INQUIRY INTO THE VICTORIAN ONDEMAND WORKFORCE

The gig economy and the electrical industry

J O'Dwyer / February 2019
Introduction

Master Electricians Australia (MEA) is the trade association representing electrical contractors recognised by industry, government and the community as the electrical industry’s leading business partner, knowledge source and advocate. Our website is www.masterelectricians.com.au.

MEA currently has a membership base of approximately 3000 electrical contractors in Australia. MEA understands the current and potential issues facing electrical contractors today.

Master Electricians Australia has a dedicated team that provides comprehensive workplace relations advice to electrical contractors who are also employers to ensure that they are compliant with their industrial obligations.

THE VICTORIAN ELECTROTECHNOLOGY INDUSTRY

The Victorian Electrotechnology Industry generates revenue of approximately $5 billion annually and includes a workforce of approximately 45,000 trade qualified employees employed by approximately 14,000 electrical contracting businesses in Victoria. We estimate that 90% of the industry’s Contracting business have less than 10 employees and features a high level of “legitimate” contracting as companies increase and decrease their employees based on work orders, projects and contracts. The electrical contracting industry along with the building construction industry has a well-established basis of contracting on demand workforces.

The electrical industry is a specialist construction industry and provides specialist services for downstream construction and industrial markets. It is particularly divided into 3 main areas being see in Diagram 1 below.

Diagram 1 IBISWorld Electrical Services in Australia report 2018
Nationally contractors have endured subdued demand from building markets over the past five years and reduced household discretionary income has limited consumer spending. Victoria however has minimised this impact with a large investment in infrastructure and economic stimulus.

The key drivers for the electrical services and technology industries are:

- residential building construction
- residential discretionary spending
- commercial and industrial construction
- capital expenditure on machinery and equipment
- heavy industry, institutional and non-building construction

Victorian economic data is pointing to softness in the electrical industry. On the review of housing approvals are pointing to a soft sector and continuing to do so. Data from the ABS shows the following:

According to the 2018 IBISWorld report E3232 Electrical Services in Australia;

“The industry’s profit performance is projected to deteriorate over the five years through 2018-19, with margins narrowing to an estimated 6.5%. This trend reflects the competitive conditions in key building markets and the slump in demand from several mining and infrastructure markets, which has forced contractors to reduce prices to secure installation and maintenance jobs. However, businesses servicing the emerging growth markets of home automation and energy conservation are expected to generate stronger profit margins over the five years through 2018-19.”

The views reported in IBISWorld Report may well be supported by the Housing data unless the Victorian Government continues to provide large stimulus and large capital-intensive projects.

However more broadly technological advances in electrical and electronic equipment over the next five years include key growth areas such as Solar PV systems, domestic and commercial battery storage systems, networking systems for electronic data transfer; C-Bus systems; LED energy-efficient lighting; domestic smoke detection and alarm; telephone, broadband and pay TV services; surveillance instrumentation installation and maintenance. Emerging technology also points to growing demand for the installation of electricity charging facilities for electric vehicles, including commercial charging stations at shopping centres and workplaces, and the installation of specialist plugs at residential premises.
What is the GIG Economy?

The discussion paper has failed to define what the ‘on-demand workforce’ / ‘gig economy’ is. It has failed to clarify exactly what is being assessed. This is dangerous, and any recommendations or views expressed by the inquiry should first explain exactly what the on-demand workforce is and what the recommendations or findings are trying to address. We foresee that trying to address small pockets of on-demand entrepreneurship will have broader and unintended consequences for larger well established and regulated Contracting sectors such as Electrical Contracting and Building and Construction Industries.

Our concern is demonstrated by review of a number of overseas reports that try to research this area of economic activity. As an example, The McKinsey Global Institute report “Independent work: Choice, Necessity and the GIG Economy states

“We define “independent work” as the increasingly broad range of ways in which individuals earn income outside of the traditional long-term employer-employee relationship. Our definition focuses on the characteristics of the work itself rather than the legal arrangements surrounding it. The independent workforce includes the self-employed, independent contractors, freelancers, some small business owners, and many temporary workers, including those who get short-term assignments through staffing agencies.” Page 20

In reports more recently and closer to Australia we see reports from ABC Fact Check 

ABC fact check casualisation article 12/7/2018 clearly shows that the definition of what is the gig economy is varied depends on one’s own objectives. The article quotes including:

“Jeff Borland, a professor of economics at the University of Melbourne, told Fact Check there was no formal definition of insecure work.

He said “slippage” between definitions, as well as insufficient data relating to new forms of employment such as the gig economy, meant the debate over the rate of casualisation was open to interpretation.

Professor Wooden, a labour economics expert, said despite definitional changes, and the fact there was no fixed definition of a gig economy job, it was still possible to debate the issue.

“You can still have a sensible conversation, but the problem is it’s ripe for people to be selective in their facts, to be partial, and you can say none of them are quite wrong.”

Many groups who are concerned about the insecure work/ casualisation/ gig economy make a number of claims about the state of affairs. Others say that the rate has historically not changed in the last 20 years as shown below.
However, we do see that from 1982 that 13% of the population was in casual positions and as a consequence of Australia’s need to reduce tariffs, increase international competition and to decentralise wage fixation and increase productivity the Hawke/Keating Government introduced a raft of economic change that was required to ensure Australia was able to meet the challenges of globalisation that was occurring, and which has led to a significant level of economic growth.


There are 600,000 small businesses in Australia - and an additional 150,000 in the farming sector. The precise contribution of the 750,000 small businesses to Australia is difficult to quantify but is substantial. They account for 96 per cent of all firms, half of private sector employment and a third of all employment in Australia. The existence of the small business sector contributes greatly to the flexibility of the economy and its ability to evolve to meet changing demands.

The 2017 report from the Australian Small Business and Family Enterprise Ombudsman shows that this number has now grown to 2.1 million small businesses more than 250% increase.

MEA would clearly say that the gig economy is NOT genuine subcontracting, labour hire or casual employment. In the electrical industry our employers use direct hire and labour hire employees, subcontracting arrangements and contracting arrangements to complete projects and work assignments as they arise.

In short electrical contracting business employment and contracting arrangements are governed by numerous areas of regulation in Victoria including:

- Fair Work Act
- ABCC (Australian Building and Construction Commission and related codes)
- Taxation (Federal and State) and Superannuation Acts
- Victorian Electrical Licensing and Safety acts
- Victorian Workplace Health and Safety
- Australian Standards (up to 80 relevant Standards including AS/NZS 3000)
- Victorian Labour Hire licencing
- Victorian Workers Compensation scheme
- Sham contracting legislation

The very nature of the electrical and construction industries is project based / on-demand work. It is also why these industries have portable long service leave and redundancy schemes in place to take account of the economic ebbs and flows of the construction industry.

In Australia we have well developed common law that determines the party’s rights obligations and responsibilities call the “Control Test” for assessing genuine subcontracting arrangements. There are 2 types of control outcomes those being:

**Contract of service**

An employee works under a contract of service. He or she personally performs a task or tasks allocated to him or her by his or her employer. The employee is subject to the control and direction of the employer.

**Contract for service /employment**

An independent contractor works under a contract for service. An independent contractor performs an agreed task for an agreed price.
The independent contractor controls how the task is to be done, in what manner and using what methods and materials. However, the completed task must meet the requirements as set down by the employer.

MEA experience as an Employer Association is that the “Control Test” is used in many jurisdictions including taxation, workers’ compensation and portable long service leave funds to name a few. Whilst the test is determined on a case by case basis we do believe that this test, and the common law surrounding it, provides a suitable mechanism to determine who is an employee and who is a genuine subcontractor. The Fair Work Commission publishes resources to assist and below is an extract that assists employers determine the difference. FWC Employee Vs Independent Contractor

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Employee</th>
<th>Independent Contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Degree of control over how work is performed</td>
<td>Performs work, under the direction and control of their employer, on an ongoing basis</td>
<td>Has a high level of control in how the work is done</td>
</tr>
<tr>
<td>Hours of work</td>
<td>Generally works standard or set hours (note: a casual employee’s hours may vary from week to week)</td>
<td>Under agreement, decides what hours to work to complete the specific task.</td>
</tr>
<tr>
<td>Expectation of work</td>
<td>Usually has an ongoing expectation of work (note: some employees may be engaged for a specific task or specific period)</td>
<td>Usually engaged for a specific task.</td>
</tr>
<tr>
<td>Risk</td>
<td>Bears no financial risk (this is the responsibility of their employer)</td>
<td>Bears the risk for making a profit or loss on each task. Usually bears responsibility and liability for poor work or Injury sustained while performing the task. As such, contractors generally have their own insurance policy.</td>
</tr>
<tr>
<td>Superannuation</td>
<td>Entitled to have superannuation contributions paid into a nominated superannuation fund by their employer.</td>
<td>Pays their own superannuation (note: in some circumstances independent contractors may be entitled to be paid superannuation contributions).</td>
</tr>
<tr>
<td>Tools and equipment</td>
<td>Tools and equipment are generally provided by the employer, or a tool allowance is provided.</td>
<td>Uses their own tools and equipment (note: alternative arrangements may be made within a contract for services).</td>
</tr>
<tr>
<td>Tax</td>
<td>Has income tax deducted by their employer.</td>
<td>Pays their own tax and GST to the Australian Taxation Office.</td>
</tr>
<tr>
<td>Method of payment</td>
<td>Paid regularly (for example, weekly/fortnightly/monthly).</td>
<td>Has obtained an ABN and submits an invoice for work completed or is paid at the end of the contract or project.</td>
</tr>
<tr>
<td>Leave</td>
<td>Entitled to receive paid leave (for example, annual leave, personal/carer’s leave, long service leave) or receive a loading in lieu of leave entitlements in the case of casual employees.</td>
<td>Does not receive paid leave.</td>
</tr>
</tbody>
</table>

The on-demand nature of the electrical industry is also noted in the modern award. The award has in it conditions that are well understood for the use of on-demand employees being casuals. Those include conversion to part time or full time after 6 months at the option of the employee and a positive responsibility on the employer to offer.

10.3 Casual employment

(a) A casual employee is one engaged and paid as such. A casual employee’s ordinary hours of work are the lesser of an average of 38 hours per week or the hours required to be worked by the employer.
(b) For each hour worked, a casual employee will be paid no less than 1/38th of the all-purpose weekly wage rate of pay for their classification in clause 16—Classifications and minimum wages, plus a casual loading of 25%.

(c) The casual loading is paid instead of annual leave, paid personal/carer’s leave, notice of termination, redundancy benefits and the other attributes of full-time or part-time employment.

(d) The overtime provisions of clause 26—Overtime and clause 24.13 apply to casual employees.

(e) Casual conversion to full-time or part-time employment

(i) A casual employee, other than an irregular casual employee, who has been engaged by a particular employer for a sequence of periods of employment under this award during a period of six months, thereafter has the right to elect to have their contract of employment converted to full-time or part-time employment if the employment is to continue beyond the conversion process.

(ii) For the purposes of clause 10.3(e)(i), an irregular casual employee is one who has been engaged to perform work on an occasional or non-systematic or irregular basis.

(iii) Every employer of such an employee must give the employee notice in writing of the provisions of clause (e) within four weeks of the employee having attained such period of six months. The employee retains their right of election under clause (e) if the employer fails to comply with the clause.

(iv) Any such casual employee who does not within four weeks of receiving written notice elect to convert their contract of employment to full-time or part-time employment is deemed to have elected against any such conversion.

(v) Any casual employee who has a right to elect under clause 10.3(e)(i) on receiving notice under clause 10.3(e)(iii) or after the expiry of the time for giving such notice, may give four weeks’ notice in writing to the employer that they seek to elect to convert their contract of employment to full-time or part-time employment, and within four weeks of receiving such notice the employer must consent to or refuse the election but must not unreasonably refuse.

[10.3(f) inserted by PR700653 ppc 01Oct18]

(f) A casual employee must be engaged and paid for at least 2 consecutive hours of work on each occasion they are required to attend work.

Given the above information and circumstances we do not believe that on-demand work in the Electrical Industry suffers from any lack of regulation or protection.

CONSUMER SENTIMENT AND DIGITAL PLATFORM EFFECTS ON INDUSTRIES

MEA does however believe that the gig economy and those who engage within it are susceptible to consumer and platform characteristics that can be addressed. MEA would draw comparisons between the Electrical Industry and the recent Taxi Industry disruption.

The Taxi Vs Uber on-demand workforce / digital disruption is a significant example of the effects of consumer sentiment and digital platform effect on industries. Consumer wish to get from Point A to Point B as efficiently and economically as possible. Consumers were, and are, price and time sensitive.
A review of online articles clearly shows that Uber wins on price and reliability. An example of the findings can be found with Choice in the following article:

Choice; ubex vs taxi which one is best

What the Uber example demonstrates, is the increasing use of digital platforms by the public to source personal workers/contractors to undertake tasks directly, usually facilitated by a “fit for purpose” platform. In many cases we see traditional middle intermediaries and regulators simply bypassed, particularly when barriers to an alternative supplier are low to enter an industry.

The Taxi Industry and the taxi owners created an industry which included

- controlled the supply of services (i.e. number of licenses),
- high barriers to enter the market in terms of fees and charges,
- instituted inflexible working arrangements for owners and drivers,
- monopolised markets in smaller communities with limited or no competition,
- lack of accountability and developed poor customer service reputation on a community level

Uber was able to cut out the restrictions by connecting customers and drivers directly with

- no cap on participants
- reduced cost,
- low barriers to enter
- increased security,
- increased customer service and reliability for consumers to a level not experienced in the taxi industry but better matching their expectation.

Issues existed in the Taxi industry before Uber arrived, issues such as:

- poor customer service,
- price sensitive consumers (however with little or no alternative)
- unreliability of fares being completed,
- cash society and drivers turning off meters and providing services “off the books”.
- Illegal touting which was not addressed or seen as a serious issue in the decades before Uber.

Issues of cash jobs and illegal touting affected the Taxi industry and/or Owner, both illegal but because the platform did not enable wide spread connection with consumers the issues were minor. An example can be seen in the following news article from The Age in 2006.

Illegal taxi touts Melbourne airport to city trips

Digital platforms simply enable consumers to make it easier to find a service that meet their price sensitive nature. Platforms also deliver those with services at lower rates to attract larger clientele.
The Electrical Industry faces a similar history and problem, like the Taxi industry. The threat of the digital platform and connecting customers to providers is both an opportunity for Electrical Contractors to develop customer base but also introduces a significant increased risk to consumers and electrical contractors.

Digital platforms such as Airtasker, Gumtree, Facebook etc enable consumers to seek out and engage self-employed people to undertake work which may or may not be legal for them to undertake.

The Electrical Industry barriers to enter are high including,

- a 4-year apprenticeship plus
- post trade qualifications plus
- relevant licensing and insurance requirements plus
- Inspection auditing and reporting regimes

This is required to ensure the safety of the industry is maintained. Work completed incorrectly can and will result in electrical deaths of not only those undertaking the work but possibly other contractor’s consumers and the public.

Electrical Contractors have always faced issues concern cash jobs or “cashies” by employees on weekends, which is discouraged and monitored through stocktakes, policies and monitoring. However, with platforms delivering clients to suppliers of services it is harder to monitor, and the market is expanded from word of mouth and referral to online access. In preparing this response MEA reviewed Airtasker. MEA found a possible example of such behaviour whereby an electrician is possibly working without a Contractors license. These types of examples are not uncommon.

https://www.airtasker.com/users/ryan-e-12753032/

Many of these types of adds also say “can work early morning or late afternoon or weekends, suggesting that they do hold a full-time job and will do work out of hours and not be subject to relevant industry requirements.

However, unqualified and unlicensed people to enter the trade industry is relatively low with requirements being

- Basic tools and transport required
- Rudimentary knowledge of trade skills
- Easy access to supplies from large retail hardware suppliers

However, a significant upswing in reports of illegal work is available for viewing in any of the above websites and others. Illegal workers are simply advertising with little to no consequences and a brazen flouting of the laws.


In general, “Handyman” services are a guise for illegal work with overseas, untrained workers touting their skills where uneducated consumers are rating services which they have no way in judging are safe reliable or legal.

Consumers are also a source of illegal work whereby examples such as this showing that no consideration of licensed work and that cost seems to be a primary driver.

In examining the above examples of consumer sentiment and digital platform effects on industry we see that the facilitation of the breaches source is one of information that is approved and or allowed to be published in the advertising medium.

In Victoria, and every other state in Australia, there is a positive obligation on Registered Electrical Contractors (REC) must not publish or cause to be published any advertisements, notice or statement that the contractor carries on or is willing to carry on electrical contracting work unless the advertisement, notice or statement includes the registered number of the contractor. In every state and territory in Australia there is an obligation on consumers not to undertake electrical work for themselves.

What is common is advertising or access to markets. In Australia a system of self-regulation is in force to manage advertising and it is clear from the Ad Standards material that advertising either from a Contractors point of view or a consumer’s point of view is clearly advertising. We see that platforms like Gumtree Facebook and Air tasker clearly fall under the codes requirements. Particularly requirements concerning User Generated Content (UGC). The organisation Ad Standards has developed a code of practice for advertisers and relevant practice notes for different industries

- AANA Code of Ethics July 2018
- AANA Code of Ethics Practice Note November 2018
- Marketing in the Digital Space Industry Practice Note

We would draw your attention to the Digital Space Practice extracts and highlights below.

1. WHAT DOES THIS INDUSTRY PRACTICE NOTE APPLY TO?
   a. Material which draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct and:

   • which is under the reasonable control of the advertiser, whether or not a payment or other valuable consideration is involved;
   • which is communicated via a website or social media page or other digital environment; and
b. Examples of digital marketing include all forms of commercial communication on:

- Brand-owned websites or brand-managed social media pages (including mobile and tablet versions), including 3rd party user-generated comment (UGC)
- Independent social media sites (e.g. Facebook, LinkedIn, Twitter)
- Social news sites (e.g. Reddit)
- Video sharing sites (e.g. Youtube, Vimeo)
- Wikis (e.g. Wikipedia, PBwiki)
- Apps (e.g. mobile and web based applications)
- Blogs and microblogs
- Photo sharing sites (e.g. Flickr, Instagram, Pinterest)
- Podcasts
- RSS feeds
- Interactive digital point of sale and billboards
- Interactive TV services
- Advergames
- MMS/SMS

This list is not exhaustive.

Managing consumer interactions

Many digital platforms provide functionality and mechanisms for brands to define and manage the way consumers interact with them and with each other. AANA recommends making use of the following functions to manage consumer interactions in a brand’s digital space:

- Notifications management: sends an email notification to a nominated email address when a customer posts, comments or sends a message to a brand’s page.
- Permissions management: allows a brand owner to restrict viewing of a page to specific countries and/or age groups.
- Mobile page management apps: allows a page owner to review UGC via a mobile or tablet (for example, Facebook has a Pages Manager mobile application).
- Profanity block list: blocks posts/interactions which contain proscribed words or phrases. These can be set to different filter levels (e.g. strong, medium) so that UGC can be appropriately managed according to brand and audience requirements. Each platform provides its own mechanisms for managing UGC and brands should familiarise themselves with the functionality available when establishing their digital presence.

How should UGC be moderated?

What is considered reasonable review of UGC will differ by brand owner and brand, and will be based on the digital site or platform, the expectations of the relevant digital community, and the level of activity on the digital site or platform. In terms of best practice for the review of UGC, the AANA recommends that:

- brand owners should consider monitoring their social media pages at least once every business day, as standard, and on non-business days, consistent with the brand’s level of activity and consumer engagement;
- during periods of increased engagement (by the brand owner or by users), brand owners should increase their frequency of monitoring;
• where possible, immediately following and for at least two hours after a new post, brand owners should monitor for further posts;
• where possible, brand owners should make available a mechanism to allow users to notify the brand owner of any UGC they consider to be unacceptable;
• where possible, brand owners should consider using automated software to remove UGC which clearly offends prevailing community standards;
• guidelines or ‘house rules’ which clearly define what is and is not acceptable UGC should be developed and be made easily accessible to registered users;
• pre-vetting of UGC is not generally required (although brand owners may find language profanity filters, as mentioned above, useful).

**Responding to Ad Standards queries about UGC**

*If a complaint about UGC is received by Ad Standards, it will notify the brand owner and the brand owner should review the UGC against the relevant AANA Code. Relevant AANA practice notes are available and AANA members can approach the AANA for advice and assistance. If, in the brand owner’s judgement, the UGC breaches an AANA Code, the offending UGC should be immediately amended or removed.*

*Ad Standards will not usually consider complaints about material that has been removed at the time that the complaint is received, or subsequent to the receipt of the complaint but prior to consideration by the Ad Standards Community Panel. However, Ad Standards will consider whether the advertisement was current at the time the complaint was made, whether the advertiser intends to republish the material and whether the complaint raises a significant issue of public interest.*

It is our view that the Community expectation is that licensed work such as electrical and plumbing are undertaken by qualified and licensed workers working for licensed contractors, this is supported by legislation however a gap in the current law allows advertisers to flout this community expectation which will have serious and possibly fatal consequence. It is our view that to minimise illegal work developing from any of the identified sources that action should be recommended that advertisers undertake the following

1. Develop a protocol to ensure that any user developing content relating to licensed work must provide proof of and display all relevant licenses in each jurisdiction the advertisement appears in
2. That any user developing content who does not hold said licenses for the provision of services is prohibited from advertising.
3. That consumers who advertise for work to be completed related to the relevant trades must include a statement that only licensed contractors will be considered
4. That platform owners have a clear and documented complaints process available in Australia for resolution and withdrawal of UGC within 2 hours of being notified of the non-complaint advertisement.
5. That advertisers have a positive duty imposed upon them through both the Electrical Safety act and the Ad Standards be approached to amend the said practice note to include a requirement for lawful activity including relevant state jurisdiction licensing requirements

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