

Submission to the Inquiry into the Victorian on-demand workforce



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Introduction

In this submission we draw upon original research on food-delivery work in the Australian platform economy. Data was collected through worker interviews in Melbourne and Perth, which we believe will enhance the inquiry's understanding of some elements of this type of on-demand work and its implications for work and workers. The research considers the lived work experience of food-delivery workers who are engaged to transport food from restaurants to customers via the platforms Uber Eats and Deliveroo. This work is 'on-demand' as workers are engaged by the platforms as independent contractors, paid by piece rates and jobs or 'gigs' are allocated to workers by platforms on the basis of customer orders. This arrangement conforms with Stewart and Stanford's (2017) characterisation of platform-based 'gig' work, which centres on: high levels of irregularity shaped by customer demand; part of the capital necessary to undertake the work is provided by workers; the work is frequently paid on a piece rate basis; and it is arranged and/or facilitated via online and/or mobile platforms.

Our research, collected in Australia (in part in Victoria) and following Australian (and Victorian) regulations, will assist the Inquiry's investigation into the on-demand sector and the position of those individuals working on platforms in Victoria. Our conclusions are based upon interviews with 58 food-delivery workers in the first half of 2017 who were working for on one, or multiple, food-delivery platforms. While food-delivery is not a new phenomenon, the development of 'on-demand' food-delivery work is unique, as workers are directed and engaged by digital platforms with limited human interactions and inputs. Platforms in the food-delivery sector have used technology to reorganise work processes. This, in conjunction with contractual arrangements, where workers are categorised as independent contractors under the Australian regulatory system, has resulted in novel work regimes. Thus far, the impact of these developments in Australia has been subject to limited empirical investigation. Developments in communication technologies (e.g. smart phones, GPS and internet) and advances in 'algorithmic management' (Aloisi, 2016) have allowed digital platforms to facilitate a 'quadrilateral' arrangement between customers, workers, platforms and restaurants, an arrangement which has allowed restaurants to expand their delivery services, provided consumers with a wider range of choice and created opportunities for workers to earn income.

Food-delivery work in the gig economy is inherently geographically uneven. That is, the platforms focus on servicing inner-urban areas with a high density of restaurants and customers. This business strategy does not necessarily extend to outer-suburbs, let alone regional areas, meaning the costs and benefits of the food-delivery sector of the gig economy are disproportionately concentrated on urban and particularly inner-urban areas. While the work is 'arranged' online, the work must be undertaken by workers in the 'real world' in a time sensitive way, i.e. hot food gets cold, cold food gets warm. Workers make themselves available to work by 'logging on' to mobile applications that allocate jobs (usually paid at piece rates) and connect riders to restaurants and customers. The start-up costs for workers are low, in many cases just a bike, phone, mobile data, a police clearance and an Australian Business Number are all that is required to start platform-based food-delivery work, there are currently no formal qualifications or licenses required.

The extent and nature of the on-demand economy in Victoria

Legal or Work Status of Food-delivery Workers

In the food-delivery sector, workers are engaged as independent contractors rather than employees. This categorisation, while contentious, was recently affirmed as accurate in the ride-sharing segment of the gig economy by the Fair Work Commission (Fair Work Commission, 2017). Such classification is significant as it means that these workers are currently not protected by the National Employment Standards. In the food-delivery sector, the recent case involving Melbourne based Foodora courier Josh Klooger saw the worker classified by the Fair Work Commission as an employee. However, given the peculiar and particular

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circumstances of this case, including regular rostering, Mr Klooger subcontracting allocated food-delivery work to other independent contractors, promotion and disciplinary arrangements (Fair Work Commission, 2018), it is unlikely to be able to be generalised to other food-delivery 'on demand' workers.

Riders in our study were predominately young, non-Australian residents (47 of 58 interviewees indicated that they held temporary work or student visas) and had low English language skills. These workers were acutely aware of the tenuous positions they held in the Australian labour market and suggested that they only had limited labour market alternatives. This labour market position was compounded by work restrictions associated with their visas, e.g. students are restricted in the number of hours they can work. Further, regulatory uncertainty over how to measure hours worked in the gig economy leads to uncertainty not only relating to employment relations, but also immigration law (Goods, Veen, & Barratt, 2017).

Whether Contracting Arrangements Avoid the Application of Workplace Laws

The form of contracting arrangements in the 'on-demand' economy is significant, particularly following the Fair Work Commission's rulings relating to Uber ridesharing drivers, as this working arrangement follows existing workplace laws. The application of the multi-factor test to determine that workers are independent contractors conforms to regulations, in contrast to, for example, the recent seven-eleven case where employment laws were breached. From a regulatory point of view, this may mean that the workplace laws have to change to consider this form of work organisation, which did not exist at the time those laws were enacted. Further, the platforms' ability to unilaterally change the terms and conditions workers accept when they log into these apps, means that if particular arrangements are characterised as employment, the platforms are able to change these terms and conditions to reflect bona fide independent contracting. Our research found that the two food-delivery platforms regularly changed the terms and conditions of the work. The engagement of food-delivery workers as independent contractors provides distinct advantages to platforms who are able to shift the risk of employment from the provider of work to the performer of work.

On demand services, and the workers who operate on them, are reliant upon consumer demand in order to generate income (Stewart & Stanford, 2017). There are, however, further factors that influence workers' ability to earn income. Food-delivery workers are dependent on the platforms to allocate them work. This means, due to the piece-rate nature of their remuneration, workers are unable to control how many pieces they are allocated and in turn, how much they can earn. This transfer of risk means that on demand work becomes increasingly market-regulated (Kalleberg & Dunn, 2016; Naderi, 2018), a historic departure from the social protections of work in Australia which date back to the Harvester judgement.

This market regulation means that the desirability of these jobs is dependent on workers' labour market power (Wood, Graham, Lehdonvirta, & Hjorth, 2018). For example, in our sample the overwhelming majority of workers were temporary migrants, who frequently were constrained by their visa conditions in their ability to find work and did not enjoy the protections of the Australian welfare state (Goods, Veen, & Barratt, 2019). This weak market position limited workers' ability to support themselves financially, for example, some food-delivery workers were found to be relying upon charities such as soup kitchens (original interview material of the authors).

The capacity to protect workers.

Job security for these workers was extremely limited, as the nature of this work means workers' (with a narrow exception for some Deliveroo workers who, at the time of data collection, primarily operated on slightly more secure shift patterns) income security was fundamentally shaped by the demand for food-deliveries, the number of riders available and the technologically mediated allocation of work by the platform. In this context, workers regularly reported average hourly earnings well below the then national minimum wage of \$22.86 per hour, the rate for casual employment. This pay rate is legally acceptable due to workers' independent contractor status.

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The independent contractor status of workers means that they are extremely vulnerable to losing their income. For instance, one rider interviewed in our research explained how they had become injured at work, and therefore had to stop working in the gig economy and, consequently, their earnings dropped to zero. Conversely, workers' ability to decide when, where and for how long they undertook their work, in the absence of a manager allocating shifts, was viewed as a major positive of food-delivery work. For some, gig work enabled them to balance their work and non-work lives. However, the economic realities of consumer demand constrained this flexibility. The highest earning periods were lunch and dinner times, particularly on weekends. Thus, the imperative to earn offset the frequently celebrated gig work 'quality' of work flexibility, particularly as the work was paid in piece rates. We also note that the busiest work periods are those that have traditionally seen workers paid penalty rates to reflect the unsocial hours of work.

This uncertainty revealed in our research shows that the protections which are generally associated in Australia with employment are denied to these on demand workers. Gig work in the food-delivery sector exposed workers to workplace risks and poor pay, leaving some riders feeling like members of an underclass. The emergence of gig work has seen these workers moved outside the realms of these traditional protections. Rather than through a deliberate shift in policy, it is an underpinning feature of the platforms' business models which has prompted this changed circumstance for gig workers.

Job Quality in the Platform Economy

Our research further highlights that evaluating job quality in the platform-economy can be a messy exercise. Understanding whether work is good or bad seems simple, yet within the academic literature there is no widely accepted definition of job quality. This is in part because the concept of job quality cuts across multiple scholarly fields, each with its own theoretical and normative interpretations, definitions, and measurements. Worker perceptions of their jobs are shaped by earnings, work conditions, personal circumstances and labour market alternatives.

As part of our analysis of the worker interviews we focused on four broad questions of job quality, approximating different dimensions:

- What level of economic security does the work provide?
- What degree of autonomy did they have over their gigs?
- What aspects of the work provided enjoyment?
- And, how did the work 'fit' with individual job expectations and circumstances, labour market position, and broader socio-political context?

We advocate a wide definition of job quality since an individual, and even a labour market perspective can underplay adversarial consequences of particular forms of work for broader societal context – in the extreme, drug dealing, for instance, might be highly enjoyable, profitable and lucrative for an individual yet is deemed societally unacceptable.

Thus, although some jobs subjectively 'fit' a particular individual's personal and labour market circumstances, we pose that job quality discussions need to take into consideration societal expectations about the nature of the work, and its impact on workers. In the Australian context, this aligns with the objectives of the current Fair Work Act and resonated with the ethos of 'fair and reasonable' employment standards set down in the Harvester Decision which shaped Australian notions about individual needs within the expectations of a 'civilised community' since early federation (Higgins, 1907).

In the food-delivery sector we encountered some horror stories about economic insecurity, fuelled by the workers' classification as independent contractors. Interviewees further explained how they fell through the cracks of existing workplace, health and safety legislation, with costs for workplace injuries and permanent disabilities passed onto taxpayers (e.g. via inappropriate Medicare or travel insurance claims).

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While interviewees frequently were upbeat about food-delivery work, especially when viewed in light of their direct labour market alternatives – frequently other low-paid forms of work such as cleaning, hospitality, and retail in which underpayment is rife (Macneil & Bray, 2012) particularly for vulnerable workers – such positive perceptions of food-delivery should not neglect some of the more problematic features of these arrangements. As the literature on job quality highlights (Galván, 2012) workers' expectations about how long they will undertake work also shapes their perceptions of quality. The interviewed riders all viewed platform-work as a short-term prospect. Merely something to get them by – e.g. to sustain them whilst searching for alternative employment or support their travels – at a specific stage of their life – e.g. during their studies. Therefore, they were less concerned about the negative aspects of this particular form of platform-work.

From a societal perspective, however, there is a need to ensure that these new work opportunities are socially sustainable. Currently, this form of platform-work exhibits several parasitic tendencies in relation to social security and further entrenches a growing working poor.

While platforms are currently legally able to evade employment protections, on the basis of our research we argue government and policy makers should care about this type of platform-work in its current form – particularly since taxpayers are indirectly subsidising platforms' business models. Rather than calling for reclassifying workers into employees, we suggest sectoral-based regulation might be effective. This option can harness innovation, retain the positives, and offer the taxpayer a better deal.

In our recent paper in the *Journal of Industrial Relations* (Goods, Veen, & Barratt, 2019) we propose three sectoral-oriented approaches, which would be within the discretion of the State government to create greater transparency and fairness surrounding these forms of work organisation.

1. **Industry specific fora / tribunals:** As workers are not classified as employees they are unable access to the Fair Work Commission, which limits their ability to seek redress to resolve disputes. This creates the opportunity for regulators to provide workers access to traditional or alternative voice mechanisms. This may include state governments creating industry specific tribunals, or expanding the role of existing bodies such as the Transport Accident Commission for this segment of the platform-economy which uses public roads .
2. **Sector-wide workers' compensation requirements** could be imposed on all food-delivery platforms. Such reforms have been considered in Queensland (Peetz, 2018).
3. **Demand greater transparency from platforms on average earnings:** Platforms collect data on the earnings (both gross and before deductions) of workers as well as the time that workers are both on jobs and logged into the apps. Reporting of this data could result in greater transparency in workers' earnings, similarly to the Victorian Government's attempts to regulate ridesharing services, which would result in workers and prospective workers having a better idea of their earning potential in food-delivery.

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