments, and no organisational liability or support if an incident occurs. The platforms profit by taking a cut from the hourly rate of the platform's workers, but bypass most of the regulation that would normally govern delivery of care and support services. Meanwhile, responsible providers are burdened with the weight of regulation and oversight, and unable to compete on price.

The Bill fails to provide adequate coverage of gig and contractor workers

We support the intentions of the Bill to provide for workers compensation coverage for gig workers, however ultimately we believe the Bill will fail to meet that goal, and certainly won't meet it in a comprehensive or timely manner.

First, we are concerned that Bill abdicates Queensland's responsibility for determining who is eligible for the state's own workers compensation scheme — in terms of gig workers — because, under proposed Section 11(1)(b), it hands that decision to the Fair Work Commission's future process of determining minimum standards for employee-like gig workers. We urge the Government to take control of this vital policy area and make its own decisions about the sorts of workers that it believes should be covered by workers compensation, but are currently not eligible. Certainly, that cohort of workers extends well beyond the types of workers likely to be covered by a future minimum standards order through the Fair Work Commission. For example, directly contracted disability and aged care support workers, which are referred to below.

Second, by handing this decision to a tribunal, through a new system that is untested, with lengthy processes, consultations and judicial proceedings of its own, the Government would guarantee lengthy delays for any potential future workers compensation coverage, potentially multiple years. The need for action is urgent, it should not wait until an unknown, untested application works its way through a new process in the Fair Work Commission.

Third, as implied above, the limitation of only providing workers compensation to gig workers covered by a minimum standards order will restrict that coverage to workers fortunate enough to be included in a successful application for that order. There are hundreds of thousands of gig workers in dozens of industries on platforms, and the Queensland Government should be capable of deciding the types and categories of workers that require workers compensation coverage through principles and rules, not at the whim of whether or not an application was made to a tribunal.

Fourth, the 2019 'Consultation Regulatory Impact Statement'³ (RIS) and 2024 'Decision Impact Analysis Statement – Gig workers and bailee taxi and limousine drivers'⁴ are, sadly, woefully inadequate as an evidence base underpinning the policy approach for gig workers in this Bill — mostly due to being shockingly out of date and therefore not a true representation of today's gig economy and gig workforce. The 2024 decision has been based on a consultation that occurred in 2019, some five years ago. Five years, in a technology-based sector such as gig platforms, is alike to multiple decades of progress in other sectors. Change is rapid, new startups and failures can happen in the blink of an eye, and new business models are constantly evolving and testing the boundaries of regulations in order to find niches in markets and competitive advantage.

Put simply, it should be unacceptable to make a decision that will ultimately impact tens of thousands of workers when so much change has happened between the gathering of evidence and the policy decision. For example, in the care sectors alone, the number of platforms changed from a handful to around 20 different platforms in that time alone. The number of workers on those platforms has ballooned from around 5,000 to upwards of 30,000 to 50,000.

In addition, the focus was largely on transport sectors, while in the meantime the gig economy has sprung up in dozens of other sectors, including the government-funded care economy — yet this does not appear to be a consideration of either document. Further, the number of respondents that gave feedback to the original consultation appears to be between 10 and 20, an absurdly low number which surely should not be considered a comprehensive enough base upon which to make (or choose not to make) far-reaching amendments to the workers compensation scheme. To the outside viewer, this could be described as farcical.

Finally, as referred to above and discussed in more detail below, the Bill fails to account for the need for workers compensation coverage for directly engaged contractor workers, which are particularly noticeable in the care sectors. The explosion of the gig economy created a new appetite for people to directly contract individual workers to cut the costs of services, and this new 'grey' economy now boasts tens of thousands of workers in the care sectors alone — yet this Bill will do nothing to ensure these support workers, whose work is of an employee-like nature and who would previously have always been employees, are protected by workers compensation insurance.

³ https://www.worksafe.qld.gov.au/_data/assets/pdf_file/0026/19277/ris-gig-taxi-limo-industries.pdf

⁴

<https://www.oir.qld.gov.au/system/files/2024-02/decision-impact-analysis-statement-gig-workers-bailee-taxi-limousine-drivers.pdf>

Workers compensation is critical for care sector gig workers

Access to workers compensation insurance coverage is vital for disability and aged care support workers. It is well-documented that these sectors have a far greater occurrence of workplace injuries than other sectors.

For example, in the *2021-2022 Australian Bureau of Statistics, Work related injuries report*, it was found that the rate of injury for community and personal service workers was double the national average for workplace injury.⁵ The most common cause of injury was 'lifting, pushing, pulling or bending' — common requirements in support work. Consequently, it is of the utmost importance that there is adequate insurance to protect disability support workers, given the increased likelihood of a workplace injury.

In addition, while some platforms claim to provide personal accident insurance to support workers (as part of the fees paid by the workers to platforms), many platforms provide no insurance for personal injuries at work. Even when platforms do provide some level of personal accident insurance, it is a very poor substitute for workers compensation.

For example, the largest platform for contractor support workers provides insurance that pays up to a maximum of \$1,000/week to an injured worker, where the Queensland workers compensation scheme currently pays up to 85% of a worker's usual weekly earnings or the pay rate specified by the relevant industrial award, or \$1,408/week if using the Adult Average Time Earnings method. In the tragic case of a fatality at work, the same large contracting platform provides a lump sum payment of \$250,000, compared with up to \$712,855 under the Queensland scheme. The Queensland scheme is also far more generous in ongoing and additional payments to dependents and families of workers.

However, many platforms simply offer no insurance for accidents or injuries of workers of any kind.

Finally, if we take the NDIS as an example, the cost model that underpins the price limit per hour of disability support work explicitly provides for the cost of workers compensation for these workers. Therefore, when NDIS participants are provided with funding for these services, the cost model that determines the prices and funding packages assumes that workers compensation is being paid. So not only is workers compensation critical for the wellbeing of this workforce, but it is being funded for these workers by taxpayers through the NDIS. In that case, states should make workers compensation cover mandatory when engaging NDIS support workers, regardless of the method of engagement.

⁵ Work-related injuries report FY 21-22, Australian Bureau of Statistics, <https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/work-related-injuries/latest-release>

Platforms can easily implement workers compensation obligations

Care sector platforms already perform a comprehensive set of “employer-like” functions for their support workers, including worker verification and financial transactions such as invoicing and wage payments (for a full run-through of these functions and interactions, please see the [Appendix](#) at the end of this submission).

These existing functions, and the fact that platforms already use technology for all work arrangements, mean platforms are perfectly placed to take on a role as the ‘employer’ for the purposes of workers compensation. They have systems and structures in place that will enable them to facilitate workers compensation insurance, just as Hireup does through our platform for our employed support workers. It’s worth noting that a number of care sector platforms already provide a range of insurances for their workers, sometimes including personal accident and injury insurance, which acts as a lower-quality version of workers compensation.

Direct contracting arrangements in the care sectors

Direct contracting arrangements, resulting in a client-to-contractor relationship similar to arrangements facilitated by platforms, are also sought on classifieds or job-seeking websites. There are now numerous Facebook groups set up to directly connect clients and workers, which showed more than 80,000 members in total at last count.

These arrangements mean that individual care sector clients directly engage individual support workers to provide services, without any intermediary, without oversight or accountability, and with very few workplace protections. The scale of these arrangements is large and growing, and it should be noted that many care sector workers work as part-time employees and then also offer themselves for shifts working directly with clients, through an ABN as a contractor, to make up more hours of work.

However, because these are not employment arrangements the workers rarely qualify for workers compensation coverage, and thus more and more support workers are unprotected should something go wrong providing their services.

This has been described as the household ‘grey economy’ by researcher Fiona Macdonald, particularly in her report *Unacceptable Risks: The Dangers of Gig Models of Care and Support Work* (Centre for Future Work, May 2023), and we recommend committee members read this report for further context.⁶

It is worth noting that there are incentives at play in avoiding costs such as workers compensation, as people have limited funds to pay for services, so any perceived savings from the client side can be an incentive to purchase a particular service at a lower price than a similar service. The absence of any mandatory workers compensation for support workers has the potential to add to other ‘opt-in’ costs for

⁶ <https://futurework.org.au/report/unacceptable-risks/>

contractors, such as superannuation, to further incentivise the ongoing growth of contracting in care sectors and other community services, to the detriment of the guaranteed rights and conditions of employment.

Consequences and potential loss for Queensland if no further action

Aside from the obvious benefits of workers compensation for workers, it also provides benefits to the state. Therefore, Queensland faces significant consequences and potential losses if the Bill is not widened to include all workers deserving of workers compensation insurance. The most clear consequences and financial losses are the manner in which costs that would otherwise be covered by workers compensation insurance are shifted into the public system.

Gig platforms are known for their deftness at 'socialising losses while privatising profits'.

1. **Queensland's public health system & Motor Accidents Insurance Commission (MAIC) bear the cost for contractor gig worker injuries:** The operating model of contractor platforms largely results in contract workers being left with little to no workers compensation (or private insurance) coverage. This means when a gig worker is injured, they can only turn to the public health system to receive medical treatment and rehabilitation, or if injured in a transport accident, the costs are borne by the MAIC. Ultimately, it is other taxpayers and the Government who are forced to cover the costs. The high incident rates in the care economy could easily amount to tens of millions of dollars of extra health care costs to the Queensland Government, as well as upward pressure on Motor Accident Insurance premiums.

A second and lesser-known issue is the possibility of turning workers compensation schemes into unfunded liabilities for states:

2. **Other businesses can end up paying the WorkCover costs for platform worker injuries:** Recent legal cases in NSW and Victoria have set a concerning precedent that may see state and territory-based workers compensation schemes required to cover the costs of contract gig workers — despite no contribution being made to the schemes by gig platforms operating under a contractor model.

To take the NSW example, in 2020, a worker was tragically killed in Sydney while performing a food delivery job for the Hungry Panda platform. Despite being a contract gig worker and not an employee, his family received the full rate of workers compensation under NSW's iCare scheme. While the man's family deserved the full rate compensation, this precedent is concerning because it means other contributors to workers compensation are left to pay the bill — not Hungry Panda. Hungry Panda received the benefit of workers compensation without ever contributing to it. Other businesses that do

contribute are left with ever-increasing premiums that cover the gap — a double whammy that further disincentivises an employment model. This has the potential to collapse a scheme that is already under pressure.

If Hireup's average workers compensation premium per worker was extrapolated to the estimated 51,000 gig workers operating in the QLD, it would amount to a substantial boost in WorkCover contributions: at least \$16 million per annum.

The 2019 RIS itself estimated that the cost distribution for gig workers who are not entitled to workers' compensation came to over \$73 million, with the community footing more than 50% of that bill, and gig platforms only 10%.

Care sector employers are undermined and made unviable

A further reason it is important to apply workers compensation as broadly as possible across the care sectors and the gig economy is that, in situations where workers are offering to work without the cost of workers compensation or other elements like superannuation built into their price, it means these workers are providing a cut-price, but high-risk service. Understandably, people are attracted to lower prices in order to get as many hours of support services from their limited budget as they can.

The result of this is that directly engaged workers through platforms can undercut the broader provision of services by responsible workers and providers in both the NDIS and aged care, which is undermining the ability of the sector as a whole to remain viable. Further, where there are loopholes available to exploit, it incentivises people to *avoid* costs such as workers compensation in order to offer similar services to others but at a lower price.

This is the current state of the uneven competitive playing field in care sector markets in Australia. The mandatory requirement to provide workers compensation to support workers directly engaged or engaged through platforms will thus not only benefit those workers (and their clients), but also help to maintain a level competitive market in which providers face similar costs. This will help the care sector to maintain viability and compete on the more valuable proposition of service quality, not the lowest prices.

Developments in other jurisdictions

It is notable that other Australian jurisdictions have begun making changes to provide workers compensation and work health and safety coverage to gig workers and care sector workers, for example:

- In WA, NDIS support workers have been 'deemed' as workers for the purposes of workers compensation, meaning that regardless of the method of their

engagement, the person employing or contracting the worker must provide workers compensation insurance.

- In NSW, the Government has committed to provide workers compensation to gig workers, with details expected later this year.
- Also in NSW, SafeWork NSW has developed strong guidelines for work health and safety obligations in the disability sector, including for gig workers and gig platforms.⁷

Recommendations

There are numerous ways the Queensland Government could achieve wider workers compensation coverage for both gig workers and the growing cohort of contractor workers in the care sectors. These include:

1. Under Section 11, prescribe gig workers who are in a contract for service as 'workers', or similarly within Schedule 2 Part 1 under 'Who is a worker in particular circumstances', prescribe gig workers who are in a contract for service as a worker in that particular circumstance.
2. Correspondingly, under Section 20, prescribe gig platforms that supply labour for services as 'employers', or prescribe them within Schedule 3 'Who is an employer in particular circumstances' (useful identifying features are available in the Federal *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*, at 'Subdivision B—Digital platform work, 15L Meaning of digital labour platform').
3. A more comprehensive solution is to prescribe workers in certain types of work, such as the approach in WA that deems all NDIS support workers as 'workers' covered by workers compensation insurance. This approach has the benefit of covering deserving workers regardless of the type of engagement, whether it is through a gig platform or a direct arrangements as an individual — it recognises that it is the *type and nature of the work* that matters when it comes to the need for workers compensation, and it is agnostic as to the mode of engagement. This provides for the widest coverage and the least ability for gig platforms and others to avoid their obligations.

⁷ <https://www.safework.nsw.gov.au/your-industry/health-care-and-social-assistance/disability-support>

Appendix: Support worker interactions with online platforms when delivering care services

Below is an example of a contractor worker's interactions with an aged care or disability support gig platform:

1. A worker **applies to the platform's website** to be a support worker by submitting personal details, identity documents, relevant checks (police and other screening checks if required), any training qualifications if required, and referees.
2. The platform conducts **extensive verification** — identical to the process followed by all responsible employers.
3. If verified by the platform, it may **contact the worker directly** and **contact the worker's referees**. (However, even though they carry it out, most platforms do not accept legal responsibility in their Terms of Use for this 'verification'.)
4. The worker formally agrees to the **platform's terms of use**
5. The worker is **approved by the platform** to begin to work using the platform.
6. The worker **uploads a profile to the platform's** website to advertise their support services and appear in searches conducted by prospective clients.
7. The worker receives a **message (communication) through the platform's software** from a prospective client regarding potential to be engaged for support work, or sends a message to a prospective client who has posted their needs on the platform.
8. The client and worker then communicate through the **platform's messaging software** about support requirements, compatibility, and availability.
9. (A worker and client may also agree to meet in person to decide their personal compatibility before booking a shift.)
10. Through the platform, the worker and client **book a support shift** for a specific time and date (and, if the platform allows the rate to be negotiable, an hourly pay rate is agreed).

Note: Platforms argue they do not control or direct activities on the shift, nor do they allocate tasks. That is because, in the vast majority of cases, the individual client does. Platforms rely on this convenient fact to claim these relationships are not delivering services, where in

fact, they are identical to any 'traditional' home care employer that allocates staff but allows tasks, activities and duties to be agreed on by the individuals.

11. The support shift is undertaken, and during the shift the platform also **provides insurances** such as personal accident and public indemnity.
12. The worker and client **confirm the shift** through the platform that the shift has been finalised (with any additional agreed costs such as vehicle use) — and **inform the platform** if any incidents have taken place.
13. The platform **invoices** the client for the agreed shift cost based on the hours worked and the worker's pay rate, plus the platform's fees.
14. The client **pays** the platform.
15. The platform **deducts its fees** — (1) from the client's payment, and (2) from the wages of the worker.
16. Finally, the platform **pays the worker** their resulting **gross wage**.
17. If an incident occurs on shift, the platform may have an incident reporting system for either party to contact (however, platforms generally do not accept responsibility to remedy any incidents, which can be profoundly confusing for users).

This is not the end of the platform's involvement. Steps 10-17 are repeated for each and every support shift, which tend to last months or years.

Beyond the above, platforms offer or provide a range of services that are usually the responsibility of an employer. This includes:

18. **Training**, often via online module
19. **Complaints investigation and handling** — this extends to control over whether the worker will be permitted to remain on the platform, or banned.
20. **Ratings and reviews** of workers is becoming an increasingly common form of algorithmic control over how prominent a workers profile might be. This can disincentivise raising genuine workplace problems.
21. **Engagement with sector regulators** on behalf of the 'community' of contractors.
22. Much like (21), platforms may engage in government **advocacy** to seek changes on behalf of their workers and clients.