



13 October 2020

Tim Pallas
Minister for Industrial Relations Victoria, and
Department of Premier and Cabinet

Via email: ondemandinquiry@dpc.vic.gov.au

Dear Minister Pallas,

RE: CONSULTATION ON THE ON-DEMAND INQUIRY'S RECOMMENDATIONS

Thank you for the opportunity to make a further submission regarding the recommendations of the Inquiry into the Victorian On-Demand Workforce.

The Victorian Trades Hall Council (VTHC) is the peak body for unions in Victoria and represents 40 affiliated unions and over 430,000 workers that reach into every industry in the state, both in the public and private sector. From the eight-hour day, to occupational health and safety laws, few, if any, campaigns for workers' rights have been won without Victorian unions. Ensuring all Victorian workers are safe, respected and are protected by hard-fought workplace entitlements is core work to unions.

Worker exploitation in the gig economy is part of a broader movement by employers towards insecure work and corporate avoidance of employment and occupational health and safety laws. Victorian unions have been grappling with this avoidance for years now, culminating in the exploitation we're currently seeing and the rise in gig workers during COVID-19.

This Inquiry presents a great opportunity to level the playing field for some of the state's most vulnerable workers. It is paramount that Victoria does not delay on acting; waiting for Federal action that never eventuates means workers in our state remain without justice.

VTHC's submission includes 17 recommendations that would ensure the Victorian Government is proactive, creative and centres the needs of Victorian workers.

If you have any questions, please don't hesitate to contact Felicity Sowerbutts, Director of the Young Workers Centre based in the Victorian Trades Hall Council, on 0421 856 786.

Kind regards,

A handwritten signature in black ink, appearing to read "Carina", is written over a light blue rectangular background.

Carina Garland
Assistant Secretary, Victorian Trades Hall Council
CG:TC

LUKE HILAKARI
Secretary

CARINA GARLAND
Assistant Secretary

WILHELMINA STRACKE
Assistant Secretary

Trades Hall
54 Victoria Street Carlton 3054
Phone: 03 9659 3511
info@vthc.org.au
vthc.org.au
weareunion.org.au

VTHC Submission to the On-Demand Inquiry's Recommendations



Introduction

The Victorian Trades Hall Council (VTHC) welcomes the opportunity to make a submission to the consultation on the Inquiry into the Victorian On-Demand Workforce's recommendations.

The Inquiry into the Victorian On-Demand Workforce (the Inquiry)'s report gave thorough consideration to the issues faced by workers, including many vulnerable workers, who utilise the 'gig economy' to obtain an income. It clearly identified that inconsistency and a lack of certainty regarding who is an 'employee' and therefore who is restricted from accessing the hard-fought rights and entitlements employees receive, is driving the emergence of the gig economy.

Many if not the overwhelming majority of workers using these gig work platforms should be deemed 'employees' and have the rights associated with an employment relationship, yet contracts are written to deliberately carve out these entitlements. While codifying the employment relationship under Commonwealth legislation, particularly the *Fair Work Act (Cth)* 2009, would easily resolve these issues, Victorian workers cannot afford to wait for a federal response. Victoria must be creative and proactive in how it addresses exploitation of gig workers.

Companies motivated by profit are inherently looking for ways to reduce their bottom line. It's no wonder we've seen workers who would otherwise be employees reclassified as "independent contractors" in a range of industries adopting the gig work model. Food delivery and taxi services are obvious examples, and Victorian unions are also concerned about the rates of workers being forced into gig work in industries such as aged and disability care, health work, construction and trades, arts, security and a range of professional industries.

The very existence of these gig work platforms incentivise employers to falsely classify their workers as "independent contractors" to avoid their obligations, and puts at risk the milestones workers in union and successive governments have reached in protecting vulnerable workers - wage theft laws, portable long service leave, OHS protections and other protections are on the line. Further, as more workers are falsely deemed "independent contractors", Victoria's revenue will diminish, as will payroll tax.

The Victorian Government must act now to curb these gig worker platforms undermining the very basis of workers' rights and entitlements.

The Inquiry made a number of recommendations that the Government should implement to make the necessary changes. This submission includes the interim perspectives of over 100 workers engaged through gig work platforms, including apps and websites, who were consulted about the changes they seek to the gig economy. These consultations are ongoing. Representatives from 11 Victorian unions have also met to discuss the recommendations and their views are represented in this submission. VTHC will expand upon the practicalities of the Inquiry's recommendations and emphasise that Victorian unions see their implementation as key to protecting workers.

Uncertainty of the work status test

Victorian unions affirm the Inquiry's view that the uncertainty of the work status test is the root cause of gig work platforms corroding workers' rights.

During consultations, gig workers responded to a range of questions including whether they see themselves as an employee or independent contractor. While 68% of respondents said they see themselves as an independent contractor, only 17% said they chose gig work to 'be [their] own boss'. Corporations relying on gig work drill into their workers over and over again that they are "independent contractors" despite the elements of the control indicia being present.

On the amount of control so-called "independent contractor" gig workers have over their work, 74% said they could not set their pay rate, 48% said they could not choose which jobs they accept, and 58% said they can be penalised or banned from their app if they reject certain jobs. In this way gig work corporations are maximising their profit off the backs of their workforce, while denying them any of rights or protections.

A number of gig workers also highlighted that the insecure nature of their work further affirms the feeling that they have little control over their "independent contracting".

"I have to keep my rates low to get the job."

"I am technically a contractor, but Airtasker is very exploitative. I've seen other taskers accepting contracts at below Award rates."

"I have no guarantee of consistent work/income."

"The company bans you for passing on business details (I have a registered ABN and Name) under the guise of "privacy". What it actually does is prevents users from bypassing their app."

Gig workers were asked to rate potential reforms discussed by the Inquiry from 1-10; 1 indicating they do not support the recommendation and 10 indicating their strongest support. They were asked whether the ability set their own rates would be a useful reform in dealing with the issues of the gig economy, and this had the lowest support amongst respondents, with only 48% assigning it a 10.

This indicates that given the choice, gig workers don't want to be genuine independent contractors, but would rather have the entitlements present in an employment relationship. For example, 78% of respondents said reform enabling them to be paid a minimum wage had their strongest support and assigned it a 10.

I want to see stronger disincentives and penalties for platforms that intentionally neglect their legal responsibilities to workers (e.g. by wrongly classifying them as independent contractors)

I want platform workers to be able to set their own pay rates with customers/clients, rather than have their pay dictated entirely by platforms.

I want laws to ensure gig economy workers are paid a minimum wage and no longer have to offer their services at lower rates to compete for jobs.



To address this issue, the Inquiry made recommendation 6 and 7; to codify the work status test and to ensure all laws that rely on the common law definition of employee be updated.

Victorian unions support this approach, but are cautious.

Working people deserve hard fought rights such as secure wages, sick leave, superannuation and OHS protections regardless of their industry or relationship of employment as deemed or otherwise by a contract.

Since their inception, unions have dealt with employers finding ways around these rights, and employers searching for loopholes to undermine workers’ rights and the important role of organised labour. Gig economy platforms are constantly changing their models of operations to deal with regulation and avoiding their obligations.

Codification needs to be carefully implemented so as to avoid further marginalising workers. Unions have experience with, for example, employers who manipulate their rosters resulting in workers missing union meetings or important enterprise bargaining votes or employers who have casualised entire workforces as they get close to finalising their enterprise agreement.

The option to employ workers insecurely needs to be minimised to the fullest extent possible.

Codification must have the effect of increasing access to workplace rights and entitlements. In any codification of the employment relationship, Victorian unions emphasise that:

- There must be a reverse onus, so it is assumed that all workers are ‘employees’ unless it can be genuinely proved by the employer/principle contractor that they are not,
- ‘Dependency’ must be a key component of the test, with genuine regard being had to the bargaining position of each party in the contract of employment/contract,
- Workers engaged to perform the ‘core work’ of the business must be presumed to be an employee.

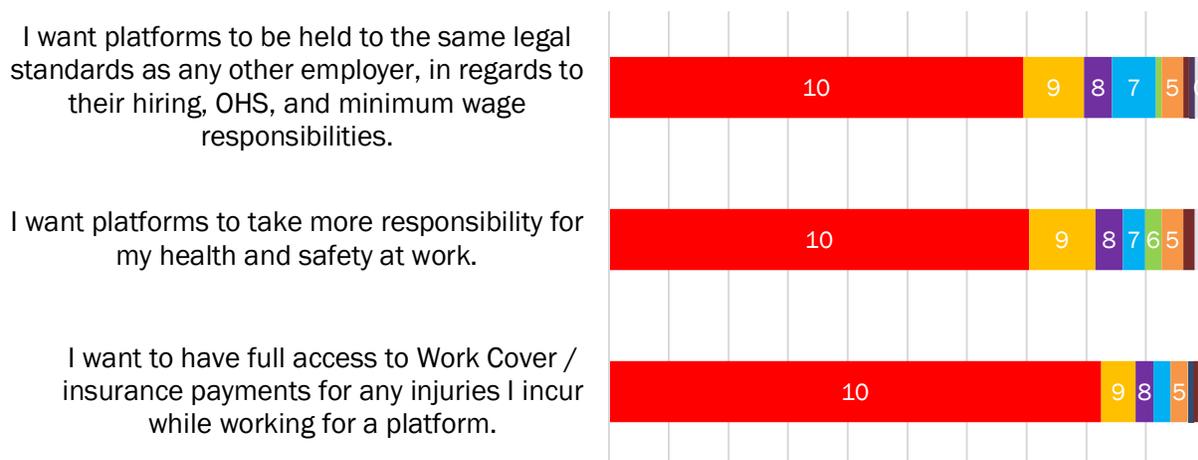
The US state of California has recently implemented new laws that could serve as a model. Here, a worker is considered an employee unless all three limbs can be met of what is known as the “ABC Test”:

- a. The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- b. The worker performs work that is outside the usual course of the hiring entity’s business; and
- c. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.¹

Extending employment rights through OHS

While the Victorian Government is restricted constitutionally, the ABC Test may be able to be applied to legislation such as the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), the *Occupational Health and Safety Act 2004* (Vic), and the *Wage Theft Act 2020* (Vic). This would give the Victorian Government the opportunity to regulate genuine independent contracting and employment.

It is important that the opportunity to implement reform via OHS law is taken, as gig workers feel they have diminished access to OHS protections and are at risk at work. When asked to rate potential reforms “I want to have full access to Work Cover / insurance payments for any injuries I incur while working for a platform” had the strongest support of any proposed reform; with 79% of respondents assigning it a 10.



The Victorian Government must also consider defining ‘the workplace.’ Currently, there is little accountability for workers engaged through gig work platforms.

¹ Assembly Bill (AB) 5 (California) 2019

For example, one food delivery rider told VTHC they felt safer riding through the back streets as they were able to avoid tram tracks and car doors. It took them approximately 1-2 minutes longer to reach the customer's house, but meant they felt safe in their work. Despite there being no complaint from the customer, the app informed the worker they were working 'fraudulently' and had take the route as prescribed by the platform. Workers on these apps have no 'manager' they can speak to about their safety and don't know who makes these kinds of decisions.

There is no accountability or transparency.

When asked who they would turn to if they had been unfairly banned or disciplined by their platform, gig workers were overwhelmingly lost; 19% said they wouldn't know where to turn and 52% said they would try to 'Google the answer'.

This problem also applies to disability support workers and aged care workers. Websites like Mable.com and Care.com sign up workers and distribute their labour to participants under schemes such as the National Disability Insurance Scheme (NDIS). Here, control over OHS protections can be a major issue as workers are entering the homes of those who need care which are often not set up to prescribe with regulations, or they may be subject to harassment or generally exposed to unsafe conditions. This is in context where risk is increasingly being outsourced to marginalised workers in high-risk settings, which has been exposed by COVID-19. At a minimum, these platforms need to observe standard infection control and provide PPE, neither of which rate a mention on their websites.

Further, the process of dispute resolution has denied workers due process. If a participant complains, workers who are deemed "independent contractors" through these platforms automatically have their work terminated. There is no one that workers can go to in order to challenge these decisions.

Victorian unions believe there is a broad ability to define 'the workplace' under OHS and workers compensation laws and assign responsibility.

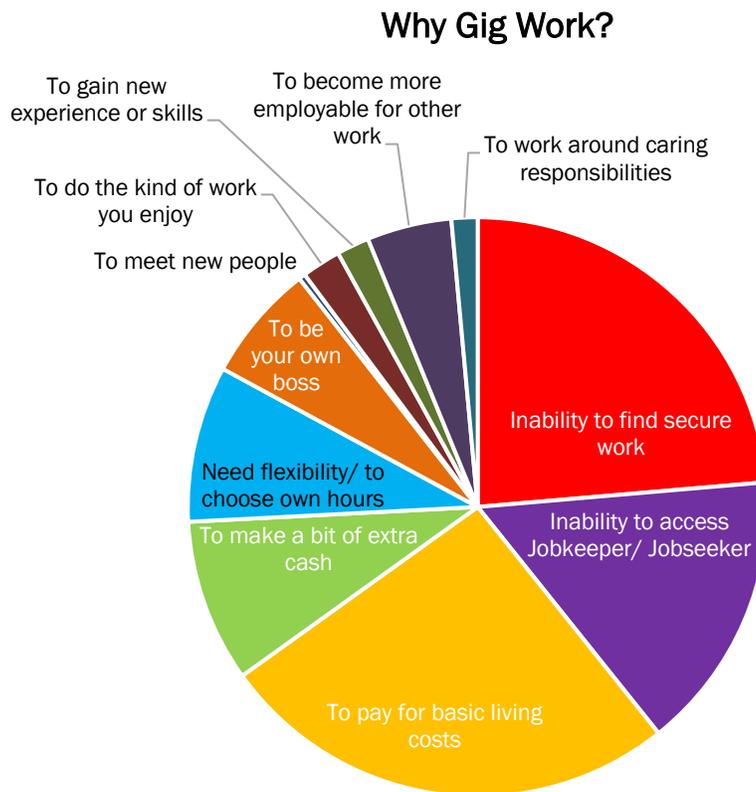
Recommendation 1: investigate amending the Workplace Injury Rehabilitation and Compensation Act 2013 (Vic), the Occupational Health and Safety Act 2004 (Vic), the Wage Theft Act 2020 (Vic) and other Victorian legislation that extends to employment to include:

- a. *The ABC Test;*
- b. *A reverse onus on employers to prove their worker should be deemed an independent contractor; and*
- c. *A definition of 'the workplace' that extends to gig work platforms.*

Increase in vulnerable workers accessing work via platforms

Workers employed in the gig economy report widespread exploitation including wages far below minimum rates set under Awards, contraventions of their OHS, insecurity, harassment, and long hours waiting around.

In VTHC's consultations gig workers were asked why they use platforms to gain work. Gig workers were able to select multiple answers, and 60% said it was due to an inability to find a secure job or other work, 40% said it was due to an inability to access support schemes such as JobSeeker, and 66% their gig work is used to pay for basic living costs.



Gig workers were also asked what, in their perspective, were some of the biggest issue for them in the gig economy, and 81% said the 'low pay'; 56% said 'inability to bargain collectively with other workers or negotiate for better pay and conditions,' and 41% said 'addressing grievances/ resolving issues with a platform.'

Gig workers are also piecing together their income; with 77% of respondents reporting they are engaged through more than one platform. In many cases, they use up to five. The most common platform used was Uber, with 36% of respondents working as an Uber driver, and 46% workers as an UberEats delivery rider.

It is also common for gig workers to undertake multiple types of work, with 24% working in more than one industry. Delivery including food delivery was the most common type of work, with 67% of respondents reporting working in this industry, 31% reported working in transport, 16% in odd jobs/tasked based work, 13% in professional work, and 9% in hospitality. Gig workers also commonly work in healthcare, administrative work, and caring work.

Gig economy jobs are not good, secure or well-paid jobs. They're far from the 'flexible work' that corporations relying on gig-work like to promote. In fact, only 22% of respondents said they worked in the gig economy for the 'flexibility' and only 4% said it worked around caring responsibilities.

The prevalence of gig work depends on vulnerable workers desperate to derive an income. It is little wonder that migrant workers and international students, workers without access to the social safety net and who often face discrimination, dominate gig work platforms.

However, throughout the COVID-19 recession, in desperation to supplement their income, the rates of workers taking up work via gig work platforms has increased. Respondents to VTHC's consultations reported that 24% had taken up working in the gig economy within the last year.

While nationally, the unemployment rate dropped from 7.5% in July to 6.8% in August,² there was a surge in the number of "independent contractors". Out of those new jobs added, it is predicted 50,200, or around 45%, are in the gig economy.³

During the pandemic, Uber reported a 50% increase in users and increased rider numbers to reflect that.⁴ Further, for this period, total hours worked in August only increased by 0.1%,⁵ meaning more workers are sharing the same amount of work, resulting in increased insecurity and effectively reduced wages.

The graph on the next page plots the increase in gig economy work throughout Australia for the month of August.

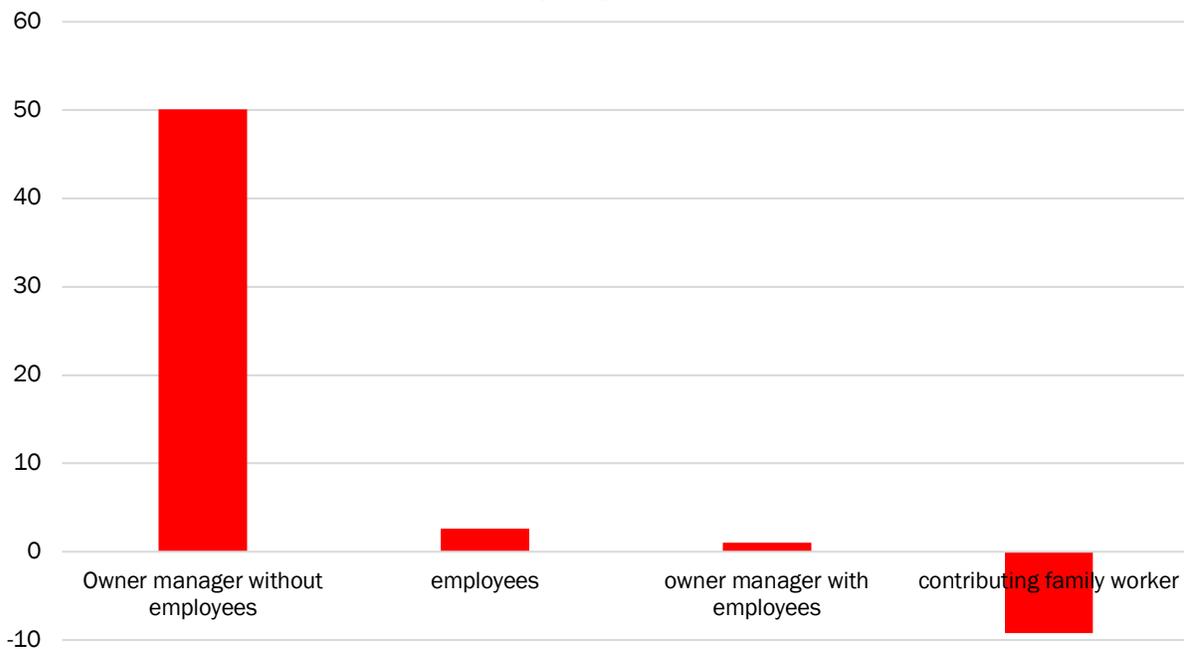
² Australian Bureau of Statistics, Labour Force Data August 2020

³ Australian Bureau of Statistics, Labour Force Data, Detailed August 2020

⁴ Derwin, J "Desperate for work': the gig economy is booming but the jobs it's creating aren't the ones Australia needs", *Business Insider*, 22 September 2020, accessed <https://www.businessinsider.com.au/gig-economy-australia-work-rideshare-jobs-2020-9>

⁵ Australian Bureau of Statistics, Labour Force Data, Detailed August 2020

Increase July-August, Australia



As Victoria emerges from its second lockdown period, it is absolutely critical that it bucks this trend. While these figures indicate there has been a surge in gig economy work, VTHC's consultations also demonstrated the precarity of workers before the COVID-19 health crisis, as 43% of respondents had been working in the gig economy between 1-2 years, 19% for 3-5 years and 13% for more than 5 years.

The Victorian Government must do all that it can to ensure Victoria does not rely on the gig economy for workers looking for secure, well-paid, meaningful work. This must include ensuring all of government spending drives the recovery from the COVID-19 pandemic and results in secure jobs. A key measure in this recovery should be addressing government procurement to ensure that spending is not used to further outsource work or lead to insecure employment.

Recommendation 2: the Victorian Government public spending to ensure the creation of high-quality secure jobs.

Recommendation 3: the Victorian Government must adopt a Fair Jobs Code that ensures public funds are not used to subsidise the use of independent contracting gig economy platforms, particularly in aged and health care.

Recommendation 4: all public entities must report levels of outsourcing via gig work platforms annually and outsourcing to gig work companies must be prohibited in agencies or entities funded by the Victorian Government.

Inaccessible resolution pathways to determine work status

The Inquiry, in recommendations 8 and 9 suggested the creation of a streamlined support agency to provide advice and have the resources to help resolve work status through dispute resolution services. Where this fails, the Inquiry's recommendation 10 finds that a tribunal-style body should be established to provide accessible determinative work status resolutions.

While not opposed to these recommendations, Victorian unions highlight their reactive rather than proactive nature. Importantly, changes are needed that will bring sweeping reform which sees vulnerable gig workers access the rights they should have been entitled to from the beginning. The root of the issue is the unequal power imbalance between individual gig workers and large corporations operating via apps. An educative and individual dispute resolution mechanism will do little to solve this issue.

The Victorian union movement have spoken with over 500 gig workers since 2016 and in doing so have supported workers who have faced health and safety incidents, a decline in pay or those who have been unfairly blocked from accessing work via platforms. We have also organised workers to take action in the form of protests and stop-work actions against large platforms like Uber and Deliveroo, and brought gig workers together in person and in online forums like Facebook and WhatsApp groups to support each other, ask questions and identify solutions. Over the last five years we have built a level of trust with gig workers in Victoria and we have successfully identified the most effective ways to communicate with a diverse cohort who experience barriers when it comes to reaching out to organisations for assistance.

Victorian unions posit that their role is already to provide the education and support suggested in the Inquiry's recommendation 9, and in fact they have the ability to further drive at resolving the power imbalance than an agency due to their collective nature. Unions have been somewhat hamstrung in recent years by federal reform to industrial law, yet unions make workplaces safer,⁶ and unionised workers are more engaged with their employer and overall employment.⁷ Collectively bargained wages are higher and also lead to an increase in productivity.⁸

As such, the Victorian Government should implement the Inquiry's recommendations 8 and 9 by further funding a collective response to the issue of exploitation of gig workers.

Recommendation 5: the streamlined support agency should form part of the Victorian Trades Hall Council, which would provide education, outreach and community legal support to enable gig workers navigate complex working situations, and refer out to the relevant union wherever possible.

⁶ Trade Union Congress (2016) 'The Union Effect', United Kingdom, accessed: <https://www.tuc.org.uk/research-analysis/reports/union-effect>

⁷ Barth et. Al. (2020) Union Density Effects on Productivity and Wages, *The Economic Journal*, 1-39

⁸ Ibid

For certain industries affected by gig work platforms, dispute resolution has become a prominent issue. Drivers and food delivery riders can be hugely affected by negative ratings from customers including being barred from the app, with no opportunity for explanation or dispute resolution. Union members working in the health industry as part of the NDIS have experienced negative reviews based on their race or gender, and then this discrimination has led them to have a reduced 'star rating', resulting in them not being chosen by clients/customers. This ultimately is discrimination causing unemployment and it needs a proactive response.

The Victorian Government has introduced measures to ensure labour hire workers are protected through a licensing mechanism. This could either be extended further to cover corporations operating through a gig-work style platform, or could be used as a specific model to adopt.

Victorian unions suggest that the licensing model should be specifically applied to the gig economy as it's so widespread and needs particular resources. The Victorian Government should also have access to a record of the platforms operation in the state as they have the records of businesses and organisations via ABNs, to maintain, oversight and ongoing, relevant knowledge about the prevalence of gig work. A licensing system would be an effective way to gather this information.

Recommendation 6: establish a Gig Economy Licensing Authority to oversee a requirement that all corporations engaging workers through a platform, app or website be licenced, similar to the labour hire licensing regime.

Here, a range of corporations, from Uber to Airtasker, Mable and Easi operating in Victoria would be required to apply for a licence. This gives the Victorian Government the opportunity to intervene and extend workplace protections.

For corporations where workers are controlled by and/or perform the core work of the platform, they will need to deem their workforce 'employees' to gain a licence. Where they do not meet this threshold, platforms should be made to enforce at least minimum Award wages. This is important, as amongst consulted gig workers, 72% rated platforms being compelled to display minimum wages as a 10.

Recommendation 7: In applying for a licence, gig economy corporations should be made to demonstrate they:

- a. Deem their workers 'employees', where the platform's workers meet the one or more of the three limbs of the ABC Test,*
- b. Have a mechanism for setting minimum floors in accordance with Awards, e.g. on platforms such as Airtasker or Care.com, where workers outbid each other for jobs or advertise their services at a lower rate than the minimum wage prescribed by the Award, an error should pop up on the app/website;*
- c. Genuinely consult with workers and their relevant union, regardless of their work status;*

- d. *Contribute to insurance premiums as part of the Victorian workers' compensation scheme and have processes in place to ensure payment of compensation where a worker is injured at work;*
- e. *Abide by their obligations under occupational health and safety (OHS) regulations, including recognising that they have control over work practices and meet the necessary standards to ensure work is safe;*
- f. *Encourage union membership by advertising the relevant union on their app or website when workers sign up;*
- g. *Make clear who holds managerial positions and who makes decisions when workers sign up by designating a contact person;*
- h. *Have clear dispute resolution policies and procedures, including the opportunity to review decisions, a clear contact person, and to make clear to workers what kind of feedback is important from customers (i.e. inadequately performing a task), and which kind should be disregarded (i.e. rating reviews based on discrimination).*

As unions understand the issues affecting workers on the ground, they must receive funding to investigate whether platforms maintain their conditions of licensing. Where issues are raised, the Authority should audit the platform immediately.

It should also be encouraged that where workers are deemed 'employees', platforms negotiate enterprise agreements with their workers in union.

Recommendation 8: Unions have powers of investigation under the Gig Economy Licensing Authority, and where issues are raised, the Authority must audit the platform immediately.

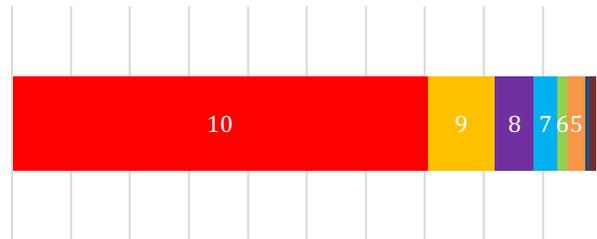
This licensing regime should be reinforced by amending legislation pertaining to transport workers and health and safety.

Recommendation 9: the Victorian Government amend the Transport Accident Act 1986 (Vic), the Occupational Health and Safety Act 2004 (Vic), and the Workplace Injury Rehabilitation and Compensation Act 2013 (Vic) to extend responsibility and costs associated with insuring the workers gig economy corporations engage in the event they are injured or die at work, including in a transport accident.

Enforcement mechanisms are key to driving change. Victorian unions highlight that theoretically, there are a range of protections in place for vulnerable workers, but large corporations and gig work platforms have been able to side-step them with little recourse. A licensing regime must be accompanied by corporate penalties.

Consulted gig workers also said disincentives and penalties for platforms' poor behaviour was extremely important, with 86% rating it 8 or above.

I want to see stronger disincentives and penalties for platforms that intentionally neglect their legal responsibilities to workers (e.g. by wrongly classifying them as independent contractors)



In Victorian unions' experience attempting to address wage theft, the size and enforceability of, and the resources of those implementing penalties is key. Before wage theft was made a crime in Victoria, less than half a percent of all allegations of underpayments lodged with the Fair Work Ombudsman (FWO) proceeded to litigation,⁹ due to the lack of funding and financially minimal penalties.

Penalties and enforcement mechanisms for gig workers exploitation must be similar to those introduced to address wage theft.

Recommendation 10: corporations operating on gig work platforms who fail to obtain a license, or fail to meet the ongoing minimum standards set by the licence, must face significant fines.

Recommendation 11: the Gig Economy Licensing Authority must be well-resourced and have the jurisdiction to investigate and enforce licensing requirements.

As mentioned in Recommendation 8, unions should also have investigative powers and be able to refer cases to the Gig Economy Licensing Authority.

The Victorian Government should also ensure that while gig workers wait for a Federal codification a fair definition of 'employee' encompassing them, "independent contractors" who should be employees are allowed to collectively bargain, or have a person or a group of person to act as their negotiating agent, resembling the model adopted in the *Owner Drivers and Forestry Contractors Act (Vic) 2005*. The option for collective bargaining was rated highly amongst consulted gig workers, with 90% rating it an 8 or above. This was also recommended by a number of unions to the Inquiry.

VTHC also supports the recommendations contained in the Transport Workers Union (TWU)'s submission pertaining to the *Owner Drivers and Forestry Contractors Act (Vic) 2005*. While expanding the relevant protections would create an effective minimum floor for gig workers in the transport industry, it is important the Victorian Government implement reform to protect all vulnerable workers unfairly deemed as "independent contractors".

⁹ Senate Standing Committee on Education and Employment 2015, Questions on Notice, Fair Work Ombudsman SQ16 000232, Questions 8 and 9

Recommendation 12: the Victorian Government explore options to allow gig workers to negotiate collectively including whether the Owner Drivers and Forestry Contractors Act (Vic) 2005 could be adapted for this purpose.

Unions such as the United Workers Union (UWU) also recommended supporting the creation of worker-run gig co-operatives, for workers who genuinely meet the criteria of ‘independent contractors’ where workers can collectively agree on their minimum rates and standards.

Recommendation 13: part of the Gig Economy Licensing Authority be to allocate funding for worker owned gig cooperatives.

In recognition that international students and migrant workers make up the overwhelming majority of gig economy workers, particularly in the taxi and food delivery sectors, the Victorian Government must also mandate that any international student studying at a Victorian university, TAFE, or high school should have compulsory workplace rights training. This was widely supported amongst consulted gig workers, with 74% rating this reform option as a 10. Workplace rights education should be conducted by unions in conjunction with VTHC.

Recommendation 14: compulsory workplace rights training for international students be rolled out across Victorian university and TAFE campuses and high schools.

Emergence and conduct of platforms

Importantly, the Inquiry did not fully examine the question of whether gig-economy style platforms should be allowed to operate in Victoria at all. In almost all cases, the services offered through gig-work apps and websites existed before the introduction of ‘uber’ and the so-called ‘innovation’ that followed. Victorian unions instead argue that Uber is not an innovator or disrupter but uses technology to re-introduce working conditions present during the 19th century.

The question of whether Victoria actually wants the social upheaval, inequality and exploitation associated with gig economy apps, in exchange for services that may be slightly cheaper (if at all) should be examined in detail.

Victorian unions argue emphatically that the social and economic consequences are dire for working people. Any allowance of the operation of gig-work apps should be heavily regulated via a licensing regime.

Further, gig-work should not be allowed to occur in industries that provide essential services to the Victorian community. The model of corporations who rely on gig-work drives profit by undercutting the security and wages of staff, and results in over-worked and poorly trained workers, leading to poor outcomes for all Victorians.

The further push towards the uptake of gig work in female dominated industries such as health, aged and disability care, will widen the gender pay gap for workers in already insecure, low paid sectors. The risk for Victorian women retiring into poverty will increase, as falsely classifying workers as “independent contractors” allows corporations to avoid their superannuation obligations. Industries including social services, health care, teaching and in the public sector should not be subjected to the gig-economy, as there is too great a social risk.

Recommendation 15: the Gig Economy Licensing Authority should examine which online gig platforms should be allowed to conduct business and make profit in industries where there is an ethical incompatibility between quality work and insecure gig work.

The Victorian Government should also consider setting the standard of gig platform work through encouraging the establishment of worker-run gig co-operatives.

Recommendation 16: part of the Gig Economy Licensing Authority be to allocate funding for worker owned gig cooperatives

Gig workers can't wait

VTHC has received detailed answers to a number of questions in ongoing consultations. Many show a strong bias towards needing the rights and entitlements afforded to workers with an employment relationship.

“Consider us employees rather than contractors”

“There shouldn't be multiple classes of workers. If someone is an employee for tax purposes they should be an employee for benefits purposes.”

“I feel like it's pretty basic. Don't screw over workers when they're doing the exact same job as genuine employees. There needs to be penalties for things like this.”

“I want to work as a full-time employee.”

“Just treat us legally as employees.”

“Sham contracting and gig work ruins lives as the stress of precarity does too. When people are just trying to survive, they can't stop and 'upskill', develop their own business, think about the future - life just becomes an eternal scratching around to ensure the rent is paid.”

“Strict regulation of the gig economy to dissuade abusers.”

Gig workers also expressed an urgent need to increase their rates of pay in line with minimum wages. Many said they were struggling to make ends meet and felt powerless to do anything about it and exploited by gig work platforms.

“Better pay rates for the workers who are working for Uber/Ola/Didi/Airtasker etc. Minimum wage [is a] must. Better employment rights.”

“Pay rate per time is important. Sometimes we stay online for 4-5 hours without any order which the company pays us nothing. Ensure minimum pay rate per hour”

“Companies such as Uber should better compensate driver. Drivers have no choice but to accept the trips due to fear of having their account disabled. These companies don't pay any leave allowances which means you don't have any income coming in if you are unable work on any day, reclassifying drivers as employees would make expected income for drivers more certain and stable.”

“These companies [are] making hell of profit at the cost of drivers. In my experience, after expenses and taxes, my average hourly earnings are approximately \$10.”

“The government [should] provide more jobs to international students so that they do not find difficulties in [meeting] their basic expenditures and living cost as they are not eligible for any JobSeeker or JobKeeper payment.”

“I'm seriously worried about the future. I've been ripped [off] so many times by dodgy employment contracts, it's like I'm going to be working until I'm 90 just to pay off student debts and a mortgage.”

“Please, take initiative for better pay rate. We are exploited by these companies. We have no idea about the calculation of fare for each trip.”

“I am on a part-time research internship at the University of Melbourne. The rest of the time I work doing deliveries for DoorDash. Currently I can only afford to buy eggs (my low income goes to rent and bills) and jointly with church donations I get to put food on my table. I am currently looking for a job because my dream is to perform as a professional Researcher here in Australia.”

“A special type of Centrelink payment for gig economy workers that is more flexible and allows for thick and thin periods whilst still maintaining a basic income for rental security.”

“Uber is ripping off us...we're working at \$10/hr or sometimes we get nothing. It takes all of our time and we can't enjoy our lives...even working up to 12hrs per day we aren't making a money equal to minimum wage...we use our own cars bike petrol and still we get insulted by customers restaurants and uber would do nothing about it...we feel like we're living a miserable life...while we came crossing seas for a better life and work balance.”

Abuse by customers and fear for gig workers, often migrants', safety was a common theme.

"There should be better protection [for] drivers against disorderly and misbehaving passengers. Drivers usually have to put up with bad passengers as fake complaints about drivers by passengers tend to get drivers at risk of losing access to the platform and drivers straight away lose their means to earn a living."

"Support us from customers who are discriminatory, violent or abusive in the cab. Provide assistance by actual customer care over the phone rather than in-app suggestions or bot imitated replies."

"Seeing as this beautiful country with ample range of opportunities is built on blood and sweat of immigrants since time immemorial, it's only fair if not an obligation to ensure that the immigrants and temporary residents, especially the ones working in the gig economy have their fair share of opportunity in status quo to which we are entitled to."

Gig workers expressed an urgent need for assistance, especially considering COVID-19, while also explaining they have received little government support so far.

"[I] hope the government will take necessary steps soon"

"Make it happen please we really under paid now."

"Please help us"

"Uber eats have changed their pay structure since pandemic started and now for each delivery we get 3 to 4 dollar less on average compare to before."

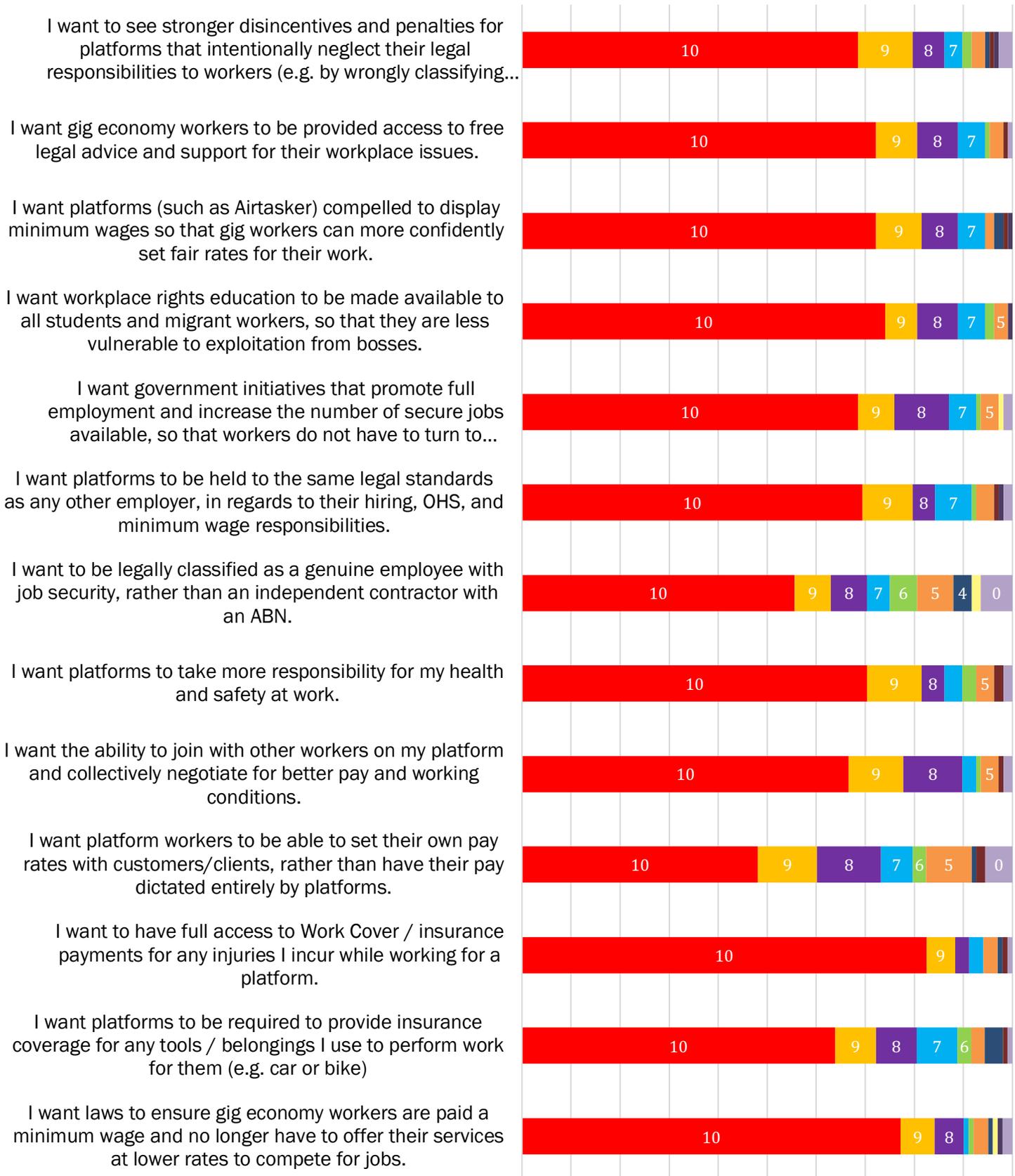
"Finally someone is really thinking of us. I would really appreciate if this happens and some results reach the needy."

"Regulate these companies."

"Look after the workers."

"I am tired of the gig economy."

The graph below shows responses to suggested reforms from gig economy workers.



Conclusion

Gig economy workers are suffering exploitation, contraventions of their OHS entitlements, and unfair reductions to their minimum wages because technological platforms with faux 'disruption' have been able to falsely deem them independent contractors. This must come to an end.

The On-Demand Inquiry made a number of useful recommendations to draw a line in the sand and ensure gig workers access the rights and entitlements they deserve. The Victorian Government must prioritise empowering gig workers and extending workplace entitlements when implement these recommendations.

VTHC also supports the Inquiry's recommendations aimed at the Commonwealth Government. The Federal jurisdiction is the only one who has the power to fully address this issue and resolve the root cause of the problem by codifying a comprehensive definition of 'employee' that includes gig workers. VTHC urges the Victorian Government to be a leading advocate and call for change at this level.

Importantly, more and more workers are turning to the precarious, exploitative gig economy as the social safety net is insecure or unattainable during the COVID-19 pandemic. The Victorian Government must act to create jobs and reduce the number of workers being forced into this form of insecure work.

Reforms to the gig economy must be proactive, and include a licensing model to allow the Victorian Government to intervene where unfair treatment occurs. It must be ensured that all measures are enforceable and associated with the requisite penalties for contravention. A licensing model would encourage consideration of what industries gig work platforms should be allowed to operate in. VTHC emphasises that the increasing moves towards gig work in health care must cease.

A licensing model would also ensure accountability and dispute resolution processes, and give some power to workers who can be penalised by an app and have their livelihood taken from them, for any perceived wrong move.

VTHC implores the Victorian Government to implement real, effective change for vulnerable gig workers.

Recommendations

Recommendation 1: investigate amending the Workplace Injury Rehabilitation and Compensation Act 2013 (Vic), the Occupational Health and Safety Act 2004 (Vic), the Wage Theft Act 2020 (Vic) and other Victorian legislation that extends to employment to include:

- a. The ABC Test;
- b. A reverse onus on employers to prove their worker should be deemed an independent contractor; and
- c. A definition of 'the workplace' that extends to gig work platforms.

Recommendation 2: the Victorian Government public spending to ensure the creation of high-quality secure jobs.

Recommendation 3: the Victorian Government must adopt a Fair Jobs Code that ensures public funds are not used to subsidise the use of independent contracting gig economy platforms, particularly in aged and health care.

Recommendation 4: all public entities must report levels of outsourcing via gig work platforms annually and outsourcing to gig work companies must be prohibited in agencies or entities funded by the Victorian Government.

Recommendation 5: the streamlined support agency should form part of the Victorian Trades Hall Council, which would provide education, outreach and community legal support to enable gig workers navigate complex working situations, and refer out to the relevant union wherever possible.

Recommendation 6: establish a Gig Economy Licensing Authority to oversee a requirement that all corporations operating under a gig-work style employment structure be licenced, similar to the labour hire licensing regime.

Recommendation 7: In applying for a licence, gig economy corporations should be made to demonstrate they:

- a. Deem their workers 'employees', where the platform's workers meet the one or more of the three limbs of the ABC Test,
- b. Have a mechanism for setting minimum floors in accordance with Awards, e.g. on platforms such as Airtasker or Care.com, where workers outbid each other for jobs or advertise their services at a lower rate than the minimum wage prescribed by the Award, an error should pop up on the app/website;
- c. Genuinely consult with workers and their relevant union, regardless of their work status;
- d. Contribute to insurance premiums as part of the Victorian workers' compensation scheme and have processes in place to ensure payment of compensation where a worker is injured at work;

- e. Abide by their obligations under occupational health and safety (OHS) regulations, including recognising that they have control over work practices and meet the necessary standards to ensure work is safe;
- f. Encourage union membership by advertising the relevant union on their app or website when workers sign up;
- g. Make clear who holds managerial positions and who makes decisions when workers sign up by designating a contact person;
- h. Have clear dispute resolution policies and procedures, including the opportunity to review decisions, a clear contact person, and to make clear to workers what kind of feedback is important from customers (i.e. inadequately performing a task), and which kind should be disregarded (i.e. rating reviews based on discrimination).

Recommendation 8: Unions have powers of investigation under the Gig Economy Licensing Authority, and where issues are raised, the Authority must audit the platform immediately.

Recommendation 9: the Victorian Government amend the Transport Accident Act 1986 (Vic), the Occupational Health and Safety Act 2004 (Vic), and the Workplace Injury Rehabilitation and Compensation Act 2013 (Vic) to extend responsibility and costs associated with insuring the workers gig economy corporations engage in the event they are injured or die at work, including in a transport accident.

Recommendation 10: corporations operating on gig work platforms who fail to obtain a license, or fail to meet the ongoing minimum standards set by the licence, must face significant fines.

Recommendation 11: the Gig Economy Licensing Authority must be well-resourced and have the jurisdiction to investigate and enforce licensing requirements.

Recommendation 12: the Victorian Government explore options to allow gig workers to negotiate collectively including whether the Owner Drivers and Forestry Contractors Act (Vic) 2005 could be adapted for this purpose.

Recommendation 13: part of the Gig Economy Licensing Authority be to allocate funding for worker owned gig cooperatives.

Recommendation 14: compulsory workplace rights training for international students be rolled out across Victorian university and TAFE campuses and high schools.

Recommendation 15: the Gig Economy Licensing Authority should examine which online gig platforms should be allowed to conduct business and make profit in industries where there is an ethical incompatibility between quality work and insecure gig work.

Recommendation 16: part of the Gig Economy Licensing Authority be to allocate funding for worker owned gig cooperatives.