

The Victorian Government
Response to the Report of the
Inquiry into the Victorian
On-Demand Workforce



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[Acknowledgement of Country](#)

The Victorian Government proudly acknowledges Victoria's Aboriginal peoples as the traditional custodians of the lands on which we live and work. We pay our respects to them and their Elders past, present and future, and honour their unique relationship to Country. We hope that our work contributes towards positive outcomes for the Aboriginal community.

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Introduction

The Inquiry into the Victorian On-Demand Workforce (the Inquiry) was established by the Victorian Government in late September 2018 to examine the extent and nature of the on-demand workforce and economy in the State including:

- the effect of the on-demand economy on the labour market and the broader economy;
- the legal or work status of people working with or for online platforms; and
- the application of workplace laws to on-demand workers, whether contracting arrangements are being used to avoid those laws, and to assess whether those laws are being enforced effectively.

The Victorian Government welcomes the Report of the Inquiry (the Report) chaired by Ms Natalie James, the former Fair Work Ombudsman. The Report was released on 15 July 2020. It provides the first extensive, deliberate and comprehensive review of the on-demand or 'gig economy' workforce commissioned by any government in Australia.

The focus of the Inquiry was on work facilitated by digital platforms, whereby workers and clients are matched via internet sites or apps. It recognised 'platform work' as a key emerging labour market development. There is no distinct 'platform economy'. Rather, platforms are a tool through which on-demand work is accessed. The matters traversed in the Report are wide-ranging, and the call for action by governments in response to its recommendations are compelling. Concrete actions are required to assist and protect 'gig' workers who often have little or no bargaining power, and sometimes limited options to earn income in a precarious work environment. The Report has focused the Victorian Government's attention on the composition of our workforce and ability to effectively regulate, support and meet the needs of workers and business, while not stifling innovation or entrepreneurship.

Conduct of the Inquiry

Many Victorian workers, unions, businesses, industry associations, as well as academics and community sector organisations, provided valuable contributions to the Inquiry. The Chair engaged with organisations and individual workers to encourage as many Victorians as possible to participate. Over ninety formal submissions (including supplementary submissions) were provided to the Inquiry. More than 200 people participated in more than 30 individual or group consultations and an online forum for workers was also held. A small number of participants were consulted by the Chair on a confidential basis. The Inquiry also sought additional information on specific matters by writing to a range of people, bodies and organisations. The Inquiry was assisted by high levels of cooperation from all stakeholders, including platforms, businesses, community organisations, unions and workers.

To support the Inquiry, the Victorian Government commissioned research (*Digital Platform Work in Australia – Prevalence, Nature and Impact*) by Queensland University of Technology, the University of Adelaide and University of Technology Sydney. Released in June 2019, the resultant survey found that 13.1 per cent of persons in Australia (1,827 of 14,013) have at some time undertaken platform work, and 7.1 per cent were currently working (or offering services) through a platform or had done so in the 12 months before they were surveyed (988 of 14,013).¹ In Victoria, 13.8 per cent had undertaken platform work at some time, with 7.4 per cent doing so at the time of the survey or in the 12 months before they were surveyed.

The Report

The Report recognised that the Australian labour market’s ability to meet the needs of businesses and workers is critical to our economic success. At the same time, the emergence of digital platforms and their reliance on business models that for the most part operate beyond the reach of beneficial work laws has put the spotlight on the need to balance flexibility for businesses and consumers with protections for workers. The Inquiry also recognised that there are sound commercial reasons for Victorian businesses to use on-demand arrangements, including to manage fluctuations in consumer demand. Some workers also seek different arrangements at various stages in their life, depending on their preferences, needs, skills and lifestyle.

The Inquiry identified the following six key aspects of the current system that are not serving the community well, and that require governments’ attention:

- there is uncertainty around work status
- advice and support about work status is limited and fragmented
- participants in the on-demand economy have no real pathways to determine work status
- platforms are emerging and growing, and they mostly use non-employment models
- high numbers of ‘low-leveraged’ workers are accessing work through platforms and work status is often ‘borderline’
- there are inadequate protections for non-employee ‘small business’ platform workers.

¹ P. McDonald, P. Williams, R. Mayes, D. Oliver and A. Stewart, [Digital Platform Work in Australia – Preliminary findings from a National Survey](#), Department of Premier and Cabinet, State of Victoria, 2019 p. 10 (accessed 20 June 2019).

The recommendations for change set out in the Report are directed at the following six key outcomes:

- **Clarify and codify work status:** to reduce doubt about work status and the application of entitlements, protections and obligations for workers and business, and align legislative definitions across the statute books
- **Streamline advice and support:** for workers whose status is borderline
- **Provide fast-track resolution:** of work status so workers and business do not operate under prolonged doubt about entitlements and obligations
- **Provide for fair conduct for platform workers** who are not employees through establishing Fair Conduct and Accountability Standards that are principles-based and developed through a consultative process with relevant stakeholders
- **Improve remedies for non-employee workers:** to address deficiencies and anomalies in the existing approach
- **Enhance enforcement:** to ensure compliance, including where sham contracting has occurred.

The Government's Response

In late 2020, the Victorian Government sought additional feedback from stakeholders on the Report's recommendations. The views expressed through the Government's consultation process, chaired by Mr Nick Staikos MP, the Parliamentary Secretary to the Treasurer, have further informed this response to the Report. The Victorian Government supports, in full or in principle, each of the Inquiry's 20 recommendations. The Victorian Government will work progressively toward implementing the recommendations.

The Government will provide better and more focused support and assistance to on-demand workers who need it and respond to the key challenges identified by the Inquiry. Some measures will create a more equal regulatory plane by allowing on-demand workers to test the 'fairness' of their arrangements and better shape the arc of their working lives. The Government considers that the recommendations are balanced and measured, and envisages that the recommendations will be implemented by partnering and collaborating with stakeholders.

In 1996 and again in 2009, the Victorian Government referred most of its industrial relations powers to the Commonwealth. Victoria maintains responsibility for occupational health and safety, workers' compensation and other State-specific regulatory functions, such as child employment and long service leave. As a referring State, Victoria has a strong interest in advocating for an industrial relations system which is based on consultation, cooperation and good faith bargaining, underpinned by a safety net of fair employment conditions.

The Commonwealth controls many of the levers to change laws that are relevant to on-demand work, including the:

- *Competition and Consumer Act 2010* (Cth), Schedule 3 (Australian Consumer Laws)
- *Income Tax Assessment Act 1997* (Cth)
- *Independent Contractors Act 2006* (Cth) (Independent Contractors Act)
- *Fair Work Act 2009* (Cth) (Fair Work Act)
- *Superannuation Guarantee (Administration) Act 1992* (Cth).

RESPONSE TO RECOMMENDATIONS

GUIDE TO RESPONSE

This response has been prepared in accordance with the Guidelines for Victorian Government Submissions and Responses to Inquiries, although they do not formally apply in this case. The following key sets out the five categories of response, which are consistent with the Guidelines.

KEY	
Support in full	All elements of the recommendations are supported
Support in part	Some elements of the recommendations are supported
Support in principle	The Victorian Government generally supports the intent or merit of the policy underlying the recommendations and will consider how to implement them.
Under review	Further analysis is required for the Victorian Government to determine its position.
Not support	The Victorian Government does not support the recommendation.

RECOMMENDATION		RESPONSE	COMMENT
1	The Inquiry recommends that the Commonwealth Government, in collaboration with state governments and other key stakeholders, lead the delivery of the recommendations in this report regarding the national workplace system.	Support in full	<p>The Commonwealth is responsible for Australia’s national system of workplace laws. As it was the universal view of those participating in the Inquiry that change should be led nationally, the Victorian Government supports this recommendation in full. The Victorian Government will strongly advocate for the Commonwealth to act on the blueprint for reform of the national workplace system, set out in the Report. These reforms require establishing a fit-for-purpose regulatory framework, in collaboration with State and Territory Governments.</p> <p>The Victorian Government notes that the Inquiry identified many policy areas and regulatory frameworks that affect, on-demand work, including:</p> <ul style="list-style-type: none"> • workplace or industrial relations • workers’ compensation • health and safety • taxation • competition • national disability services • small business

			<ul style="list-style-type: none"> • labour hire • commercial passenger vehicles, and • transport accident compensation. <p>The Government supports the Report's views that regulatory intervention must always be carefully considered and justified by failings in the current system. Keeping this in mind, the Government supports the Report's conclusions that the current system requires improvements, so that it is fit-for-purpose. The mechanisms to determine work status are pivotal to determining whether workers and businesses are subject to appropriate entitlements protections and obligations.</p> <p>In August 2020, the Victorian Minister for Industrial Relations wrote to the Commonwealth Minister for Industrial Relations and all State and Territory Ministers to ask that they consider the Report, and note that it recommends that the Commonwealth act to amend national workplace laws, in collaboration with State Governments.</p> <p>In response, in October 2020, the Commonwealth Minister Porter wrote to Minister Pallas, indicating that the Australian Government is continuing to monitor developments in the on-demand economy, and that he was considering the implications of the recommendations in the Report. Subsequently, the Commonwealth enacted the <i>Fair Work (Supporting Australia's Jobs and Economic Recovery) Act 2021</i>.</p> <p>It is regrettable that the Commonwealth did not use this opportunity to adopt the reforms to national work laws identified by the Inquiry, which could better support on-demand workers and businesses. The Victorian Government will continue to advocate for strengthened and improved legislative provisions.</p>
2	<p>The Inquiry recommends that, if the Commonwealth does not act, Victoria, in consultation and collaboration with other states, should pursue administrative and legislative options to improve choice, fairness and certainty for platform workers that:</p> <ul style="list-style-type: none"> • are constitutionally available 	Support in full	<p>The justification for government action has been clearly set out in the Report. National consistency is considered by the Victorian Government to be of great benefit to workers, business and the economy and, in addition to advocating for Commonwealth action, we will therefore prioritise efforts to collaborate across jurisdictions where possible to drive the development of laws balancing flexibility for businesses and consumers, with improved protections for on-demand workers.</p> <p>Noting that a national approach to reform may not eventuate, or be unduly delayed, the Victorian Government will:</p>

	<ul style="list-style-type: none"> • align with its broader priorities • are appropriate in the current regulatory landscape, and • meet the needs of the current and future workplace. 		<ul style="list-style-type: none"> • consider legislative and administrative options available to it to achieve the recommended outcomes identified in the Report; and • continue to advocate to the Commonwealth for national reform to areas that the Commonwealth may exclusively legislate. <p>In implementing the Report's recommendations, the Victorian Government will be guided by the principle of ensuring we accommodate and support genuine needs of platform businesses and not stifle innovation or entrepreneurial activity while maintaining a fair and relevant safety net of conditions and obligations for workers and businesses alike.</p>
3	The Inquiry recommends governments should, in implementing change, consult and collaborate with stakeholders; including platforms, employees, industry groups and unions.	Support in full	<p>The Victorian Government supports collaboration and consultation with its partners in the business community, among industry associations, with workers and their representatives, and in the community sector.</p> <p>The Government considers that there is much to be gained by canvassing the views of members of the community and key participants in the on-demand sector when developing legislative and administrative options for reform. The Inquiry was assisted by high levels of cooperation from platforms, businesses, community organisations, unions and workers and the Government will continue to consult and work with these key stakeholders in implementing the recommendations.</p>
4	The Inquiry recommends governments cost the changes and consider those costs alongside the transferred costs of the current systemic uncertainty around work status – the impacts on workers, businesses, the economy and community more broadly.	Support in principle	<p>The Victorian Government recognises the contribution platforms make to the economic and social fabric of the community and the need for cost impact analysis.</p> <p>At a crucial time when Victoria's economy looks to rebound strongly, the costs and benefits of reform will need to be comprehensively considered and carefully balanced when pursuing substantive changes to the existing system, including:</p> <ul style="list-style-type: none"> • transferred costs caused by continued uncertainty about work status for all participants • the extent to which regulation may place a burden on platforms and other businesses • platforms' ability to remain competitive and to provide work for many Victorians • providing suitable support for platform workers in Victoria.
5	The Inquiry recommends appropriate government funded surveys and evidence-based research to ensure policy makers	Support in principle	The Victorian Government will continue to rely on evidence-based advice from a range of reliable sources, including government-initiated surveys where this is appropriate.

	<p>are aware of critical developments in platform work.</p>	<p>For example, as noted in the introduction above, the Victorian Government commissioned a national survey (<i>Digital Platform Work in Australia – Prevalence, Nature and Impact</i>) to support the Inquiry’s work. It provided the first comprehensive understanding of the on-demand workforce in Australia. Data from the National Survey found that platform work is far more extensive than previously understood.</p> <p>The national survey data suggests that gender inequalities in the traditional labour market may be reproduced in on-demand work. It found that women:</p> <ul style="list-style-type: none"> • reported earning less than men as an hourly rate on average • were significantly less satisfied than men with their ability to set the price for their services • were less positive than men about the fairness of fees and costs associated with work through the platform • were more likely to participate in stereotypically feminine types of work including clerical and data entry, writing and translation, and caring, whereas men were more likely to participate in work associated with stereotypically masculine occupations such as software development and technology and transport and food delivery. <p>Noting various commentators have already highlighted the disproportionate impacts of coronavirus (COVID-19) on women workers, and the findings of the national survey, the Government will commission further research to examine whether platform work reproduces or even amplifies gender inequalities in the labour market.</p> <p>Initiatives to improve the collection of information about the occupational health and safety risks for on-demand workers, and to mitigate risks as far as it is possible to do so, are supported by the Victorian Government.</p> <p>In 2019, WorkSafe obtained evidence-based research by Deakin University to inform policy development in support of the Inquiry. WorkSafe continues to support start-ups to develop solutions for a safer working environment for gig economy workers. In late 2020, the new Road Safety Strategy was launched by the Victorian Government which included the announcement of a targeted initiative to improve the safety of food delivery riders. As part of this initiative the Government will engage with industry and workers to understand the level of road safety embedded in their onboarding and daily work, consider the risks and issues and formulate a short, medium and long-term set of initiatives to work with businesses, platforms and the workers themselves. A strong focus of the proposals will be on education</p>
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			and safety, developing best practices policies and procedures for businesses, and establishing a trial relating to effectiveness of safety equipment for riders.
6	<p>Clarify and codify the status of workers in legislation and align definitions across the statute books.</p> <p>The Inquiry recommends that the FW Act be amended to:</p> <p>(a) codify work status on the face of relevant legislation (rather than relying on indistinct common law tests)</p> <p>(b) clarify the work status test including by adopting the ‘entrepreneurial worker’ approach, so that those who work as part of another’s enterprise or business are ‘employees’ and autonomous, ‘self-employed’ small business workers are covered by commercial laws.</p> <p>(c) provide that the:</p> <p>(i) provision of safety protections and entitlements such as superannuation, training, occupational health and safety and worker consultation is not disincentivised because of the potential impact on work status</p> <p>(ii) party asserting a worker is not an employee, bears the</p>	Support in principle	<p>As noted in response to recommendations 1 and 2, the Victorian Government will advocate for reforms to the national workplace system, including by encouraging the Commonwealth to amend the Fair Work Act and the Independent Contractors Act to clarify and codify work status.</p> <p>The Victorian Government notes that an important starting point is to clarify the work status test, which could potentially be achieved by adopting the ‘entrepreneurial worker approach’.</p> <p>The Victorian Government notes that the Commonwealth <i>Fair Work (Supporting Australia’s Jobs and Economic Recovery) Act 2021</i> inserted a new definition of “casual employee” in the Fair Work Act, in an attempt to provide greater certainty and clarity about an employee’s (work) status and entitlements. However, this change does not clarify the status of on-demand workers by statutorily defining who is an employee more generally or deeming some or all of those workers to be employees. As noted above in response to Recommendations 1 and 2, the Victorian Government is disappointed that the Commonwealth has not capitalised on this opportunity to reform the Fair Work Act and has not taken up reforms to national work laws identified by the Inquiry.</p>

	onus of proving work status, and (iii) the relative bargaining positions of each party are expressly considered when determining work status.		
7	<p>Align work status across the statute books.</p> <p>The Inquiry recommends that governments review the approach to 'work status' across work laws (e.g. Independent Contractors Act, superannuation, workplace health and safety, tax) with the purpose of more closely aligning them, specifically, considering:</p> <ul style="list-style-type: none"> (a) the need for clarity, consistency and simplicity (b) the policy imperatives of each regulatory framework (c) appropriate coverage for low-leveraged workers (d) the need to appropriately protect platform workers. 	Support in principle	<p>The Victorian Government supports in principle reviewing and aligning, so far as it is possible, state laws that extend entitlements, obligations and protections based on work status (like payroll tax, workplace health and safety and insurance for work injuries) to ensure that on-demand workers are consistently and appropriately covered and protected by these laws.</p> <p>The Victorian Government will undertake further work to consider what specific changes to legislation may be made to achieve the policy intent of this recommendation.</p>
8	The Inquiry recommends there be a clear primary source of advice and support to workers to help them understand and use dispute resolution or other informal options to resolve their work status.	Support in principle	<p>The Victorian Government will give consideration to what support can be provided at a state level, including utilising the capacity and expertise of existing Victorian agencies.</p> <p>The Victorian Government supports the principle that platform workers should have easily and readily accessible advice and support regarding their rights and entitlements.</p> <p>As noted in response to Recommendation 1, the Victorian Government agrees with the Report's conclusion that change should be led nationally, and that the best outcome would be for the Commonwealth to undertake meaningful reform in this area.</p>

			While the Commonwealth has provided increased resources to the Fair Work Ombudsman (FWO) to conduct many of its activities, the Victorian Government notes that the FWO's present focus on employees is of limited assistance to on-demand workers who are engaged as independent contractors and we will continue to advocate for Commonwealth reform.
9	<p>The Inquiry recommends that a Streamlined Support Agency (whether stand alone or incorporated into the functions of an existing suitable body) should:</p> <ul style="list-style-type: none"> (a) have dedicated and sufficient resources (b) be accessible to and prioritise platform workers, particularly low-leveraged workers (c) help resolve work status through advice and dispute resolution (d) help workers understand the entitlements, protections and obligations of their work status (e) where work status is borderline, escalate the question to Fast-tracked Resolution (see Recommendation 10) prioritising a determination. 	Support in principle	<p>The Victorian Government will give consideration to what support can be provided at a state level, including utilising the capacity and expertise of existing Victorian agencies.</p> <p>As noted in response to Recommendation 1, the Victorian Government agrees with the Report's conclusion that change should be led nationally, and that the best outcome would be for the Commonwealth to undertake meaningful reform in this area.</p> <p>In the absence of action from the Commonwealth, the Victorian Government supports the principle that workers should be able to access a fast track process for resolution of work status, especially in cases where that status is borderline.</p>
10	<p>Work status determinations</p> <p>The Inquiry recommends that a fit-for-purpose body provides a mechanism for accessible, fast resolution of work status that:</p> <ul style="list-style-type: none"> (a) produces authoritative and binding determinations for all parties 	Support in principle	<p>The Victorian Government supports in full the need for the determination of work status to be available at the outset of the relationship, to assist platforms and workers to operate with certainty.</p> <p>A determination of a worker's legal status as an employee or independent contractor could also provide prima facie evidence of a person's status for the purposes of the common law and possibly the Fair Work Act and other commonwealth work laws.</p>

	<ul style="list-style-type: none"> (b) is available to all workers and businesses (c) is as informal as possible (d) is appropriately funded to provide access (e) has decision makers with appropriate expertise (f) allows for resolution from the outset of the work arrangement (g) allows groups of workers under similar arrangements to seek resolution (h) is inexpensive and helps fund applications and costs of low-leveraged workers (i) operates in a coordinated way with the Streamlined Support Agency, enabling seamless referrals and support. 		<p>The Victorian Government will consult with key stakeholders and existing state regulatory agencies to determine whether Victoria should establish a determination function and fast-tracked resolution mechanism.</p> <p>As noted in response to Recommendation 1, the Victorian Government also agrees with the Report's conclusion that change should be led nationally, and that the best outcome would be for the Commonwealth to undertake meaningful reform in this area.</p>
11	<p>Work status determinations</p> <p>The Inquiry recommends that governments encourage platform businesses with significant non-employee, on-demand workforces to seek a work status determination.</p>	Support in principle	<p>The Victorian Government supports this recommendation in principle. As the Report noted, much of the doubt about status would be resolved if platforms were able to initiate work status determinations. For these reasons, the Victorian Government supports the recommendation that, in the first instance, platforms operating with significant non-employee characterised workforces would be encouraged to seek a work status determination should there be a mechanism established.</p> <p>Proactively seeking work status determinations could minimise a platform's costs. There are many benefits to be gained by seeking determinations if there is ambiguity when a work relationship commences, rather than subsequently when a dispute arises.</p> <p>As the Report notes, platform businesses demonstrated much goodwill when engaging with the Inquiry and the Victorian Government, expressing a desire for more certainty and to provide greater fairness to workers. This is another reason platforms ought to be encouraged to seek work status determinations should a mechanism be established.</p>

12	<p>Work status determinations</p> <p>The Inquiry recommends that, if platforms do not voluntarily seek a proactive determination, governments consider requiring platforms to initiate a determination process, or governments could facilitate this.</p> <p>(a) Proactive work status determinations should be targeted at enterprises of an appropriate size, maturity and number of workers and consider the costs for businesses, particularly small and emerging businesses.</p> <p>(b) Platforms should be given appropriate timeframes to apply and react to potential consequences and effect any changes.</p>	Support in principle	<p>The Victorian Government supports in principle this recommendation as a possible next step, that may assist in further clarifying the application of, and achieving compliance with, Victorian work laws. Where there are complex contractual arrangements, and there is uncertainty about which work laws apply to their workforces, proactive determinations required or facilitated by the Government may be justified.</p> <p>The Victorian Government will further consider the feasibility of facilitating or requiring work status determinations, in consultation with stakeholders, and considering options that are constitutionally and legally available. The Government values the contribution and innovative changes which platforms have introduced in Victoria. As the Report states, this reform should not impose unreasonable obligations, and the Government should consider the costs for businesses, and consider applying this recommendation to businesses of a certain size and maturity and with a specified number of workers. Consideration could also be given to this recommendation after assessing the effectiveness and take-up of the voluntary option (Recommendation 11).</p>
13	<p>Platforms should be transparent and fair</p> <p>The Inquiry recommends that platforms should be transparent with workers, customers and regulators about their worker contracts. Arrangements should be fair and consider the nature of the work and the workers.</p>	Support in full	<p>The Victorian Government supports the objective of improving transparency between platforms and the workers they engage. This is in part because, as was noted in the Report, the systems that platforms have put in place can be opaque.</p> <p>The Victorian Government acknowledges that non-employee workers, particularly low-leveraged workers are entitled to genuine choice, certainty and fair conduct in their work arrangements. Platform workers are also entitled to greater certainty about the key terms and conditions of their work.</p>

14	<p>Fair Conduct and accountability standards</p> <p>The Inquiry recommends that governments lead a process to establish Fair Conduct and Accountability Standards or principles, to underpin arrangements established by platforms with non-employee on-demand workforces.</p>	Support in full	<p>The Victorian Government supports in full the establishment of standards to encourage fair conduct and accountability by platforms. The Government also notes that there may be stakeholder efforts underway to support the intent of this recommendation.</p> <p>The Victorian Government supports the development of general principles as canvassed in the Report, governing:</p> <ul style="list-style-type: none"> • consultation about work status and arrangements • consideration of parties' leverage or bargaining power • fair conditions and pay • fair and transparent independent dispute resolution • worker representation, including the ability to seek better work arrangements, and • safety. <p>The final form and the substance of the standards and application to workers and platforms will be shaped in consultation with stakeholders, and considering:</p> <ul style="list-style-type: none"> • the costs and benefits of the model • the regulatory burden on platforms • businesses remaining competitive • support and protections for on-demand workers, and • Victoria's legislative responsibilities over industrial relations and working arrangements. <p>Some platforms engaging non-employee workers expressed to the Inquiry a desire to establish fair standards, including by consulting workers on aspects of their arrangements and implementing dispute resolution procedures. Platforms also informed the Inquiry and the Government, that they wish to improve the benefits provided to their workers but are concerned to avoid a reclassification risk - that the presumed non-employee status of workers would be jeopardised.</p> <p>It is noted that Australian Consumer Laws include the option for principles or standards to apply voluntarily in the initial stages, before further measures are introduced. Constitutional limitations will also be considered when developing standards, having regard to Victoria's legislative powers over industrial relations matters and their application and interaction with Commonwealth legislation.</p>
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15	<p>Collective Bargaining for platform workers</p> <p>The Inquiry recommends Commonwealth competition laws remove barriers to collective bargaining for non-employee platform workers and ensure workers may access appropriate representation in dealing with platforms about their work arrangements.</p>	Support in full	<p>Noting that responsibility for competition law rests with the Commonwealth, the Victorian Government will advocate, collaborate and encourage the Australian Competition and Consumer Commission (ACCC) and the Commonwealth to remove obstacles to effective collective bargaining by platform workers and appropriate representation.</p> <p>As noted in the Report, the Fair Work Act provides for collective bargaining, agreement making and protected industrial action for employees, including platform <i>employees</i>. However, this system is not available to non-employee workers. Self-employed workers are ‘small businesses’ and as such they are inhibited in their capacity to take collective action where it is anti-competitive under Commonwealth competition laws. Presently, non-employee workers cannot bargain collectively unless authorised by the ACCC. In deciding whether to allow such conduct, the ACCC will consider whether the public benefit outweighs any detriment of such conduct.</p> <p>The Victorian Government notes that the ACCC is seeking to introduce reforms, by implementing a class exemption, so that certain businesses (with less than \$10 million aggregated annual turnover in the financial year prior to the business joining the collective bargaining group or it being formed), could lawfully bargain collectively to jointly negotiate terms, conditions and prices (without offending competition laws).</p>
16	<p>Platform modern award</p> <p>The Inquiry recommends that the FWC work with relevant stakeholders, including platforms and representatives of workers and industry, about the application of modern awards to platform workers,</p>	Support in full	<p>The Victorian Government acknowledges the intent of this recommendation but notes that award coverage for platform workers is not straightforward. This is partly because the <i>presumed</i> status of most platform workers is that they are independent contractors (and so based on that assessment would not be covered by a modern award), and as it is likely that some (though not all) workers when assessed would not be classified as employees.</p> <p>The Inquiry found that some platforms engage workers under awards. Other platforms informed the Inquiry that award rates are used as a guide for setting payments. The Report</p>

	<p>with a view to ensuring fit-for-purpose, fair arrangements that are compatible with work enabled by technology.</p>		<p>also noted that there are some aspects of the current regulatory system that may not be easily applied to platform models.</p> <p>The Victorian Government has consistently supported the maintenance of a fair and relevant minimum safety net for workers, consisting of a national minimum wage, modern awards and the national employment standards. The Government considers that the award system should enable genuine enterprise bargaining and promote workforce participation.</p> <p>The Victorian Government also notes that when the Commonwealth recently asked the Fair Work Commission to examine the feasibility of simplifying pay arrangements (by introducing loaded rates), reducing administrative complexities and streamlining classification structures in four identified awards, it did not ask the tribunal to consider the capacity of the modern award system to accommodate platform work.</p> <p>The Victorian Government will continue to advocate to the Commonwealth that the Fair Work Commission work with relevant stakeholders to confirm the application and scope of modern awards for platform workers.</p>
17	<p>Remedies</p> <p>The Inquiry recommends that governments clarify, enhance and streamline existing unfair contracts remedies so that they:</p> <ul style="list-style-type: none"> (a) are accessible to low-leveraged workers (b) enable system-wide scrutiny of platforms' arrangements (c) introduce penalties and compensation to effectively deter unfair contracts (d) allow materially similar contracts to be considered together and orders made with respect to current and future arrangements. 	Support in full	<p>As noted in the response to Recommendation 1, Victoria will continue to advocate for national reform of work laws, including the Independent Contractors Act and Australian Consumer Laws.</p> <p>The Inquiry concluded that the remedies available under these laws are neither purpose built for platform workers or readily accessible, and the avenues for challenging the 'fairness' of their working arrangements are limited. The Inquiry was unable to identify any case of a platform worker bringing a claim using the unfair contracts remedy under the Independent Contractors Act. With only 16 claims filed in total as at July 2020, this leads to the conclusion that the jurisdiction is little used and not well supported. By comparison other avenues available to workers to challenge decisions about their work arrangements are accessed much more frequently (70,976 unfair dismissal applications were made between 1 July 2014 and 30 June 2019, and 23,479 general protection claims were filed between 1 July 2014 and 30 June 2019).</p> <p>The Report also noted that the unfair contracts remedies under Australian Consumer Laws are deficient because there is no penalty for including unfair terms in contracts. It also noted that it is uncommon for a contract to be amended to remove any unlawful terms, and so businesses can continue to use unlawful terms in subsequent and similar contracts.</p>

			The Victorian Government supports the objective of clarifying, enhancing and streamlining existing unfair contracts remedies so that they are fit-for-purpose including for low-leveraged self-employed workers (who are not employees).
18	<p>Remedies</p> <p>The Inquiry recommends that the Streamlined Support Agency be responsible for and sufficiently resourced to provide effective support to self-employed platform workers and to prioritise actions against systemic deployment of unfair contracts involving these workers.</p>	Support in principle	<p>As noted in response to Recommendations 1 and 17, Victoria will continue to advocate for national reform to improve workplace and work-related laws.</p> <p>The Victorian Government will also consider whether further complementary arrangements are needed so non-employee workers can pursue claims more readily under State laws. We will also explore cooperative arrangements with other States and the Territories to improve access to the unfair contracts' jurisdiction, effectively working to introduce changes nationally and explore opportunities for developing cooperative arrangements.</p>
19	<p>Sham contracting</p> <p>The Inquiry recommends strengthening provisions to counter sham contracting to</p> <p>(a) reflect the recommendations of previous reviews including the Black Economy Taskforce and the Productivity Commission, to capture conduct where it would be reasonable to expect the employer knew, or should have known, the true character of the arrangement was 'employment', and apply appropriate penalties to this conduct</p> <p>(b) require a court to consider each party's relative bargaining position and how much genuine</p>	Support in full	<p>The Victorian Government supports measures to strengthen provisions in the Fair Work Act to counter sham contracting.</p> <p>As noted by the Inquiry, sham contracting could be more effectively tackled by lowering the test to whether an employer "reasonably should have known" that the workers were legally employees.</p> <p>The Victorian Government will continue to advocate this position to the Commonwealth Government. It is consistent with the recommendation of the Victorian Inquiry into the Labour Hire Industry and Insecure Work, as well as the Commonwealth's Productivity Commission Inquiry into the Workplace Relations framework, and the Black Economy Taskforce Inquiry.</p>

	choice a worker has over their presumed work status.		
20	<p>Sham contracting</p> <p>The Inquiry recommends that regulators proactively intervene to resolve cases of 'borderline' work status, especially where it is occurring at a systemic level and impacts on low-leveraged workers, including by initiating test cases.</p>	Support in principle	<p>To access justice, workers need support. The Victorian Government supports the provision of assistance to workers whose status is borderline or in dispute, especially for low-leverage workers, and where there is a systemic level issue.</p> <p>The Government will further investigate the most appropriate means of supporting the initiation of test cases in Victoria.</p> <p>It is noted that the Commonwealth, in its 2019-20 budget, allocated \$9.2 million in additional funding to the FWO to establish a dedicated unit to investigate sham contracting and to educate employers and workers. The Victorian Government will continue to advocate for the Commonwealth to provide adequate support to the FWO, as the national workplace regulator, to promote compliance and enforce workplace laws, including for low-leveraged, on-demand workers.</p>