

Submission to: **Inquiry into the Victorian on-demand workforce -
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FORWARD

Thank you for the opportunity to make a submission to this very important inquiry into the on-demand economy. I make this submission on my own behalf, and not as a representative of any organisation or group. The views expressed in this submission are based on my professional experience in public policy development and implementation, and my personal experience as consultant, writer, and licensed private investigator.

My background is in public policy development. I have undergraduate level qualifications in Economic History and Politics and post graduate qualifications Public Policy and Finance. For 15 years from 1992 I worked for several key Victorian Government policy agencies, including Department of Treasury and Finance as a Senior Economic Policy Adviser, and the Department of Justice. I have also worked at Director level in the Commonwealth Department of Health and Ageing.

I currently work as a Public Policy and Industry Development Consultant and Writer as a sole trader/contractor. For the past 6 years I have also been a licensed private investigator in Victoria working primarily on workplace injury compensation matters. In the course of that work I have interviewed dozens of injured workers, and their employers and written scores of reports about the impact of workplace injuries on the injured workers and made recommendations to improve safety in the workplace.

In recent years I have written extensively (<https://www.greenleft.org.au/glw-authors/richard-mcencroe>) on the inherent shortcomings of the gig or on-demand economy standard business models. This brief submission focusses on what I consider to be the most significant and egregious and exploitative elements of the app- based gig economy “independent contractor” model, namely:

- **Risk and responsibility shifting** - from employer to worker
- **BYO capital and risk** - an unfair value proposition for workers
- **Dependent Independent Contractors** – the worst of both worlds
- **Risk and cost shifting** - from private to public sector
- **An unbalanced scorecard** – flexibility and choice overrated
- **True costs are ignored** – we are all losing, especially the vulnerable

SUBMISISON

1. Risk and responsibility shifting - from employer to worker

In many gig economy companies, the operating model is one where the value and risk propositions are dramatically skewed in favour of the operator to the detriment of the worker. The faux independent contractor model (and the inherent pitfalls within it for workers) is well described in the Background Paper.

These arrangements hark back to the pre-industrial era (1700's) where piece work was the standard operating model. Workers were paid by the product and not by the hour, and were responsible for all their input costs, like materials and energy, competed with one another for work, and had no capacity to collectively bargain, or assert minimum standards of pay or safety. In an Uber type gig model, little is different.

2. BYO capital and risk - an unfair value proposition for workers and their families

Gig economy workers (deemed contractors) are being skewed by gig economy companies to provide a disproportionate share of the capital and absorb a disproportionate share of the inherent risks. Gig workers are generally:

- required to use and risk (and depreciate) their own car (often the only capital asset a worker or his/her family has);
- may or may not be remunerated for their time and effort;
- are unlikely to earn minimum wage (once costs have been netted out – see 2018 TWU survey <https://www.twu.com.au/home/campaigns/rideshare-drivers>);
- work in a high risk and dangerous sector (road transport); workers accrue no superannuation, leave or other entitlements;
- are not part of any workers compensation insurance scheme (the workers compensation status of workers injured or killed in the gig economy is opaque at best, and non-existent at worst); and
- compete with one another, resulting in a “race to the bottom”. Wages are sub minimum wage level, meaning that the capacity of these workers to self-insure is non-existent, and gig workers have no capacity to collectively bargain or otherwise negotiate improved safety and conditions.

3. Dependent Independent Contractors – the worst of both worlds

To date much of the commentary around the status of gig workers has been around whether the workers are contractors or employees. This is an issue being considered by law makers, policy makers and regulators around the world, and clarity and certainty on the question may yet be years away. In the interim, I submit that some focus should be directed to the use of what could be termed “dependent independent contractors”.

In general terms, when the taxation, superannuation, WorkCover and other relevant legislative frameworks were being designed and developed, policy and law makers did not envisage a situation where sub-minimum wage workers would be independent contractors. Rather, the broad conceptual model underpinning all these frameworks was the idea that independent contractors were those with some specialisation or area of expertise – whether it be a trade, a profession, or a service. The level of specialisation, skill or expertise allowed independent contractors to be price setters in a market, charging a fee for their service enough to allow them to self-insure, contribute to their own superannuation etc. Traditional independent contractors could self- provide all the entitlements traditionally provided by an employer because they could afford to, it was built in to the price.

Under current arrangements in the gig economy, it is extremely unlikely if not impossible for the average driver, delivery worker or the like to be able to earn a minimum wage, much less be in a position to self-insure. As a result, such these workers are in a “worst of both worlds” situation, where they receive neither the benefits of employment nor genuine independent contracting. In terms of their negotiating strength in the labour market and their rights and protections, many modern gig workers are no better off than the piece workers of the 1700’s.

4. Risk and cost shifting - from private to public sector

Where workers do not accrue superannuation from an employer or have the capacity to contribute to their own retirement savings (because the rates of remuneration are sub subsistence level), those workers are more likely to need income support in retirement.

In this context, the only group benefitting from the existing standard gig operating model are the companies themselves. Using technology and “flexibility” as a Trojan Horse, the gig economy operators have orchestrated a situation in which they benefit while:

- the worker is worse off because they have no retirement savings;
- the taxpayers of Australia are worse off due to increased age pension costs;
- the taxpayers of Victoria are worse off because of foregone payroll tax and added burden on the existing public insurance schemes such as the TAC; and
- families and communities are worse off because workers do not have the opportunity to take paid time off as required to care for family, themselves, or the community.

5. **An unbalanced scorecard** –disproportionate value given to flexibility and choice

Supporters of and investors in the gig economy make much of the “flexibility” inherent in the business models gig companies have adopted to date. There is no doubt that many workers do value flexibility, and would opt to work in a more, rather than a less, flexible environment when given the choice. That’s human nature. If asked whether they would prefer to work with rights or without rights, those same workers would likely opt to work with rights too. The real question is whether workers would choose flexibility over workplace rights, and why are they being forced to choose one or the other.

There is no reason why flexibility can only be achieved at the expense of workers’ rights. The way forward is to focus on the achievement of both. The gig economy companies have established this either/or construct, and the role of this inquiry and other policy development work is to change that dichotomy.

Key to the achievement of both objectives (flexibility and rights) is to establish a set of economy wide minimum standards applicable to all on-demand workers. As the Background Paper sets out, there are a range of models currently being developed internationally. Victoria has the opportunity to examine the various systems being considered and adopt a regulatory framework for the on-demand sector which include:

- minimum pay rates
- the ability to attract and accrue leave and entitlements
- workers compensation protection.

Failing to set a floor price for labour will enable the current “race to the bottom” to further cut pay rates for workers.

“Flexibility” is not the only feature of the gig economy which is overstated and incorrectly weighted. The value and importance (in terms of the value it should be given in terms of considering the merit of a market offering) of consumer *choice* needs to be more scrutinised.

It has been, and no doubt will be, argued by gig companies that the highly competitive market conditions (rideshare or food delivery most notably) mean that they cannot afford to pay their workers properly and remain in business. This argument does not hold up in any other sector and forgets that the ongoing viability of private firms in non-essential sectors like rideshare or food delivery is not something regulators or governments need to be concerned about.

Just because the market is enjoying paying a low price for a service, does not mean that price cannot be changed. If consumers need to pay more for a service because the cost of delivering that service must be increased to accommodate changes in fixed costs of delivery (ie: the application of minimum employment standards), then that is what consumers must pay if they want to continue to use the service.

In this context the role of the regulator is to support and lead consumers rather than be led by the gig operators. If businesses which cannot afford to operate in Victoria or Australia because to do so means they need to pay workers minimum entitlements, then those are the very types of businesses Victoria does not need. Strong companies will adapt to the changed regulatory environment and find innovative ways to cost and price their products such that they can continue to operate successfully in a regulated (or semi-regulated) environment. Less strong companies will not survive, and that’s a good thing for workers, the economy and the community.

Flexibility and consumer choice are relevant factors in determining the costs and benefits of any proposed regulation of the on-demand economy, however they are not the only considerations. The extent to which flexibility and choice related benefits are derived must be measured against the costs of the model, which are too often ignored or too narrowly perceived.

6. The true costs are ignored – we are all losing, especially the vulnerable

The true cost of failing to properly regulate the sector as it grows, and spreads into more and more sectors, from aged care to food delivery to plumbing, needs to be inclusive of both the direct and indirect costs. Direct costs can be measured in the

lost wages, low superannuation balances, a lack of training and opportunity for advancement (a characteristic of work in the on-demand sector), and lack of economic activity due to reduced spending power of workers who are unsure of their income day to day.

In terms of indirect costs, consideration needs to be given to the economy wide impacts for superannuation, for taxation revenue, and for insurance premiums of other workers and taxpayers who may end up cross subsidising this growing uninsured “precariat”.

There are also community and social implications of a “no rights” employment model. Although the data or studies into such impact have not been developed to date, it is reasonable to assume that the more workers there are in an economy or region who do not have access to basic rights, then the worse off that community will be. Where workers do not have access to a paid day off, cannot take a day of leave for domestic violence or to care for a sick family member, cannot take a paid holiday at Christmas, and cannot pay the bills if they are unlucky enough to be injured at work; then the economy, region, community, family and individual will be negatively impacted. This reduction in community well-being will translate into additional costs in terms of reduced community harmony, increased family violence, increased crime, drug and alcohol use and all the factors that are linked to levels of stress and insecurity.

The true costs of the gig economy contractor model are being ignored at a micro and macro level. As has been well documented and will no doubt be explored in detail in submissions to this inquiry, at a micro level, for individual workers, the take-home pay reality is often downplayed, misrepresented, or hidden altogether.

For example, it is common practice for rideshare companies to advertise for drivers on the basis that drivers can “earn” up to \$1200 per week, or some similarly unlikely sum. “Earn” is what they say, but what they mean is ‘receive in revenue’. From these receipts the costs of petrol, depreciation, water, sweets, mobile phone, etc needs to be deducted.

Surprisingly, this conduct, which is clearly false and misleading advertising has not been the subject of any regulatory focus to date to my knowledge. This is frustrating when some companies direct their driver recruitment efforts specifically at vulnerable people, such as newly arrived migrants.

Summary

The nub of the argument I and others have been prosecuting over the past two to three years is that the benefits of app-based technology can be captured, harnessed and utilised by individuals, communities and economies without the need to exploit workers. The two have been presented as an either/or proposition - not by workers, or regulators, or consumers, but by gig economy companies. Deriving the benefits of technology (for consumers, business, and workers) and ensuring fundamental human and workers' rights is achievable, and they should not be considered mutually exclusive objectives.

The future of our quality of life, our sense of community and fairness, and the quality of our economy depends on us getting the regulation of the emerging on-demand economy right. I congratulate the Victorian Government on taking this important first step towards a brighter, safer, more respectful working future for the generations of Victorians to come.