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20 February, 2019

Inquiry Secretariat
Inquiry into the Victorian On-Demand Workforce

**By email:** ondemandinquiry@ecodev.vic.gov.au

Dear Sir/Madam,

We welcome the opportunity to provide feedback in relation to the Submission in Response to the Inquiry into the Victorian On-Demand Workforce.

Please do not hesitate to contact me and my colleagues on [text removed] or at [text removed] if we can further assist with the inquiry's important work.

Yours faithfully,

**Daniel Victory**
**Principal Lawyer**
**MAURICE BLACKBURN**


# Submission in Response to the Inquiry into the Victorian On-Demand Workforce

**February 2019**

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## Introduction

Maurice Blackburn Pty Ltd is a plaintiff law firm with 32 permanent offices and 32 visiting offices throughout all mainland States and Territories. The firm specialises in personal injuries, medical negligence, employment and industrial law, dust diseases, superannuation (particularly total and permanent disability claims), negligent financial and other advice, and consumer and commercial class actions.

Maurice Blackburn employs over 1000 staff, including approximately 330 lawyers who provide advice and assistance to thousands of clients each year. The advice services are often provided free of charge as it is firm policy in many areas to give the first consultation for free. The firm also has a substantial social justice practice.

## Our Submission

The on-demand workforce is a 21st century phenomenon being regulated via 19th and 20th century regulation.

Entities engaging the on-demand workforce have leveraged new technology and exploited out-of-date legislative frameworks to circumvent industrial laws and have sought to classify workers as independent contractors in order to avoid tax, insurance, industrial and other obligations.

There is now a high degree of public concern regarding the impact of those changes. This concern arises from the increasing prevalence of such arrangements and the disproportionate impact of insecure work on the most vulnerable members of the workforce.

Insecure work arrangements, such as independent contracting, strike at the fundamentals of what Australians associate with work – regular pay, ongoing employment, protection and fair conditions, and the opportunity for advancement.

Despite undertaking work which in every other aspect has the hallmarks of a direct employment relationship, these low paid, vulnerable workers who are engaged as independent contractors are denied access to basic minimum labour standards and institutionalised collective bargaining.

Maurice Blackburn congratulates the Victorian Government on this timely and important inquiry. In the following pages, we have framed our responses to the terms of reference with regard to:

- The importance of ensuring appropriate definitions in contemporary work arrangements and relationships;
- The importance of equipping registered organisations with the resources to challenge unlawful sham contracting when it occurs; and
- The importance of collective bargaining as a means for achieving employment standards.

Above all, we are mindful that it is the most vulnerable in our communities who are most at risk of exploitation by employers seeking to abrogate their responsibilities through sham contracting arrangements.

## Responses to Selected Terms of Reference

### The legal or work status of persons working for, or with, businesses using on-demand platforms

Entities engaging the on-demand workforce have leveraged new technology and exploited out-of-date legislative frameworks to circumvent industrial laws in order to avoid insurance, tax, industrial and other obligations.

The nature of employment arrangements in Australia has changed significantly over the last two decades. These changes have seen the use of independent contractors increase across all sectors of the economy.

While the ranks of independent contractors include some genuinely entrepreneurial workers, increasingly they also include low paid, vulnerable workers, who are 'dependent' on one engager (so-called 'dependent contractors')[1], or who may work for a number of engagers ('independent contractors') but are entirely reliant on their own labour to support themselves and their families.

Despite undertaking work which in every other aspect has the hallmarks of a direct employment relationship, these low paid, vulnerable workers who are engaged as independent contractors are denied access to basic minimum labour standards and institutionalised collective bargaining.

These arrangements strike at the fundamentals of what Australians associate with work – regular pay, ongoing employment, protection and fair conditions, and the opportunity for advancement.

As the discussion paper clearly sets out:

> *"These employment entitlements are determined by the existence of an employment relationship which is not defined in the statute but is determined by the nature of the contract and the common law."* (p.10)

Previous inquiries have estimated that approximately 17 percent of workers are not covered by the protections of the *Fair Work Act* because they are either independent contractors or business owners.[2]

Maurice Blackburn's experience is that many workers in the on-demand workforce are being classified by the on-demand businesses that engage them as independent contractors. For example, riders and drivers employed by Deliveroo, Uber Eats and Uber, or previously employed by Foodora.

Maurice Blackburn considers that, in truth, the relationship between the persons engaged by many of these on-demand companies should be properly classified as an employment relationship. Therefore these on-demand workers should be afforded the protections and entitlement of employees.

Indeed in light of the High Court's decision in *Hollis v Vabu Pty Ltd [2001] HCA 44* it is difficult to see how any on-demand businesses can seriously contend that workers

[1] See for example Australian Council of Trade Unions, *'Lives on Hold: Unlocking the Potential of Australia's Workforce*' (Report, Independent Inquiry into Insecure Work in Australia, 2012) 15–16.
[2] Productivity Commission Inquiry Report, Workplace Relations Framework, Volume 1, 30 November 2015 at page 107

engaged in bicycle delivery services are independent contractors and not employees. This view is supported by the recent decision of the Fair Work Commission with respect to Foodora[3]. The ATO and Revenue NSW appear to have taken a similar view.[4]

**Whether contracting or other arrangements are being used to avoid the application of workplace laws and other statutory obligations**

Maurice Blackburn submits that contracting and other arrangements are being used to avoid the application of workplace laws and other statutory obligations. Further, we consider that in many cases this is a deliberate business strategy, designed to avoid tax, insurance, industrial and other obligations.

The effects of employers engaging in this contracting behaviour are clear:

- It leads to insecure and unfair working arrangements for workers;
- Costs are shifted from the business to the independent contractor or the taxpayer. For example, independent contractors are usually required to cover the cost of their own sick leave and annual leave;
- It presents an unfair competitive advantage over businesses that do not employ such tactics and encourages a race to the bottom on wages and conditions; and.
- Governments are deprived of taxation revenue from a loss of payroll, company and income tax.

This ability to shift costs, together with ambiguities in the legal test for establishing when a person is an employee, mean that some businesses have engaged in sham contracting arrangements or deliberate attempts to misclassify employees.

The practice of misclassifying employees appears to be more prevalent in some industries than in others. The Fair Work Building Commission has estimated that up to 13 percent of self-defined contractors in the building and construction industry may be misclassified.[5] In 2011 a targeted audit of 102 employers in the cleaning services, hair and beauty and call-centre industries by the Fair Work Ombudsman assessed 23% of enterprises as misclassifying employees.[6]

In our experience, sham contracting is more likely to occur in industries and entities where:

- There is a pronounced power or status difference between the worker and the employer;
- There is a general custom or industry practice to utilise insecure forms of work;
- The business operates within a highly competitive industry, where the employer feels that the only option to save costs is through cutting corners on staff wages and benefits;
- The workers feel powerless to do anything about it, through fear of losing their jobs or residential status; and

[3] Joshua Klooger v Foodora Australia Pty Ltd [2018] FWC 6836 (16 November 2018)
[4] https://www.abc.net.au/news/2018-08-28/foodora-fallout-taxman-chasing-delivery-food-company/10172650
[5] FWBC 2012, Working Arrangements in the Building and Construction industry - further research resulting from the 2011 Sham Contracting Inquiry, December.
[6] 2011, Sham contracting and the misclassification of workers in the cleaning services, hair and beauty and call centre industries, November.

- There is competition for the jobs on offer.

**The application of workplace laws and instruments to those persons, including accident compensation, payroll or similar taxes and superannuation**

The predominant test for determining whether a worker is covered by workplace laws including the *Fair Work Act 2009* (FW Act), accident compensation, payroll tax and superannuation is the common law multi-factorial test set out by the High Court in *Hollis v Vabu*. The problems with the common law test are discussed in more detail in the next section of this submission.

The following legislation contains extended definitions that capture work performed by persons who would not otherwise meet the definition of an employee at common law:

a) *Workplace Injury, Rehabilitation and Compensation Act* (WIRC Act)[7];
b) Superannuation legislation[8]; and
c) Payroll tax legislation[9].

Maurice Blackburn submits that some of these extended definitions of 'employee' would cover some on-demand workers. However, many would still not be caught by these extended definitions. For example, the WIRC Act and Superannuation legislation both include an 'income derived' test deeming contractors to be included if at least 80% of their gross income is derived from the contract with the person engaging them.

If a workers' on-demand job is a second income stream or the work is performed under a series of short term contracts many on-demand workers may not be caught by the 'income derived' test.

Therefore even where an extended definition of worker applies, some on-demand workers may still not be covered by these extended definitions. Maurice Blackburn submits that to the extent there is any doubt about whether workers are caught by these extended definitions some on-demand businesses are using that doubt to exploit on-demand workers.

The FW Act does not contain an extended definition of the term 'employee' and relies on the common law definition.

In its report on its inquiry into Corporate Avoidance of the Fair Work Act, the Senate Education and Employment References Committee noted that for a large class of workers:

> *"There is also no security of income, no insurance for the worker in case of accident, no superannuation, no personal, annual or paid leave of any description".*[10]

[7] See Schedule 1, Part 1 – Section 9 *WIRC Act* (Vic)
[8] See section 12 of the *Superannuation Guarantee (Administration) Act 1992*
[9] See s 32 of the *Payroll Tax Act 2007* (Vic)
[10] https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/AvoidanceofFairWork/Report/c08, section 8.2.

Independent contractors do not receive the same protections and entitlements as employees.

Workers who are not covered by the FW Act, including independent contractors, are not entitled to minimum rates of pay, annual leave, personal leave, unfair dismissal and collective bargaining rights.

The lack of statutory entitlements for independent contractors means they can be engaged at a lower cost to an employer than if they were to employ the same person as an employee.

These independent contracting arrangements and insecure work are creating a generation of workers who:

- are not being paid superannuation, and will therefore not benefit from superannuation benefits at retirement;
- may be uninsured or underinsured in the event of accident or mishap;
- have no security of income;
- do not have the safety net of minimum hourly earnings; and
- are not covered for personal, sick, parental or other forms of leave.

Additionally, the various state/territory Workcover schemes are being deprived of premium income they would otherwise have received. Governments may also be losing tax revenue from lost payroll, company and income tax as a result of misclassification of workers.

In addition to unfair treatment of vulnerable workers, depriving these workers of legislative safeguards is likely to lead to cost shifting from businesses to the public purse. For example, injuries that should have been covered by workers compensation will instead be covered by Medicare, and workers who missed out on superannuation will only have the pension to rely on in their old age.

It is difficult to say what percentage of those classified as independent contractors are in truth, really employees.

**The effectiveness of existing mechanisms for determining the application of the law to on-demand workers**

The distinction between employees and independent contractors arose in the 19th century as a means of determining whether one person should be liable for the torts of another.[11]

Over the years the Courts have developed various common law tests in order to distinguish independent contractors from employees. Presently the common law test applied by the Courts is set out in the High Court decision in *Hollis v Vabu*.

[11] See *ACE Insurance Ltd v Trifunovski [2011] FCA 1204 (25 October 2011)* Perram J at [25] and *ACE Insurance Limited v Trifunovski [2013] FCAFC 3* (25 January 2013) Buchannan J at [14].

These tests have often been criticised for their complexity, uncertainty in application, and ability to be manipulated in order to achieve a desired outcome.

Despite these flaws the common law test for determining whether a worker is an employee pervades labour and industrial regulations in Australia including the *Fair Work Act 2009 and also the Long Service Leave Act 2018 (Vic).*

The common law test is also used to attribute vicarious liability. The doctrine of vicarious liability makes employers liable for the actions of their employees. However, persons who engage an independent contractor are not usually liable for the acts of independent contractors that they engage. This means that the risk and associated costs of performing work, such as obtaining public liability insurance, are borne by the independent contractor. A number of significant Court cases, such as *Hollis v Vabu* have turned on whether a worker is an employee in order to determine if a business is vicariously liable.

The ambiguity in the common law test has led to a number of legal disputes over the rights and entitlements of workers that turn on the application of a test, the results of which, cannot be predicted with certainty.

Maurice Blackburn submits that some on-demand businesses are attempting to exploit this uncertainty by wrongly classifying workers as independent contractors to avoid insurance, tax, industrial and other obligations.

**The capacity of existing legal and regulatory frameworks to protect the rights of vulnerable workers**

The vulnerability of many on-demand workers often places them at a distinct disadvantage in accessing their workplace rights. This is typified by:

- Non-engagement with unions or forms of workforce organisation;
- The on-demand business engaging the worker having significantly more resources than the worker;
- Not questioning inappropriate behaviours of businesses through fear of retribution, or not being able to find alternative work; and
- Not seeking external information on entitlements.

The present regulatory and legal environment places most of the responsibility on workers for addressing exploitation in the on-demand economy. Mainly this is done through making a complaint to the Fair Work Ombudsman or seeking the assistance of a union or community legal centre.

The Fair Work Ombudsman has shown some willingness to bring test cases regarding on-demand workers.[12] However, the Fair Work Ombudsman does not have the resources to address all the legal and regulatory issues that arise from the on-demand economy.

**The role of community groups and unions and their resourcing and infrastructure**

To date the most high profile test case involving an on-demand business was the unfair dismissal case brought by Josh Klooger against Foodora. The test case was filed and conducted with the support of the Transport Workers Union (TWU).

[12] https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/june-2018/20180612-foodora-litigation

Without the support of organisations such as the TWU, individual on-demand economy workers are unlikely to be able to bring legal cases that test the real legal status of their engagement. This is for a number of reasons including;

1. Many workers in the on-demand economy are unable to afford the costs of litigation;
2. Many workers in the on-demand economy are unaware of what they are entitled to and those that are may be afraid to speak up for fear of reprisals;
3. The costs of pursuing unpaid entitlements arising from misclassification often exceed the amounts owed; and
4. Businesses that operate in the on-demand economy have a strong monetary incentive to avoid an adverse decision from a Court or Tribunal that might set a precedent. This means they can and do spend large sums of money defending litigation and settling litigation where they perceive they will be unsuccessful.

Unions, like all organisations, have limited resources. Test cases against on-demand economy businesses are expensive and resource intensive. On-demand businesses have a strong incentive to spend significant resources defending these cases.

Unions who take on test cases against on-demand businesses are providing a significant public good. Such cases help expose businesses who are misclassifying employees and provide more certainty in the law.

These test cases have wider benefits than to those bringing the case. If the Court or Tribunal declares workers previously classified as independent contractors to be employees then this may mean increased tax revenue and increased payments of workers compensation premiums.

Businesses who comply with the law are able to compete on a level playing field without being undercut by unlawful sham contracting.

On-demand workers who receive increased wages and remuneration are more likely to spend that money in the Australian economy than the multi-national on-demand businesses that pay them. This increased economic activity also benefits the broader community.

Despite the public good provided by test cases arising from the on demand-economy unions receive no public funding to assist with the costs of bringing these cases. Often, the costs to a union of bringing a test case against an on-demand business would vastly exceed any amounts recovered by the union.[13]

Maurice Blackburn submits that the Victorian Government should formally recognise the public good provided by unions who bring claims to recover entitlements from misclassified on-demand workers by providing funding for test cases.

Maurice Blackburn also supports the decision of the Andrews Labor Government to make it easier for workers to access the Courts by lowering filing fees, hearing claims within 30 days and simplifying court processes.[14]

[13] Legal costs are not usually recoverable in cases under the *Fair Work Act 2009*.
[14] https://www.premier.vic.gov.au/dodgy-employers-to-face-jail-for-wage-theft/

**What are the alternative approaches to the status quo?**

The definition of employee should be extended by legislation to be broader than the present definition at common law.

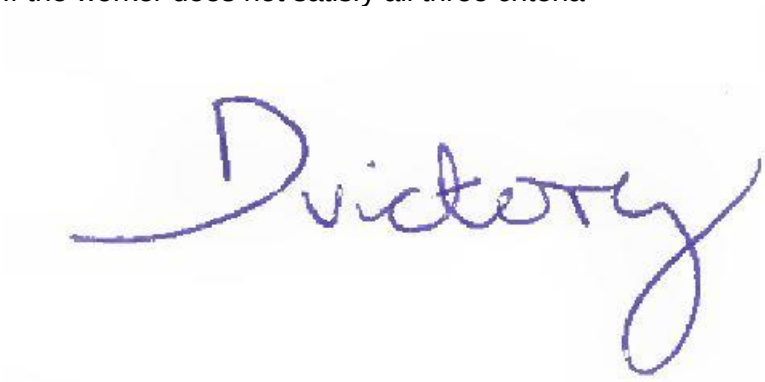
International experience can help inform this process.

In August 2018 the Supreme Court of California handed down a decision adopting the 'ABC test' for determining whether workers were independent contractors or employees. The case follows other jurisdictions in America also adopting the ABC test.

According to the 'ABC test', in order for a worker to be an independent contractor all three of the following criteria must be satisfied:

A. that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
B. that the worker performs work that is outside the usual course of the hiring entity's business; and
C. that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.[15]

If the worker does not satisfy all three criteria



then he/she is deemed to be an employee.

Maurice Blackburn believes that the above test should be inserted into industrial and other legislation that uses the common law definition of employee as a means of determining whether a worker is an employee or contractor.

Maurice Blackburn further believes that the above test should apply *in addition to* the common law definition so that if a worker is considered an employee under either test they will be classified as an employee.

There is likely to be significant overlap between the ABC test and the common law definition. However, Maurice Blackburn believes that the ABC test is simpler to apply and would remove some of the ambiguity caused by the common law definition that is currently being exploited by businesses. The ABC test is also likely to cover a larger number of workers than the common law definition which would give a greater number of

[15] *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*

workers access to the protections and rights in the FW Act including collective bargaining rights.

Maurice Blackburn believes that the Federal Government should also give the Fair Work Commission the power to arbitrate minimum standards for independent contractors. If independent contractors are entitled to conditions like minimum rates of pay, annual leave, sick leave and unfair dismissal protection this would greatly reduce the economic incentive to misclassify workers as independent contractors.

This is not a new concept in Australia. Until its abolition in April 2016 the Road Safety Remuneration Tribunal was responsible for setting minimum pay rates and other entitlements for owner drivers and had provisions for hirers and supply chain participants to audit supply chain contracts.

Maurice Blackburn submits that the Fair Work Commission should be given the power to arbitrate pay and conditions for independent contractors. This would reduce the incentive to classify workers as independent contractors and therefore reduce misclassification in the on-demand economy.[16]

Maurice Blackburn also supports the laws currently proposed by the Andrews Labor Government to make deliberate underpayment of workers an offence punishable by up to 10 years in jail.[17]

Maurice Blackburn recognises that many of these initiatives are out of the direct scope of a Victorian inquiry (see next section). We believe, however, that having this inquiry adopt and promote these alternative approaches, it would go some way to fostering change at the federal level.

**To what extent are these approaches open to the Victorian Government? If not how might they be implemented?**

There are significant barriers to the Victorian government enacting legislation to address the misclassification of workers in the on-demand economy.

The regulation of employment entitlements and independent contractor entitlements is largely the domain of the Federal Government. The Victorian Government does not have the power to extend the definition of employee under the FW Act or superannuation legislation. It is also precluded by the *Independent Contractors Act 2010 (Cth)* (the ICA) and s.109 of the Constitution from legislating entitlements for independent contractors.

The Victorian Government does have power over long service leave legislation, payroll tax legislation and Workcover legislation.

As discussed above, payroll tax legislation and Workcover legislation already have an extended definition of worker to cover workers who would not otherwise be classified as an employee. However, Maurice Blackburn believes that these extended definitions should additionally include the 'ABC test' in addition to the test currently applied at common law.

[16] This change may also require an amendment to the Competition and Consumer Act 2010 (CC Act) to exempt independent contractors who engage in collective bargaining in the Fair Work Commission from the anti-competitive conduct provisions of the CCA.
[17] https://www.premier.vic.gov.au/dodgy-employers-to-face-jail-for-wage-theft/

Long service leave legislation currently uses the common law definition of an employee. A deeming provision should be inserted into the *Long Service Leave Act 2010* so that workers who would be considered employees under the ABC test are also deemed to be employees for the purpose of that Act.

As discussed above, a common reason that businesses seek to improperly classify workers as independent contractors is to avoid vicarious liability for the actions of those workers. The Victorian Government should enact legislation making businesses who engage workers vicariously liable for the actions of those workers if the workers would be considered employees under the ABC test.

The Victorian Government also has the power to regulate the *Commercial Passenger Vehicle Industry Act 2017* (Vic). The Victorian Government has used this power in recent times to regulate ride-share businesses in the on-demand economy[18]. To date, those reforms have been targeted at improved safety and accountability, better consumer protection and industry transition assistance. However the recent reforms have not touched on the amount of remuneration to be paid to drivers in the commercial passenger vehicles.

To this end, Maurice Blackburn believes that the Victorian Government should amend the *Commercial Passenger Vehicle Industry Act 2017* (Vic) to:

- Require that applications for the registration of a booking service provider should include calculations that demonstrate the rate of pay to be paid to drivers, after expenses, is at least equal to the minimum amount the driver would be entitled to under the *Passenger Vehicle Transportation Award 2010;*

- Require the commercial passenger vehicle regulator to refuse to register booking service providers if it is not satisfied that the booking service provider's pay rates are sufficient to meet the minimum rates, after expenses, that a driver would be entitled to under the *Passenger Vehicle Transportation Award 2010*;

- Mandate that the registration of a booking service provider is conditional on them providing records to the regulator annually that are sufficient to satisfy the regulator that the booking service provider is paying drivers the minimum they would be entitled to, after expenses, under the *Passenger Vehicle Transportation Award 2010;*

- Allow the regulator to require records be provided more regularly in circumstances where the booking service provider has been found to have breached the conditions of their registration;

- Empower the regulator to suspend or cancel the registration of a booking service provider if the regulator is satisfied that the person or entity holding that registration has paid a driver or drivers below the minimum they would be entitled to under the *Passenger Vehicle Transportation Award 2010*;

- Empower the regulator to refuse registration of a booking service provider for up to three years in circumstances where the booking service provider has previously been found by the regulator to have underpaid drivers.

[18] https://transport.vic.gov.au/Getting-around/Taxis-hire-car-and-ridesharing/Industry-reforms

## Recommendations for Legislative and Regulatory Reform

Maurice Blackburn submits the following potential reforms for consideration:

In relation to common law tests of employee classification

**Recommendation 1:**
**That the ABC test should adopted by the Victorian Government as a means for determining the employment status of an employee/contractor. The test should apply in addition to the common law definition so that a worker will be classified as an employee if they meet the common law test or if they do not satisfy the ABC test.**

In relation to Workcover legislation:

**Recommendation 2:**
**That the definition of 'Worker' in the WIRC Act be amended to include workers who do not satisfy the ABC test.**

In relation to payroll tax

**Recommendation 3:**

**That payroll tax legislation be amended to make payroll tax payable in respect of any worker who do not satisfy the ABC test.**

This deeming provision should expand the scope of the definition of employee to 'deem' other workers, such as dependent contractors, as workers for the purpose of the Act.

Workers who are covered by the deeming provisions would then be able to organise and bargain in the same manner as employee workers and receive the same minimum entitlements and protections.

In relation to long service leave legislation

**Recommendation 4:**
**That the *Long Service Leave Act 2018* (Vic) be amended to apply to workers who do not satisfy the ABC test.**

As discussed earlier, a similar scheme already previously operated in respect of independent contractor drivers in the transport industry. The Road Safety Remuneration Tribunal was responsible for setting minimum remuneration entitlements, approving enterprise agreements and dealing with disputes in the road transport industry.

In relation to the *Commercial Passenger Vehicle Industry Act 2017* (Vic)

**Recommendation 5:**
**That the *Commercial Passenger Vehicle Industry Act 2017* (Vic) be amended to**:

> **1. Require that applications for the registration of a booking service provider include calculations that demonstrate the rate of pay to be paid to drivers,**

**after expenses, is at least equal to the minimum amount the driver would be entitled to under the Passenger Vehicle Transportation Award 2010;**

**2. Require the commercial passenger vehicle regulator to refuse to register booking service providers if it is not satisfied that the booking service provider's pay rates are sufficient to meet the minimum rates, after expenses, that a driver would be entitled to under the Passenger Vehicle Transportation Award 2010;**

**3. Mandate that the registration of a booking service provider is conditional on them providing records to the regulator annually that are sufficient to satisfy the regulator that the booking service provider is paying drivers the minimum they would be entitled to, after expenses, under the Passenger Vehicle Transportation Award 2010;**

**4. Allow the regulator to require records be provided more regularly in circumstances where the booking service provider has been found to have breached the conditions of their registration;**

**5. Empower the regulator to suspend or cancel the registration of a booking service provider if the regulator is satisfied that the person or entity holding that registration has paid a driver or drivers below the minimum they would be entitled to under the Passenger Vehicle Transportation Award 2010; and**

**6. Empower the regulator to refuse registration of a booking service provider for up to three years in circumstances where the booking service provider has previously been found by the regulator to have underpaid drivers.**

In relation to vicarious liability

**Recommendation 6:**
**That the Victorian Government enact legislation to make businesses who hire workers vicariously liable for the conduct of those workers if the worker does not satisfy the ABC test.**

In relation to funding for test cases

**Recommendation 7:**
**That the Victorian Government make grants available to unions who pursue test cases to determine the status of workers in the on-demand economy.**

This is because, in pursuing these cases, unions provide a public good. The community benefits from receiving better certainty about the employment status of on-demand workers, increased pay and entitlements for on-demand workers and increased tax revenue collection.

In relation to deeming provisions in the FW Act

**Recommendation 8:**
**That the Inquiry include a recommendation that the Federal Government amend the FW Act to including a provisions deeming workers who do not satisfy the ABC test to be employees.**

In relation to the powers of the Fair Work Commission to arbitrate minimum standards:

**Recommendation 9:**
**That the Inquiry include a recommendation that the Federal Government give the Fair Work Commission the power to arbitrate minimum standards for independent contractors.**

If independent contractors are entitled to conditions like minimum rates of pay, annual leave, sick leave and unfair dismissal protection this would greatly reduce the economic incentive to misclassify workers as independent contractors.