VICTORIAN TRADES HALL COUNCIL SUBMISSION

Inquiry into the Victorian on-demand workforce

May 2019

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# CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>About Victorian Trades Hall Council</td>
<td>3</td>
</tr>
<tr>
<td>Executive Summary</td>
<td>4</td>
</tr>
<tr>
<td>Recommendations</td>
<td>7</td>
</tr>
<tr>
<td>Real Story: On-Demand Food Delivery Riders speak up</td>
<td>9</td>
</tr>
<tr>
<td>Ongoing Cuts to Riders’ Pay Rates</td>
<td>10</td>
</tr>
<tr>
<td>Foodora wind up operations as courts rule their workers are employees</td>
<td>11</td>
</tr>
<tr>
<td>Foodora’s unpaid wage bill likely to fall on the public purse</td>
<td>12</td>
</tr>
<tr>
<td>Foodora’s failed business is a wakeup call for regulators</td>
<td>13</td>
</tr>
<tr>
<td>Gig Workers in 2019: Case Studies and Survey Findings</td>
<td>14</td>
</tr>
<tr>
<td>Conclusion</td>
<td>16</td>
</tr>
<tr>
<td>References</td>
<td>17</td>
</tr>
<tr>
<td>Appendix A</td>
<td></td>
</tr>
<tr>
<td>2018 On-Demand Food Delivery Riders survey findings</td>
<td>19</td>
</tr>
<tr>
<td>Appendix B</td>
<td></td>
</tr>
<tr>
<td>Deliveroo contracts November 2015 – April 2016: excerpts showing different pay structures and rates</td>
<td>22</td>
</tr>
<tr>
<td>Appendix C</td>
<td></td>
</tr>
<tr>
<td>2019 Gig Workers Survey Interim Report and Initial Findings</td>
<td>29</td>
</tr>
<tr>
<td>About the Gig Workers Survey</td>
<td>30</td>
</tr>
<tr>
<td>On-demand Food Delivery Riders</td>
<td>31</td>
</tr>
<tr>
<td>Riders’ demands</td>
<td>32</td>
</tr>
<tr>
<td>Rider Demographics</td>
<td>33</td>
</tr>
<tr>
<td>Motivations for Work and Hours Worked</td>
<td>34</td>
</tr>
<tr>
<td>Riders share their motivations for working in the gig economy</td>
<td>35</td>
</tr>
<tr>
<td>Safety Risks, Injuries and Medical Costs</td>
<td>35</td>
</tr>
<tr>
<td>Riders share their experience in road accidents and near misses</td>
<td>36</td>
</tr>
<tr>
<td>What riders want to see change</td>
<td>36</td>
</tr>
<tr>
<td>Personal Safety, Racial Discrimination and Risks as Frontline Workers</td>
<td>37</td>
</tr>
<tr>
<td>Riders share their personal safety experiences as frontline workers</td>
<td>37</td>
</tr>
<tr>
<td>What riders want to see change</td>
<td>38</td>
</tr>
<tr>
<td>Working Patterns and Algorithm Transparency</td>
<td>39</td>
</tr>
<tr>
<td>Riders share how the companies and apps control their work and time</td>
<td>40</td>
</tr>
<tr>
<td>What riders want to see change</td>
<td>41</td>
</tr>
<tr>
<td>Case Studies:</td>
<td></td>
</tr>
<tr>
<td>[worker’s name redacted] Story</td>
<td>42</td>
</tr>
<tr>
<td>[name redacted] Story</td>
<td>44</td>
</tr>
<tr>
<td>Daniel’s Story</td>
<td>46</td>
</tr>
<tr>
<td>[name redacted] Story</td>
<td>48</td>
</tr>
<tr>
<td>Gig Workers in Other Fields:</td>
<td></td>
</tr>
<tr>
<td>Rideshare Drivers</td>
<td>50</td>
</tr>
<tr>
<td>Non-Food Couriers</td>
<td>51</td>
</tr>
<tr>
<td>Care Workers</td>
<td>52</td>
</tr>
<tr>
<td>Workers in Online Job Marketplaces</td>
<td>53</td>
</tr>
<tr>
<td>Appendix D</td>
<td></td>
</tr>
<tr>
<td>Letter from the Australian Council of Trade Unions regarding the application of regulations</td>
<td>54</td>
</tr>
</tbody>
</table>
ABOUT VICTORIAN TRADES HALL COUNCIL

The Victorian Trades Hall Council (VTHC) was founded in 1856 and is the peak body for unions in Victoria. VTHC represents approximately 40 unions and over 400,000 workers in Victoria. These workers are members of unions that reach into every industry in the state, both in the public and private sectors.

Since gaining the Eight Hour Day in April 1856, VTHC has had a long history of fighting for and defending the rights of workers in Victoria. The importance of winning the Eight Hour day is significant not just in Australia but worldwide. Few advances in the quality of life for working people would have been achieved without the involvement of the Victorian union movement.

Over the last 150 years, VTHC and its affiliated unions have campaigned for and successfully won a range of important rights and entitlements for Victorian (and Australian) workers, including:

• Minimum wage
• Penalty rates
• Collective bargaining rights
• Freedom of association and the right to representation
• Occupational Health and Safety (OHS) protections
• Annual as well as Sick (and Carer’s) Leave
• Maternity and Parental Leave
• Paid Domestic Violence Leave
• Superannuation
• Protections from unfair dismissal and redundancy entitlements, and
• Long Service Leave.

This submission has been prepared with research and support from the Young Workers Centre and Migrant Workers Centre.

Please note: This submission is complimentary but not intended to supersede any submission from an affiliate union.
EXECUTIVE SUMMARY

The world of work is rapidly changing and hard-won workers’ rights are now under attack. Digital ‘disruption’ has resulted in a new industrial landscape where companies (including multinational corporations) engage workers through online platforms to perform temporary ‘gigs’ of work on demand. Common forms of gig work seen by VTHC include food delivery, ridesharing, and increasingly care work and domestic work. It’s referred to as the gig economy and it’s sold to workers and consumers as a flexible, innovative business model. The reality is anything but innovative: companies operating in this space are predominantly engaging workers as independent contractors, which allows them to shift employer responsibilities and costs onto workers directly.¹ As a result we’re seeing workers’ rights and safety diminished to those seen in the 19th century. Each and every day, these workers are missing out on the benefits of the union movement’s wins for Victorian workers: decent pay, safe work and the right to organise.

What does typical gig work look like?

- Workers face irregular work schedules, driven by fluctuations in demand for their services;
- Workers may have no guaranteed work or income;
- Most jobs are compensated on a piecework basis, with payment defined according to specific tasks rather than per unit of time worked;
- Workers are often engaged as independent contractors and do not benefit from the protection of minimum conditions of employment contained within the National Employment Standards and relevant Awards. In such cases workers are unable to organise and collectively negotiate due to cartel provisions in the Competition and Consumer Act 2010 (Cth);
- Gig jobs are usually understood to be organised around some form of digital mediation, like a web-based platform;
- Workers provides some or all of the capital equipment used in their work—from a bicycle for food delivery, to more complex and expensive transportation or computing equipment in other jobs. Equipment may be company branded.

Adapted from Stewart & Stanford, 2017.

Worker exploitation in the gig economy is part of a broader movement towards insecure work and corporate avoidance of employment and occupational health and safety laws. Subcontracting, sham contracting, labour hire arrangements and franchising arrangements are all examples of work arrangements where we have seen evidence of worker exploitation.\textsuperscript{2,3} These work arrangements diminish workers’ bargaining power, their job or income security, or result in a fissuring of the relationship between companies and their workers which allows companies to avoid or shift employer responsibilities and costs onto workers themselves or other entities.\textsuperscript{4}

One key feature that distinguishes the gig economy is the insidious reframing of gig workers’ identities as entrepreneurs. Companies have framed working on demand for piece rates as ‘flexible work’. Independent contracting arrangements with no minimum wage, entitlements or other safety nets is now part of the ‘choice’ you have by being your own boss.\textsuperscript{5} This language serves to not only normalise worker exploitation, but to give it a desirable status.

The exploitation of on demand food delivery riders is a typical example of the downsides of work life in the gig economy under our existing regulatory regime. A workforce of predominantly young migrant workers ride bicycles and scooters across busy city streets to collect food from restaurants and deliver it to people in their homes or workplaces.\textsuperscript{6} Riders are predominantly engaged as independent contractors, with little or no power to negotiate their pay or working conditions. Riders are given a ‘take it or leave it’ contract containing whatever the company’s going rate is at that time. Riders can’t negotiate collectively else be charged with forming an illegal cartel.

Riders perform long hours of unrecognized, unpaid work. Only portions of riders’ labour are considered ‘work’ for which they are paid: from restaurant pickup to arrival at the home or work of the customer who ordered. The hourly rates of pay that existed three years ago are long gone. For their efforts riders are paid either flat rates or through opaque ‘dynamic’ pay rates based on time and distance. Effective hourly pay rates are as low as $6.67 per hour.\textsuperscript{7} Riders bear the costs of essentials they need to work: a bicycle or scooter (and its maintenance), phones, data, and petrol.

\textsuperscript{7} Ibid
This submission illustrates the experience of gig workers, specifically on-demand food delivery riders. This submission includes:

1. Findings from the 2018 On Demand Food Delivery Rider survey, including alarmingly high injury rates and effective hourly pay rates below minimum wage (see appendix A).
2. Evidence of ongoing cuts to riders’ pay rates (see appendix B).
3. Implications of Foodora’s exit from Australia and the decision that its riders are employees.
4. The initial findings from VTHC’s 2019 Gig Workers survey, including case studies from riders detailing their concerns around personal safety, their inability to negotiate pay rises, and the lack of transparency by food delivery companies (see appendix C).
5. A letter from the Australian Council of Trade Unions regarding the application of regulations to be considered as part of reform to address issues in the on-demand gig economy (see appendix D).

Victorian Trades Hall Council welcomes the opportunity to illustrate these points further by participating in inquiry hearings.

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*I feel like a slave, making just enough money to survive week by week but not enough to move on and find better work or fight sufficiently for better rights in this job.*

Riders navigate dangerous busy roads under pressure to ride as quickly as possible. They need to maintain good ratings from customers to continue getting assigned jobs. Their flat rates and dynamic pay rates incentivise high quantities of deliveries. On the road they compete with cars, trams and tram tracks and at best have intermittent access to bike lanes. Riders work under these conditions without guaranteed access to workers compensation insurance. One rider, who wished to remain anonymous, summed up working in the gig economy:

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RECOMMENDATIONS

1. VTHC recommends that the state government mandate that all international students studying in Victoria receive work rights, health and safety training. This training must be embedded in university and TAFE orientation programs and delivered by relevant industry unions, worker centres and community legal centres with expertise in employment and/or occupational health and safety law.

2. VTHC recommends that the state government embed mandatory work rights, health and safety training in all Victorian high school and TAFE curriculum. This training must be delivered by relevant industry unions, worker centres and community legal centres with expertise in employment and/or occupational health and safety law.

3. VTHC recommends that the federal government amend the *Fair Work Act 2009 (Cth)* so that all workers, regardless of status, have access to minimum entitlements, safety nets, and the right to organise and bargain collectively. This includes (but is not limited to) a minimum wage, health and safety protections, workers’ compensation, superannuation, unfair dismissal protections and dispute resolution.

4. VTHC recommends that where the legal status of a worker is in dispute, there is a reverse onus of proof on the entity engaging that worker to demonstrate that the worker is operating a genuine business and not working under employer control.

5. VTHC recommends the federal government amend the *Fair Work Act 2009* to make sham contracting a strict liability offence.

6. VTHC recommends the federal government review the existing penalty regime for sham contracting with a view to increasing penalties to create a more effective disincentive.

7. VTHC recommends the state government review and amend the *Occupational Health and Safety Act 2004 (Vic)* to ensure that companies operating in the on-demand or gig economy sector bear costs and responsibilities associated with the health and safety of the workers they engage.

8. VTHC recommends the state government review and amend the *Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)* to ensure that companies operating in the on-demand or gig economy sector bear costs and responsibilities associated with the rehabilitation of and compensation to the workers they engage should they be injured or die as a result of accidents and diseases in the course of their work.
9. VTHC recommends the state government review and amend the *Transport Accident Act 1986* (Vic) to ensure that companies operating in the on-demand or gig economy sector bear responsibility and costs associated with insuring workers they engage should they be injured or die as a result of a transport accident in the course of their work.

10. VTHC recommends the federal government amend the *Superannuation Guarantee (Administration) Act 1992* (Cth) to abolish the $450 minimum monthly earnings threshold to receive super payments. This threshold unfairly disadvantages low-income earners and those performing non-standard work. Workers should earn superannuation on their first dollar earned. The minority of gig workers engaged as employees are particularly vulnerable to missing out on super given their working patterns can be inconsistent and earnings low.

11. VTHC recommends the federal government amend the *Fair Entitlements Guarantee Act 2012* (Cth) to expand eligibility of the Fair Entitlement Guarantee scheme to visa holders with work rights including international student and working holiday maker visa holders.

“I’ve had minor injuries - I have been ‘doored’ twice by cars”
- UberEats rider
REAL STORY: ON-DEMAND FOOD DELIVERY RIDERS SPEAK UP

In 2018, food delivery riders made their voices heard and their experiences felt in the first On-Demand Riders Survey. This survey, coordinated by the Transport Workers Union and the Young Workers Centre, allowed workers to tell the real story of life in the gig economy. They found:

On-demand food delivery is not just a ‘pocket money’ job – it’s a full time occupation

One in four riders reported working 40 or more hours each week: the equivalent of a fulltime job. Three in four riders reported working 20 or more hours each week. These findings contradict commentators who describe gig economy jobs as work designed to supplement or ‘top up’ regular income.9 Some riders reported working upwards of 80 hours per week which raises safety and fatigue concerns for riders on the job and other commuters on our roads.

3 in 4 riders are earning less than minimum wage

Riders were asked to report their average weekly earnings and hours worked in order to calculate effective hourly pay rates. 3 in 4 riders earned effective hourly pay rates lower than the minimum pay rates for Level 1 casual transport workers under the Road Transport and Distribution Award (2010). Calculations showed effective pay rates as low as $6.67 per hour.

Riders want employee entitlements

More than 70% of riders surveyed said they should receive worker entitlements such as sick leave.

Riders are injured on the job – and they’re uninsured

More than 45% of riders surveyed said they or someone they know has been hurt on the job. Workers described a range of injuries: minor injuries such as grazes through to serious injuries including broken bones that rendered riders unable to work.

Riders are predominantly young men and are culturally and linguistically diverse

The average age of riders who participated in the survey is 25, and 90% of riders were aged 30 or under. Food delivery riding is male-dominated: 98% of riders identified as male. Almost half (46%) listed a preferred language other than English. The top 4 preferred languages were Spanish, Mandarin, Malaysian and Hindi

See appendix A for the full 2018 On Demand Food Delivery Riders survey findings.

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ONGOING CUTS TO RIDERS’ PAY RATES

The table below provides a comparison of three different Deliveroo contracts provided to workers between November 2015 and April 2016. This comparison shows the real wage theft workers suffer as a result of lost income and super. The analysis is based on a 21 year old casual rider:

- Working four three-hour shifts per week
- With an average of five deliveries completed per shift
- Three shifts are weeknights (attracting the ‘afternoon’ rate under the Award)
- One shift is a Saturday night (attracting the ‘Saturday’ rate under the Award).

<table>
<thead>
<tr>
<th>Contract Date</th>
<th>Deliveroo Contract terms</th>
<th>Weekly income under deliveroo contract</th>
<th>Weekly income under the road transport &amp; distribution award (2015-16 rates)</th>
<th>Wages stolen per week</th>
</tr>
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<tbody>
<tr>
<td>November 2015</td>
<td>$18/hour + $2.50/delivery</td>
<td>12 hours @ $18 20 deliveries @ $2.50 = $266</td>
<td>9 hours @ $26.72 3 hours @ $32.81 = $338.91 + 9.5% super $32.20</td>
<td>-$72.91 income -$32.20 super</td>
</tr>
<tr>
<td>February 2016</td>
<td>$16/hour + $2.50/delivery</td>
<td>12 hours @ $16 20 deliveries @ $2.50 = $242</td>
<td></td>
<td>-$96.91 income -$32.20 super</td>
</tr>
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<td>April 2016</td>
<td>No hourly rate $9/delivery</td>
<td>20 deliveries @ $9 = $180</td>
<td></td>
<td>-$158.91 income -$32.20 super</td>
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See appendix B for excerpts of Deliveroo contracts obtained by the Young Workers Centre.

This analysis does not include or quantify additional factors that would demonstrate further losses to workers including:

- Phone & data allowance costs
- Bike purchase and maintenance costs
- Wages stolen due to four-hour minimum shifts under the Award
- Insurance costs
- Employment rights enshrined in law such as the right to a healthy and safe workplace with clearly defined employer responsibilities for workers’ compensation insurance.
FOODORA WIND UP OPERATIONS AS COURTS RULE THEIR WORKERS ARE EMPLOYEES

In 2018 a landmark unfair dismissal case found a Foodora rider was incorrectly classified as an independent contractor. Rider Josh Klooger had his access to the Foodora app deactivated in March and in November that year the courts ruled he was in fact a Foodora employee who was unfairly dismissed. Foodora were ordered to pay Klooger just under $16,000 in compensation for his unfair dismissal. In August, in the middle of this eight month long process, Foodora announced it would exit Australia and its Australian business went into voluntary administration.

Foodora’s failed business in Australia has resulted in multi-million dollar losses in the form of unpaid wages to workers and unpaid taxes to federal and state tax agencies. It’s been reported that Foodora’s parent company will pay creditors less than half of what it owes.\(^\text{10}\) The bill includes:

- $5.5 million in unpaid wages to workers
- $2.1 million in unpaid taxes to the Australian Tax Office
- $550,000 to Revenue NSW
- $400,000 to Victoria and Queensland Revenue\(^\text{11}\)

“more likely than not ... the delivery riders and drivers should have been classified as casual employees instead of contractors”.

Foodora’s administrators Worrells estimated former workers were underpaid by $5.5 million.


\(^{11}\) Ibid
FOODORA’S UNPAID WAGE BILL LIKELY TO FALL ON THE PUBLIC PURSE

Foodora’s administrators estimate that approximately $1.5 million in workers’ unpaid wages could be reimbursed through the Government’s Fair Entitlements Guarantee scheme under the Fair Entitlements Guarantee Act 2012 (Cth) (FEG scheme) given their assessment that Foodora’s workers are employees.12

While the FEG scheme is intended to act as a safety net for employees who have unpaid wages and other entitlements as a result of their employer’s bankruptcy or insolvency, we assert that Foodora’s misclassification of workers was a deliberate profit-maximising choice to shift employer costs and responsibilities onto workers. The legality of Foodora’s rider contracts has been questioned since as early as March 2016, when a spokesman for the Fair Work Ombudsman said the riders should fall under the Road Transport and Distribution award.13 In 2016, delivery riders reported the Australian Business Registrar cancelled their ABNs on the basis their work was more in line with a company employee.14 This is in effect corporate misuse of the FEG scheme that could be replicated by other companies operating in the gig economy should they go into liquidation.

Moreover, given the FEG scheme is only accessible by Australian citizens and permanent residents, the many international students and working holiday maker visa holders who work as food delivery riders are not eligible to make claims.15 16

FOODORA’S FAILED BUSINESS IS A WAKEUP CALL FOR REGULATORS

The Foodora story perfectly illustrates shortcomings in our current regulatory regime. An individual worker, who has lost their source of income, had to go through an eight-month long court process to assert their true rights as an employee. During this process, the unprofitable and unsustainable company in question was able to exit the country and leave behind a multi-million dollar wage and tax bill.

The Foodora story is not unique: other companies operating in the on demand food delivery sector could easily follow suit. Deliveroo Australia reported a $4.2 million loss, even after receiving more than $20 million in support from its UK parent in 2017. It is reported their ‘cost of delivery service’ for the same year accounted for 88% of revenue, a figure that analysts say would become even higher if Deliveroo were to provide workers minimum employee conditions under the Fair Work Act.17

We are seeing evidence that on demand food delivery business models are based on worker exploitation, are unsustainable, and in some cases, not even profitable. This requires urgent regulatory attention to make clear to existing and future companies operating in the gig economy their corporate and employer obligations. The ramifications for workers directly and federal and state tax revenue are too big to ignore any longer.

GIG WORKERS IN 2019: CASE STUDIES AND SURVEY FINDINGS

VTHC is contributing to the body of research on gig work by generating a snapshot of current gig workers’ experiences in Victoria. We are surveying and interviewing on-demand workers in the gig economy, with a particular focus on reaching out to food delivery riders. The survey probes:

• Workers’ capacity to negotiate pay and conditions;
• Workers’ ability to schedule and control the work they perform;
• Workers’ motivations to work, and to cease work, in the gig economy;
• The impacts of gig work on their health;
• Safety risks and hazards; and
• What regulators, unions and companies can do to improve working conditions.

The initial findings are based on 204 surveys (167 from on-demand food delivery riders) and four case study interviews conducted between December 2018 and March 2018. The key findings about on-demand food delivery riders are outlined below.

See Appendix C for the full Gig Workers Survey Interim report and initial findings.

Who is the typical food delivery rider?

The typical rider is a 26 years old, male-identifying international student. This job is his main source of income, and his motivation for working as a rider is to pay for his living costs. His visa restricts his working hours to 40 hours per fortnight during study periods, although the average rider works about 25 hours per week. English is likely to be his second (or third) language. His visa work restrictions, language and lack of familiarity with his work rights and laws in Australia leave him vulnerable to exploitation. He doesn’t have a means to negotiate with companies for a pay rise, so he must take or leave the work as it is provided to him.
Safety risks and injuries
- 1 in 2 riders experienced risks to their health and/or safety.
- 1 in 5 riders have been hit or involved in an accident on work time.
- 1 in 10 have been injured while working.
- Riders described risks to their personal safety as frontline workers including race-based verbal abuse, threats, intimidation and physical assault, working alone late at night in dark or unsafe areas and dealing with alcohol-affected customers.

No way to negotiate a pay rise
- 2 in 3 riders said it’s not possible to negotiate a pay rise in their contract. Riders say companies provided ‘take it or leave it’ contracts, rather than engaging in actual negotiations.
- Just 1 in 10 said if they wanted to negotiate a pay rise they would contact the company to ask for one. However, those who had actually attempted to do this were unsuccessful.

Lack of transparency in how work is controlled by companies
- Riders report being penalised for taking time off, reducing their hours, or refusing particular jobs:
  - Riders say they receive fewer jobs as a result of being unavailable.
  - Riders say companies can deactivate their accounts as a result of not accepting jobs.
- Riders questioned the decisions behind how jobs are allocated, saying that the companies’ decisions and their algorithms are not transparent to riders. While riders are not provided algorithm decision-making details, they reported experiencing the negative impacts on their ability to get work that they attribute to the algorithm.
- Riders also questioned the fairness of the rating system, saying they were unable to challenge unfair negative customer reviews, which could have negative impacts on their ability to get work.

Riders work to live and pay the bills
- 3 in 4 riders say this job is their main source of income.
- Most riders (3 in 5) say they work to pay for living costs.
- Just 1 in 8 work due to the flexibility, primarily around study commitments.
- 3 in 4 work 20 or more hours per week.

See Appendix C for the full Gig Workers Survey Interim report and initial findings.
CONCLUSION

All workers in Victoria deserve to be paid a living wage, to be safe at work and to have the ability to organise and negotiate their working conditions as a collective. Our employment and occupational health and safety laws and regulations are not keeping pace with changes in employment practices that are playing out in industries and occupations affected by this disruption. Even enforcement of existing laws has been shown to be too slow to respond as companies unilaterally modify employment contracts and practices in a bid to avoid liability. Workplace rights, entitlements and safety provisions for food delivery riders and all gig workers, regardless of their employment status, must meet the minimum employment standards and conditions that other Victorian workers are entitled to receive.

As digital ‘disruption’ occurs and holes emerge in existing regulation and protections, policymakers and government must resist calls to simply remove regulation and protections, and instead review and strengthen regulation and protection. Where laws are outside state jurisdiction, the state government must press the federal government to take action. It is imperative that working Victorian’s economic livelihoods and their safety are priorities when considering regulation and protection so that Victoria is the best state for working people.

VTHC will continue to campaign tirelessly for the rights, entitlements and protections of all workers in Victoria, no matter their employment status or employer, workplace or birthplace. Victoria must take the lead in protecting all working people in this state.
REFERENCES


APPENDIX A

2018 On-Demand Food Delivery Riders survey findings
ON-DEMAND FOOD DELIVERY RIDERS

We surveyed 160 on-demand food delivery riders about the ups and downs of working in the gig economy. This is what they told us.

1. MORE THAN 70% SAY THEY SHOULD GET ENTITLEMENTS SUCH AS SICK LEAVE

71.5% of riders said that they should receive worker entitlements such as sick leave.¹

2. MORE THAN 45% SAY THEY OR SOMEONE THEY KNOW HAS BEEN HURT ON THE JOB

46.5% of riders said they or someone they know has been hurt while working as a food delivery rider.² Some reported near accidents or minor injuries such as grazes. Others reported significant accidents that rendered riders unable to work due to injury or damage inflicted to their bikes.

“My friend was in an accident with a taxi driver and got a broken bone”
UberEats rider, 26

“I get hit nearly once a week”
Deliveroo rider, 20

“I’ve had minor injuries - I have been ‘doored’ twice by cars”
UberEats rider

3. 1 IN 4 RIDERS WORK FULL TIME HOURS

Contrary to the idea that gig work is used to supplement or top up regular income, 26.4% of riders reported working 40 or more hours per week. 3 in 4 (76%) riders work 20 or more hours per week.³

HOW MANY HOURS PER WEEK DO YOU WORK?

<table>
<thead>
<tr>
<th>Hours per Week</th>
<th>Percentage</th>
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<tr>
<td>0-19 hours</td>
<td>24.0%</td>
</tr>
<tr>
<td>20-39 hours</td>
<td>49.6%</td>
</tr>
<tr>
<td>40+ hours</td>
<td>26.4%</td>
</tr>
</tbody>
</table>

Some riders reported working upwards of 80 hours per week which raises safety and fatigue concerns for riders themselves and other commuters on the roads.

4. 3 IN 4 RIDERS EARN LESS THAN MINIMUM WAGE

We asked riders their average weekly pay and hours worked to calculate effective hourly pay rates and found that 76.6% of riders earn effective hourly pay rates well below the minimum wage for casual workers.⁴ Calculations also showed effective pay rates as low as $6.67 per hour.

HOW ARE RIDERS’ PAY RATES DETERMINED?

Almost all current riders report being paid per delivery. Some companies pay a flat rate per delivery, while others are paid a dynamic rate per delivery based on distance and time travelled. Contracts that provide a minimum hourly pay rate have largely been phased out; however, a small number of riders working on older contracts report hourly pay rates plus a commission based on number of deliveries. Most riders do not negotiate contracts and pay rates with companies, they are simply provided whatever the current standard contract is at their time of engagement.

¹N=130 responses ²N=145 responses ³N=129 responses
⁴N=107 responses. Compared with the Road Transport and Distribution Award Casual Transport worker grade 1 rate $24.21
**WORKERS NAME THEIR BIGGEST ISSUES**

**NO GUARANTEED WORK OR PAY**

Riders say a lack of orders combined with payment per delivery leads to low and inconsistent pay. As weekly pay goes up and down, riders often spend many hours waiting for orders to make enough money each week to meet housing and living costs.

> We should all get a basic payment per hour. Sometimes you don’t receive enough orders to earn enough money to live.
> Deliveroo rider, 25

**THE RULES AND PAY RATES CHANGE WITH NO CONSULTATION**

Riders reported companies often change the rules and rates of pay for their work without consultation or negotiation with riders or their representatives.

Riders reported sudden company rostering policy changes. For example, removing shift rosters and asking riders to log on and off work as they like, only to reintroduce allocated shifts and rosters later, essentially locking out workers who aren’t included in those rosters.

> The pay has gone down - it used to be per hour, now per delivery
> Deliveroo rider

**LONG UNPAID WAIT TIMES AT RESTAURANTS**

Riders reported long wait times at restaurants. Companies use mobile apps to alert riders when a delivery is ready to be collected. Riders report they frequently wait at restaurants for up to 1 hour while food is prepared. Riders are not paid for this time, but must remain at restaurants ready for the order. If riders cancel a delivery at this point, their delivery acceptance rate is affected, causing them to receive less jobs. Some riders say they believe the issue is a fault in company mobile apps, others say the restaurants are at fault.

> Restaurant wait times are a problem if the food is not ready.
> Deliveroo rider, 25

**WHAT WORKERS WANT TO SEE CHANGE**

**HIGHER PAY AND MINIMUM HOURLY RATES**

> I would like to have my hourly wage guaranteed. Payment by delivery is not fair for us.
> Foodora & UberEats rider, 29

**ALLOWANCES FOR WORKING IN BAD WEATHER**

> We need to be safer especially in the rain. We put our life at risk and are pressured to get the delivery done quickly but we are putting our lives at risk in the rain.
> Deliveroo rider, 24

**FIX THE BROKEN RATING SYSTEM**

> Unhappy customers are only able to complain about or rate riders, not the restaurant for getting order wrong
> UberEats rider, 27

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This report is based on surveys conducted face to face in Sydney and Melbourne and online in January 2018. The survey received 160 responses from workers who ride bicycles, scooters or motorcycles for food delivery companies including Foodora, Deliveroo, and UberEats. This report was prepared by [names redacted] and [names redacted] of the Young Workers Centre.

On-Demand Workers Australia ondemand@twu.com.au (02) 8114 6566

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2018 ON-DEMAND FOOD DELIVERY RIDERS SURVEY FINDINGS
APPENDIX B

Deliveroo contracts November 2015 – April 2016: excerpts showing different pay structures and rates
Dated November 2015

DELIVEROO AUSTRALIA PTY LTD

[Text redacted]

and

[Text redacted]

INDEPENDENT CONTRACTOR AGREEMENT

[Text redacted]
## SCHEDULE B

### Service Fees

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<th>Service Fees</th>
<th>Rate per hour $18.00</th>
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<td>Rate per delivery $2.50</td>
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Dated [Redacted] February 2016

DELIVEROO AUSTRALIA PTY LTD

[Text redacted]

and

[Text redacted]

INDEPENDENT CONTRACTOR AGREEMENT

[Text redacted]
### SCHEDULE B

**Service Fees**

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INDEPENDENT CONTRACTOR AGREEMENT
### Schedule B

**Service Fees**

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APPENDIX C

2019 Gig Workers Survey Interim Report and Initial Findings
ABOUT THE GIG WORKERS SURVEY

Victorian Trades Hall Council (VTHC) is contributing to the body of research on gig work by generating a snapshot of current gig workers’ experiences in Victoria. We are surveying and interviewing on-demand workers in the gig economy, with a particular focus on reaching out to food delivery riders. The survey probes:

- Workers’ capacity to negotiate pay and conditions;
- Workers’ ability to schedule and control the work they perform;
- Workers’ motivations to work, and to cease work, in the gig economy;
- The impacts of gig work on their health;
- Safety risks and hazards; and
- What regulators, unions and companies can do to improve working conditions.

This report includes the initial findings of our 2019 Gig Workers survey, and is based on 204 survey responses collected face-to-face and online 19 December 2018 – 3 March 2019. With outreach support from the Young Workers Centre and Migrant Workers Centre, we focused on surveying on-demand food delivery riders (who made up 167 of the respondents to date). Other gig workers who responded to the survey include rideshare drivers, care workers, non-food couriers, and workers on online task platforms. All survey respondents live in Australia, 94% in Victoria. Survey outreach is ongoing, and as such we have included major findings below. Detailed findings (including specific percentage statistics) will be released later in 2019.

For further information please contact VTHC Assistant Secretary Carina Garland [email redacted]
ON-DEMAND FOOD DELIVERY RIDERS

“People outside think it’s easy to do this work. But in reality it’s not as it involves a lot of stress. Lot of efforts are put in to get horrible pay.

Most of the times UberEats doesn’t have any orders and if there is any we have to travel a long distance for absolute shit pay and then have to travel back to the starting point location again for another order with no guarantee whatsoever.

We do it as we have no option.

Sometimes I feel so humiliated doing this job as people look down on us and treat us with the least possible respect that I want to wear a mask and cover my face. It’s that bad....”

- On-demand Food Delivery Rider, 26 years old

“This is ridiculously hard work if you plan on doing it for anything resembling a proper shifts worth of time.

You get the same pittance regardless of weather (I have only seen them offer an incentive bonus of a single dollar extra, once, and that was when no one with regard for their health would go out), weight (I’ve had to carry upwards of 15kg uphill numerous times), or distance to the restaurant (you only get paid for the drop off distance, which is usually a fraction of the distance to get the food in the first place).

They basically expect you to just burn out and leave them instead of demanding change which you have a right to.”

- On-demand Food Delivery Rider, 27 years old
RIDERS’ DEMANDS

These demands are based on interviews with riders, their survey responses and facilitated group discussions.

• Access to WorkCover and comprehensive medical insurance for riders and drivers.

• Establishment of safety committees with company, worker and community representatives.

• Companies to provide safe routes for riders through the apps.

• Higher and more transparent pay rates. Demands include:
  o Minimum hourly pay rates.  
  o Award wages.  
  o Higher pay for time and/or distance worked.  
  o Lower company commission.  
  o Full pay for full work (pay for riding to restaurants to pick up food).

• Maintenance, repair and tool allowances to meet costs of maintaining bikes, scooters, clothing and other equipment.

• Companies to provide paid sick leave.

• Companies to provide paid holiday leave.

• A transparent algorithm and the ability to challenge its decisions

• Genuine communication and negotiation channels to challenge unfair ratings and reviews from customers or restaurants.

• Advance notice of changes to contracts and the option to genuinely negotiate contracts.

• More information and assistance with workers’ tax obligations.

• Repair unfair rider ranking systems.

• Smaller travel distances between jobs.
RIDERS DEMOGRAPHICS

Who is the typical food delivery rider?
The typical rider is a 26 years old, male-identifying international student. This job is his main source of income, and his motivation for working as a rider is to pay for his living costs. His visa restricts his working hours to 40 hours per fortnight during study periods, although the average rider works about 25 hours per week. English is likely to be his second (or third) language. His visa work restrictions, language and lack of familiarity with his work rights and laws in Australia leave him vulnerable to exploitation. He doesn’t have a means to negotiate with companies for a pay rise, so he must take or leave the work as it is provided to him.

Age
- The average rider age is 26 years old.1
- Riders are young: Two-thirds of riders are under the age of 30.

Gender
- 9 in 10 riders identify as male.

Language
- 2 in 5 riders’ have a preferred language other than English.
- The 5 most common preferred languages (after English) are Mandarin, Spanish, Hindi, Malay, and Chinese (dialect not specified). Other preferred languages include French, Japanese, Portuguese, Tamil, Thai, Telagu and Vietnamese.

Visas
- The vast majority of riders (4 in 5) are temporary visa holders.
- Two-thirds of riders are international students.
- Just 1 in 10 riders are Australian citizens.

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1 Median age
MOTIVATIONS FOR WORK AND HOURS WORKED

• Contrary to the idea that gig work is a supplementary or ‘pocket money’ job, 3 in 4 riders say this job is their main source of income.

• Only 1 in 4 riders do this work to supplement other income or jobs. Of these workers:
  o Most are supplementing another paid job, most likely in the accommodation and food services, admin & support services, retail or manufacturing industries.
  o 1 in 6 are financially supported by their family.
    A minority of riders are working multiple gig jobs to make ends meet (eg rideshare driving and food delivery riding).

• These findings are reflected in the number of hours worked per week (as food delivery riders):
  o Riders work an average of 25 hours per week.\(^2\)
  o 3 in 4 work 20 or more hours per week.
  o 1 in 4 work 40 or more hours per week.
  o Riders’ hours worked per week ranged from less than 5 hours to over 80 hours per week.

• These findings are supported by riders’ reasons for doing this work:
  o Most riders (3 in 5) say they work to pay for living costs.
  o 1 in 6 work for extra cash.
  o Just 1 in 8 work due to the flexibility, primarily around study commitments.
  o Other reasons for working as food delivery riders include paying for study costs, ‘being their own boss’ and being unable to get other work.

• Most riders (4 in 5) are working for a single food delivery company. Just 1 in 5 riders work for two or more companies.

\(^2\) Median hours
RIDERS SHARE THEIR MOTIVATIONS FOR WORKING IN THE GIG ECONOMY

“As an international student it is hard to find other work in Australia.”

“[There are] not many options for work so I have to do this and take what I can.”

“For me, I don’t have very good English. If I worked for other places or restaurants it would not be as good. In this delivery work the pay is better than at many restaurants or chinese restaurants. I guess with this type of job, there is at least no boss, no one to yell at you and [it] is probably one of the jobs I can get with my language.”

SAFETY RISKS, INJURIES AND MEDICAL COSTS

- 1 in 2 riders experienced risks to their health and/or safety.
- Riders report risks and hazards including being car ‘doored’, navigating dangerous traffic, riding in wet weather, slipping on tram tracks (especially in rain), abuse from customers as frontline workers, racialized abuse while working and stress and pressure from inconsistent orders and pay.
- 1 in 5 riders have been hit or involved in an accident on work time.
- 1 in 10 have been injured while working.
- Riders reported injuries including concussions, broken collarbones, chest injuries, knee injuries, back injuries, fractured jaws, fractured noses, fractured wrists, mental trauma, deep cuts, dislocated thumbs and sprained ankles.
- We asked riders how they would cover medical costs for work-related illnesses or injuries. The majority of riders said they would cover work-related medical costs privately, through a private insurance, or via a government service rather than make a claim through the food delivery companies.
  - 1 in 2 said they would access private insurances (including compulsory overseas student health cover, private health insurance and travel insurance).
  - 1 in 6 said they would access Medicare, WorkCover or TAC. Fewer than 1 in 20 said they thought the company would pay for medical costs.
RIDERS SHARE THEIR EXPERIENCE IN ROAD ACCIDENTS AND NEAR MISSES

“I’ve had a car door opened on me twice, the first time I sent a report [to the company] (specially there for if you have a traffic accident). They sent an automated message back. That automated message was the one for if someone has their bike stolen. I didn’t send one for the second incident.”

“I was car doored one year ago. My whole pack and everything was broken, I hurt my knee it was very painful and bleeding.”

“I was involved in a crash that led to 1 and a half months off work due to chest injuries.”
“I have had two minor accidents while delivering the food in past 3 years. [I was] unable to work for 5 weeks and no compensation. [I] also suffered from severe neck pain due to wearing helmet continuously for 8 to 10 hours a day.”

“[I was] hit by a car. Uber won’t cover insurance for it.”

“You have to be careful on the road because Uber treat you as a contractor and won’t look out for you.”

“I have had 2 accidents, while I’ve been working for only 6 months, when there are rainy days it is much more dangerous for riders from the tram tracks, both accidents were from slipping on the tram tracks.”

“Weather and traffic are safety risks. The roads are slippery when it’s wet and I often have to ride on streets that are not bike friendly. If there are no bike lanes I will ride on the footpath.”

WHAT RIDERS WANT TO SEE CHANGE

“It’s not ideal work on a bike, due to dangers. Would be good if Uber suggested safer routes on the delivery map (avoiding main roads etc), as well as getting more money would be nice.”

[I want] work cover for accidents.”

“Uber could pay for our insurance, pay for our medical costs, they don’t though.”

“I would like insurance for injuries.”
PERSONAL SAFETY, RACIAL DISCRIMINATION AND RISKS AS FRONTLINE WORKERS

Riders experience risks to their personal safety as frontline workers who have no physically safe workplace, and are physically vulnerable on bikes and scooters. Riders described risks and incidents including:

- Race-based verbal abuse, threats and intimidation.
- Race-based physical assault.
- Working alone late at night in dark areas.
- Working alone late at night and dealing with alcohol-affected customers.

RIDERS SHARE THEIR PERSONAL SAFETY EXPERIENCES AS FRONTLINE WORKERS

“At the lights at Smith St I was attacked. There was a car in front of me and the lights went green, when he didn’t go after 10 seconds or so I beeped him. He got out of the car ... he pushed and hit me and said racist things to me.”

“I am scared of some customers. People in the inner city after dark can be drunk and abusive.”

“Once I was chased down the street by a group of teenagers, it was scary and the customer had to help me and wait with me it was awful. They were waiting for me.”

“Safety issues is always there every day because people just hate us for no reason and want to hit us. We just run away if that’s the situation. [There are] health risk due to stress..., over working, no sick leave or paid leave, racial discrimination, verbal abuse and threats.”

“I was concerned for my safety waiting alone in the unlit waiting area at night.”
WHAT RIDERS WANT TO SEE CHANGE

“I’d like to be paid per hour rather than per job.”

“I would ask to be paid for the trip to the restaurant to pick up the food.”

“Uber only pays $6-$6.50 per delivery, I would like to be paid more.”

“I would like to lower Uber’s take (fare fee) from 35% to 20-25%. I have no way to contact Uber.”

“More permanent jobs and a decent pay offer. Pay increases should be a minimum of what the minimum wage goes up at least 3%.”

“Drivers should be paid leave. More money per delivery. [I’m] currently receiving $7.50 minimum per delivery (increases with distance) and that’s not enough.”

“Hourly rates is the fundamental thing I would change. I also need to able to communicate with the company more, without the assumption that if something goes wrong, then I have done something wrong, which is what the app is currently biased towards.”

“I would want better fees for us riders, and if Uber helped us with repairs.”

“Better mechanics like scooters provided and paid for by the company.”
WORKING PATTERNS AND ALGORITHM TRANSPARENCY

• The majority of riders said if they want time off work (for example taking a break or a holiday), they could just log off the apps. However, in practice riders experienced barriers and repercussions for taking time off or refusing work.

• Riders said low pay and no paid leave entitlements resulted in difficulties taking time off.
  o Some riders address this by working more hours to ‘make up’ for time off.
  o Some riders said they simply don’t take time off.

• Despite their independent contractor status, riders reported some companies use rosters that require riders to book time off in advance.

• Riders report being penalised for taking time off, reducing their hours, or refusing particular jobs:
  o Riders say they receive fewer jobs as a result of being unavailable.
  o Riders say companies can deactivate their accounts as a result of not accepting jobs.

• Riders questioned the decisions behind how jobs are allocated, saying that the companies’ decisions and their algorithms are not transparent to riders. While they are not provided algorithm decision-making details, they reported experiencing the negative impacts on their ability to get work that they attribute to the algorithm.

• Riders also questioned the fairness of the rating system, saying they were unable to challenge unfair negative customer reviews, which could have negative impacts on their ability to get work.

• Riders also described their ability to accept or decline jobs is hampered as some companies do not provided full job details (ie customer location) when assigning a job. Riders cannot make informed choices to accept or decline trips that may take them to locations that are too far or not safe, or ride on roads that are dangerous.
RIDERS SHARE HOW THE COMPANIES AND APPS CONTROL THEIR WORK AND TIME

“I’d put in for absence, [however] it would reduce chance to get more work later.”

“[I’d] just not log on. But I would have to work extra hours on other days, maybe do 12 hour days, so that I could afford the time off.”

“I don’t take time off because there is no annual leave so if I don’t work then I don’t get paid.”

“When you say you are taking a break or holiday they used to suspend your activity so it wouldn’t affect your statistics. Now if you don’t log on for shift... my statistics stay so it just looks like I am being slack.”

“It’s mandatory to work on weekends for deliveroo or else I will lose my hours... Not working on weekends will reduce my chances of getting better shifts for next week.”

“Uber tells you that you can cancel orders, but they disapprove of it. If you cancel an order they can block your account, depending on the time.”

“I can’t prove it... [but] I am strongly of the assumption that if I refuse a job because it’s too far or uphill and it’s too hot on my bike, the algorithm puts me at a lower priority and I don’t get a job for another hour or so.”

“I can choose not to accept orders. But I only know the pickup location, I don’t know the drop off location until after picking up food. This can cause issues as I don’t have any control of the jobs I accept. I wouldn’t accept some jobs if I knew beforehand I would be going to have to use dangerous roads to deliver.”

“Less jobs come through if you don’t work as much.”

“Sometimes I will cancel an order if they send me too far like 5 or 7kms away. If I cancel I get rated badly, like if I went 3 kms to get the food and am really tired and see the place is another 5kms away I am on my bike and that is just too far. If you are rated below 85% your account gets blocked by Uber.”

“I don’t know how the algorithm works. There is no transparency.”

“We are all dead, like slaves working hard for less pay and serving the rich and powerful. There is no holiday or break in this job.”
WHAT RIDERS WANT TO SEE CHANGE

“I would want to be able to appeal customer feedback, sometimes there is bad traffic and customers complain and give us bad reviews which affects our ratings and job ability.”

“Get rid of the ranking system.”

“More pay, smaller distances to travel between pick-ups and drop-offs. Previously the available delivery distance was much smaller.”

“More stable income and working hours.”
CASE STUDY: [worker name redacted]

[worker name redacted]* came to Australia to study English. He’s worked as a food delivery rider for multiple companies and has seen first-hand a decline in pay and conditions as a result of unilateral cuts to rider contracts.

On unilateral contract changes and cuts to pay rates

“We used to get the hourly rates. $16 plus $2.50 per order. If you get 2 orders you get like $21, 3 orders you get $23. After 1 year they start to change the conditions.”

“The first time they called and said “we are going to change the contract. You have the option of getting this new contract that is still good (but it was really worse), or keep your [existing] contract” but … they didn’t say “you’ll be fired” but it was something like that... it was kind of mandatory to sign the other contract. They changed all the contracts that way.

Then, they tried to do the same again. They gave people two options: change to the current new contract, that is pay per distance, or keep your old contract. But they start to do something really annoying which is give the long trips to the people who didn’t change contracts. I tried to keep [my contract], but on a bike it was impossible because I had to do long trips and was earning less than $15 [per hour] because I spent a lot of time doing the orders.”

“It’s a dirty trick from [the companies]. You can change [to the new contract] or we can terminate your contract. They don’t say that explicitly but you know that it’s implied. They know who has the new contract and the old contract and who to give the long distances to.”

On the Algorithm ‘Frank’

“I’ve worked for all the companies. I worked with Foodora. I got the contract that said $10 per order and could get three orders per hour so it was pretty good. Then Foodora closed down … Deliveroo gave priority to scooters, and I’m a bike rider so I don’t receive the same amount of orders as the scooters or motorbikes. It’s not good so I complained to the companies. They say “no, it’s not that [you’re on a bike], it’s the artificial intelligence that handles all the orders”. The artificial intelligence name is ‘Frank’ and Frank assigns the orders according to… I don’t know...the algorithm.” It’s based on speed and obviously I can’t compete with scooters.”

“He [Frank] knows who is the best rider, who can do the order faster, but I don’t believe it because I know in the CBD that bicycles are faster than scooters, especially in the lunch time with lots of traffic. Sometimes they assign me an order with a scooter together and I’m faster.”
On the cost of living as an international student

“Melbourne is really expensive. When I came here I brought some money from my old job, but when I came here I realised I’m going to spend it in 2 months.”

“It’s harder to get money now. It used to be easier. I used to earn $10 per order. Now sometimes I get $5. So I have to do more orders. To pay uni, I have to borrow money from my parents. They say “why don’t you find a job that pays you more”. I say “this is the best job I can get”.

On why International students work in food delivery

“[International] students can’t apply for many jobs here because of visa restrictions. The majority of jobs are cleaner or kitchenhand or dishwasher...hard jobs. This one seemed ok, you can just ride bikes. I’m happy with the job cos I don’t have to clean toilets... I did cleaning jobs, I did kitchen hand. Even though cleaning pays superannuation and taxes... at least in this one I can practice my English and see people. The other [jobs] are kind of depressing.”
CASE STUDY: [worker name redacted] STORY

[worker name redacted] works as an on-demand food delivery driver by car.

On the realities of his limited worker power in an oversaturated competitive market

“There are so many drivers and riders coming into Uber, it’s getting hard, so there are less orders. The competition is getting higher and higher.”

“A lot of the time the restaurants don’t start making the orders until the drivers show up. A lot of the time the wait time is 15 – 20 minutes and Uber tells us if its more than 15 minutes wait you can cancel the order but .... if its past 15 minutes you’re waiting thinking “any second now... if I cancel it I might wait for another hour for another delivery to come in.” [If I cancel it] I get nothing, no money. Your cancellation rate goes up and that doesn’t look good on your profile. With a lot of competition around, the orders are gonna go to the people on the high ratings. They (Uber) don’t say that to you, but it’s the unwritten law.”

On making a living wage

“They pay us $6 per delivery and when you’re paying for petrol, your car expenses, it doesn’t really work out. It’s not practical working on a not-so-busy day. The minimum wage rate should be $18 or $19. There are days you can more than $18 or $19 per hour, but they are very seldom. If you work and pay tax, and then you have to pay car, petrol and other expenses, ... at the end of the day I would say you’d get about $10-15 an hour and that’s not practical.”

On working with no guaranteed minimum pay

“Waiting for orders... I’ve waited an hour and a half at times when I was really desperate for a certain amount of money in my bank account, so I would work as long as it would take to get the money. I used to have a target of $100 [per day]. Until I hit that $100 I wouldn’t go back home. It might take me 7 or 8 hours to make $100 and that’s not very good. [Uber] get 30% of the delivery. That’s a big amount because there’s so many [workers]...so much saturation.”
On limitations communicating with companies

“With Uber it is what it is. You’re just a delivery partner. You don’t have a proper channel in between. They say you’re a partner and you’re working with Uber not for Uber, but that’s not really the case. It’s very hard contacting Uber. You can’t really get in touch if you have an issue.”

On why workers keep agreeing to these jobs

“You don’t need any qualifications...you just need to know how to drive or ride a bike, or ride a motorcycle, and Uber is exploiting that. They have leverage over the workers because most of the workers who work for them are students struggling to get through their daily routine, struggling to pay the bills. They (Uber) take advantage of that.”

“People do it because you don’t think about the future, you don’t think about the year, you just think about the next week that you’ll get $500-600 in your account and you’ll be alright with it. That’s why a lot of delivery drivers are getting into this, they’re not realising what’s happening with them, that they’re digging this trap for themselves.”
CASE STUDY: DANIEL’S STORY

Daniel* is 25 years old and works as an on-demand food delivery rider and bike courier. Most of the companies he works for assign him jobs through an app, and some by phone call.

No ability to negotiate a pay rise

Daniel takes on jobs with three companies so he can pay for food, rent and bills. As an independent contractor, he doesn’t receive superannuation, and he can’t get a pay rise to meet increasing costs of living.

“I don’t believe I can negotiate a pay rise. It is not possible in the structure of the gig economy.”

Adverse consequences for refusing unreasonable work

Daniel says although he can choose if and when to work for these companies, his choices can negatively impact his chances of being assigned future jobs.

“There was one situation where the office called and asked me to do an unreasonable delivery, I declined and they hung up on me mid-sentence. For the next week I received substantially less delivery requests. I suspect I was in some way blacklisted and punished.”

Negative impacts to his physical and mental health

Daniel described the impact of working on the road as a bike rider. Riding in traffic can be dangerous at the best of times, and when workers are under pressure to make quick deliveries or feel compelled to work in rain or extreme heat, the risks to their health skyrocket.

“I have suffered injuries and sickness due to working in dangerous weather conditions. I have also been injured in altercations with other road users. I also receive regular verbal abuse from car drivers and even pedestrians, which is emotionally taxing.”
No paid leave means no real holidays

Daniel doesn’t have access to paid sick leave. If he gets sick or injured and needs time off work, he doesn’t get paid and needs to use his savings as make-up pay. As a result, taking time off for recreation, holidays, or to recharge is rare.

“Due to my financial situation, which is exacerbated by my employers terms and conditions, holidays and breaks are not a viable option for me.”

What Daniel wants to see change

“I would like to either be made an employee with all rights and benefits under the law, or be paid a reasonable amount to compensate for the expenses and needs I have as an independent contractor. I make $25 an hour on average. Once I remove my sick pay, leave, super and tax and expenses for the maintenance of my bike, I make well under the minimum wage.”

*name has been changed.
CASE STUDY: [worker name redacted] STORY

On getting work as a migrant

“The workers that they hire are all international students or undocumented workers.... We [migrants] are a cheap labour force... I have to admit that I don’t want to do this job. But I am 64 years old, no one will hire me.”

On piece rates and no minimum hourly pay

“The best day so far is I delivered 9 orders, and earned $63 dollars. I logged off around 8 pm.”

“They did not pay me while I am still logged in and waiting for the order comes in. Sometimes I might sit on the street for more than an hour, but [I’m] not paid. You did not give me hourly pay, but I was here, waiting, doing my job. Same as in any restaurant, the employer has to pay the worker, even they weren’t performing the work. You still need to pay the worker by hour.”

On being forced to rent or buy company scooters

“You have to use their (company) e-bike. You either purchase [the] e-bike or rent it... At the very beginning I spent $480 dollars deposit for the e-bike. Also I must pay $180 per week for renting the e-bike. I did the math, I can’t afford to pay $180 every week. So I offered to purchase this second hand e-bike. In total I paid $1120 plus $180 for the first week rental fees. The game they play here is very manipulating.”

On Safety

“Safety, the first thing is I don’t have anything to protect me on the road. If cars crushed on me, I don’t have anything to protect myself. In Australia, they don’t have bike only road, or even separate [lanes] from the other vehicles. This is bloody dangerous. I am always terrified.”

On communicating with the company

“I can’t get in touch with the employer, the only one person I complained to is the customer service, not much she can do about it. She is a part time worker who happened to be working in the office, answering phone call, assigning the works to other food delivery people.”
On the vulnerable workforce of young migrant workers

“If they [young riders] did not work hard, potentially the employer can send them back home or report them to the immigration. They are so scared. I am not scared, I have work right and was granted by the [Australian] government.”

“If it was my kids I would definitely preventing them to work in this industry. [Young] students should of focus on their studies. Also, there is no work cover or insurance. If anything happened, it’s not their (company) responsibility.”

“They (the company) are very bad, the workers voice is not loud enough.”
GIG WORKERS IN OTHER FIELDS
RIDESHARE DRIVERS

Rideshare drivers share their experiences and concerns.

On health issues related to the job
“I had heart issues due to sedentary life style.”
“I work 14 hours/day during which I get minimum time to step out of my car. I don’t have time for fitness activity and I am afraid soon or later I will have serious health problem.”

On working with no sick leave or safety nets
“I am the only person working in my family and if I stop working as a result of illness I will end up in the dole queue.”

On pay
“[It] was disheartening to put the effort in only to have Uber take 25% of my earnings, then to pay tax on the entire amount. Ended up working for around $4ph. [Now] my full time job pays $43ph.”

On job acceptance rates
“[There are consequences for] not accepting jobs even if they are from 5 or 10 km away (driving time for which we are not paid). Acceptance [rate] in app goes down and so do the chances of next job.”

What workers want
“Regulate it like taxi and good fixed fares or income guarantees per hr should be made compulsory.”

“There should be a provision for sick or annual leave.”

“More fair pay.”

“Job guarantee.”

Life as a rideshare driver
“What I do is not work, its slavery. From $82,000 I made last year I only cleared $32,000 which is less than $10/hour. No super, no sick leave, holiday or any other benefit.”
NON-FOOD COURIERS

On Pay
“I wouldn’t ask [for a pay rise] as I don’t expect to get it… there are too many other people who could do my work.”

“I stopped doing this work because it’s] not enough money.”

“Not even a chance to [negotiate a pay rise] in the gig economy.”

On Safety
“[I was] hit by a car door.”

“I was attacked by an off leash dog recently.”

On no paid sick leave and no safety nets
“[If I was unable to work due to illness or injury] I’d have difficulty paying rent/food/living expenses. Probably go into debt.”

On insecure work arrangements
“The work fluctuates and it’s not a stable income.”

What workers want
“I would like more frequent jobs and a fairer distribution of jobs. Accurate descriptions of jobs and better communication between clients, the company and me.”

“Hourly rate, actually being recognised as a worker. Some kind of cover for sickness or injury.”

“It can be great as an extra form of income. But as circumstances change and it is now my main source of income, better conditions would be appreciated. And as a lot of others do it as a main income it is only fair.”
CARE WORKERS

Online platform-based care workers share their experiences and concerns.

On Pay
“I don’t negotiate. The pay is negotiated with the employer by my agency”
“I wouldn’t [negotiate]. I would try for more hours”

On ‘being your own boss’
“Overworking [is a health risk]. Working late nights and weekends to deal with the business side of my work.”

On life without paid sick leave
“If I was unable to work due to illness or injury] I’d probably get behind in bills and have to cut back spending”

On taking time off work
“I take time off by working extra-long hours for weeks before to hopefully get enough cash to manage.”

What workers want
“I would like to have access to long service leave. I have been doing [care] work for 20+ years now, and am not eligible for long service leave. I understand the no-sick-pay thing since I am paid casual rates, and no holiday leave provisions, but I think long service leave should apply, since I am loyal to my agency and always perform whatever shift work they ask of me. I have not had a decent holiday in 20 years. And I have worked even though probably too sick to do so. I would really like to have a paid break from work.”

“Be permanent”

“I love what I do.... [but] Loving the job does not give me enough pay to generate decent holiday conditions for myself and family.”
WORKERS IN ONLINE JOB MARKETPLACES

Online platform-based care workers share their experiences and concerns.

On Pay

“You get bargained down.”

On Superannuation

“I try and send 10% on my earnings to a super fund but on weeks where it’s tough I have to skip those payments.”

On getting by

“If I was unwell or injured and unable to work] I would struggle to get by and pay rent. I would be relying on my partner’s income to support both of us. If it was long term would have to stop renting and move in with parents.”

On arranging time off work

“If I’d turn down work [but] potentially lose rating and thus future jobs.”

“Staying active on the job service makes you far more likely to get gigs.”

On problems in the gig economy

“I stopped] because it is not consistent, there are too many people looking for work and too many people who want better bang for their buck, like lowest price for the highest quality. I was doing cleaning and at the end of the job the guy nicked off and ran down the side alley so he could avoid paying me - I had to run after him, confront him and ask to be paid for the work I had just done.”

“It’s inconsistent and the lack of security gives me anxiety.”

“Overall it’s very difficult work and causes a lot of emotional roller coasters when you are not earning regular income. Some weeks you can be earning thousands of dollars. Other weeks only a few hundred. It’s very hard to average this out and live a consistent lifestyle.”

What workers want

“I would like to be PAYG so I don’t have to worry about withholding tax and paying super. Higher rate of pay and maybe guaranteed hours per week. Even if it’s a low amount of hours, in the quiet periods it can be very hard to sustain income.”

“Super + benefits.”
APPENDIX D

Letter from the Australian Council of Trade Unions regarding the application of regulations
8 May 2019

Ms Carina Garland
Assistant Secretary
Victorian Trades Hall Council

Via email:

Dear Carina,

Inquiry into the Victorian on-demand workforce

Thanks for your recent update about the Victorian Government’s Inquiry into the on-demand workforce. Since we provided our submission to the Inquiry we’ve been having some further thoughts about what the potential options might be. Whilst the ideal solution would obviously involve all workers in the gig economy in Australia having equal rights and protections, we think there are some levers at State level, particularly in the transport sector, that could potentially be pulled for the benefit of those workers that State law can affect.

I thought there was some benefit in getting our thoughts on this down in writing, given the prospect that there might be some further contact or consultation between the Inquiry and its key stakeholders before it concludes, as is usual in processes of this nature. Clearly the VTHC are a key stakeholder for this Inquiry so such an opportunity, if there is one, is more likely to be afforded to you than to us. The key issues and improvements we have considered are identified via bold text below.

We note at the outset that effective regulation of transport workers in the on-demand economy must ultimately include a national system of safe rates consisting of an independent body which sets minimum and enforceable standards for all transport workers. We endorse the TWU’s call, which this inquiry ought to consider, for government and industry participants to recognise the urgent need for a national system of safe rates which ensures:

1. Universal application of a system of binding, enforceable and safe standards. The standards will cover all parties in the transport supply chain / contract networks to ensure safe performance, planning and appropriate payments. The standards will focus on eliminating economic and contractual practices that place undue pressure on transport supply chains / contract networks;
2. Appropriate, enforceable payments and related conditions for all operators and workers, regardless of label;
3. The capacity to resolve (including where necessary through binding decisions) transport supply chain / contract networks disputes;
4. Appropriate and adequate enforcement regime; and
5. Appropriate resourcing of supply chain / contract networks auditing, training and education through an industry fund.

In the absence of action at the Federal level, State-based regulation in this field has a vital role to play. Leaving the debate of employment versus contractor status aside for a moment, one of the major obstacles to broad, State-based, mandatory regulation of the gig economy is Part 2 of the Commonwealth Independent Contractors Act 2006. This operates as a covering-the-field-type exclusion of State and Territory laws which (relevantly, and for brevity's sake):

"...confer or impose rights, entitlements or liabilities on a party to a services contract in relation to matters that, in an employment relationship, would be workplace relations matters (or provide a means for rights, entitlements, obligations or liabilities in relation to such matters to be conferred or imposed on a party to a services contract)".

Part 2 of the Independent Contractors Act 2006 also defines workplace relations matters to relevantly include remuneration, hours of work, making and terminating agreements and a number of related matters. This broad footprint appears capable of defeating any Victorian-based regulatory system that set minimum rates of pay and an associated enforcement framework in the gig economy, but for one thing: there is a relevant exception to the exclusion.

That exception is that the exclusion does not apply in relation to the Victorian Owner Drivers and Forestry Contractors Act 2005. The Victorian Owner Drivers and Forestry Contractors Act 2005 also benefits from an exception to another exclusion in Part 2 of the Commonwealth Independent Contractors Act 2006, which otherwise prevents State and Territory laws from modifying or setting aside (etc.) services contracts on an unfairness ground, a term which is defined in the manner you would expect.

The existence of this exception prompted us to have a closer look at the Victorian Owner Drivers and Forestry Contractors Act 2005 to see what work it should and could be doing in this space. The latter issue is informed by the fact that section 10A(a) of the Commonwealth Acts Interpretation Act 1901 determines references to State or Territory laws in Commonwealth laws to be ambulatory, that is they shall be construed as a reference to that State or Territory law as amended from time to time.

The Victorian Owner Drivers and Forestry Contractors Act 2005 (hereafter, ODFCA) is probably described as in the mid-point between light touch and entirely prescriptive regulation. Its broad framework in relation to owner drivers (ignoring forestry contractors for present purposes) is essentially this:

- It establishes a Transport Industry Council, which is a Tripartite body. It consults with the Minister in the making of Codes of Practice, an Information Booklet and Rates and Costs Schedules.
  - Codes of Practice must be complied with, to the extent that they impose duties or obligations. Codes of Practice can require hirers of owner drivers to adhere to certain standards and prescribe non-binding guidance in relation to other matters. Currently, for example, the Code of Practice for Owner Drivers prohibits for hirers from making misleading representations to prospective contractors (for example in relation to prospective earnings) and also requires hirers to particularise in writing the equipment or services (provided by the hirer or others) in relation which deductions are made. It also provides guidance in relation to the types of practices that are likely to constitute unconscionable conduct (discussed below) and provides further guidance that

2
contractors should, after accounting for operating expenses, receive at least an amount which they would typically receive as an employing performing the same services.

- **Information Booklets** must be provided to contractors by hirers or freight brokers prior to engagement, at least for contracts which involve engagement for 30 days or more. In the event that the contractor is engaged by the same hirer or through the same freight broker for 30 days in any 3 month period, the contractor must be given the Information Booklet on that 30th day. The current Information Booklet provides an outline of the framework that is established by the QDFCA and how it operates, general advice on setting up a business and things to consider in making business decisions and a brief description of other regulatory areas that impact the work of owner drivers. There are no regulatory limits on what the Information Booklet may contain.

- **Rates and costs schedules** must contain indicative fixed and variable expenses for operating particular vehicles as well as the rates of pay that attach to employees performing similar work. Rates and costs schedules are issued accordingly to classes of contractor and vehicle. A hirer or a freight broker is required to give a prospective contractor the rates and costs schedule relevant to the work at the same time as the information booklet, except where the engagement is for a period of 30 days or less. In the event that the contractor is engaged by the same hirer or through the same freight broker for 30 days in any 3 month period, the contractor must be given the applicable rates and costs schedule on that 30th day. Curiously, the smallest type of vehicle that a rates and costs schedule has been produced for is a one tonne van, notwithstanding that it is open to the Minister (in consultation with the Transport Industry Council) to issue such schedule for any vehicles — which are defined in the act to include bicycles and any motorised vehicles propelled by a motor that is used on a highway. The issuing of rates and costs schedules in respect of all types of vehicle that might be utilised in platform work is one small but meaningful step that the Inquiry might be asked to consider.

- It provides, in Division 3 of Part 2, mandatory features for ongoing engagement of contractors that are either of no fixed duration or for a period of at least 30 days (contractors are deemed be ongoing irrespective of the number of regulated contracts under which they are engaged during the engagement). Those mandatory features include:
  - That a regulated contract under which a contractor is engaged must be in writing, state a guaranteed minimum hours of work or income level, set out the rates to be paid to a contractor and set out the minimum period of notice of termination or payment in lieu;
  - Notice of termination (or payment in lieu), which applies where engagements exceed 3 months, subject to the right being waived via a prescribed process.

- It provides, in Division 4 of Part 2, prohibitions on hirers requiring contractors to pay monies or making deductions from money payable to contractors in certain circumstances. Relevantly, there is a prohibition on deductions or fees for services or equipment unless the amounts are a direct and proper reflection of the actual costs of the services or equipment in respect of which the costs are charged.

- It provides in Division 5 of Part 2, a right for contractors (or a group thereof) to appoint a negotiating agent (for example, a union) who a hirer is required to recognise and deal with exclusively in particular circumstances.
• It provides, in Part 4, prohibitions on hirers and contractors from engaging in unconscionable conduct. Indicia of unconscionable conduct are largely as would be expected, but also includes some more general unfairness type grounds, which direct attention (for example) to market rates for the work either as a contractor or an employee, the requirements of Codes of Practice, consistent treatment by the hirer of comparable contractors and a willingness to negotiate.

• Part 5 contains a dispute resolution function, as between hirers and contractors only. It is essentially an ADR process conducted by the Small Business Commission. Utilising that process is a necessary precondition to accessing VCAT in respect of unresolved disputes.

• VCAT has broad powers but again it is constrained by dealing with disputes as between contractors and hirers only. VCAT powers include those normally connected with the adjudication of commercial disputes (debt, restitution, interest, specific performance) as well as unfair contract type powers such as varying contracts and declaring certain terms void etc. Additional and unusual powers include the capacity to make orders to prevent specified types of contracts being entered into in future (presumably those that which VCAT judges to be somehow deficient on unfairness grounds) and a power to effectively make class orders which apply a variation order that has been made to specific contract in a dispute to all contracts of a particular class defined in the order.

• There is also a distinct and specific power vested in the Tribunal where an information booklet or rates and costs schedule is not provided, which allows the Tribunal to order that a contractor be paid a specified amount (irrespective of the terms of the contract). The amount specified is to be arrived at having regard to the terms of the contract, what the applicable rates and costs schedule specifies, earnings for an employee doing comparable work and what is “fair and reasonable in the circumstances”. Curiously, this power is said to apply to “a dispute involving an allegation that a hirer or freight broker failed to give a contractor an information booklet or a copy of a rates and costs schedule…”, whereas the definition of dispute is explicit in specifying that a dispute “...means a dispute between one or more contractors and one or more hirers...”.

The definitions used in the ODFCA are of course key to what it can and can’t achieve in its present form. The key concepts in this regard are owner driver, owner driver contract, regulated contract, hirer and freight broker (also italicised where relevant above).

• An owner driver may be a natural person, a corporation or a partnership. A natural person is an owner driver if they carry on a business transporting goods in one or more vehicles which they supply and operate (or operate with the use of additional or relief operators). It is therefore apt to describe non-employee food delivery drivers, but not “platform” drivers, and this could and in our view should be addressed by the Inquiry. One way of doing this would be to create an additional limb (or tree) in the owner driver definition, which might usefully draw on definitions and concepts in the Victorian Commercial Passenger Vehicle Industry Act 2017 (for example, an owner or operator of a vehicle registered under Part 3 of the Act provided the owner or operate does not provide an unbooked commercial passenger vehicle service within the meaning of the Act using that vehicle), while otherwise adopting the basic natural person/corporation/partnership elements of the definitions in the existing tree. There would also be a need to make consequential amendment in numerous places to deal with the various references to “freight” and “goods” so as to allow for the carriage of passengers to be included.
• An owner driver contract is a contract made by an owner driver with a person (who need not be a hirer or a freight broker) for the transport of goods by the owner driver.

• A regulated contract is an owner driver contract or one of the other forms of contract which are regulated by the ODFCA but are not relevant for present purposes.

• A hirer is a person who engages a contractor under one or more regulated contracts.

• A freight broker means a broker or agent in the business of procuring the arranging the engagement of contractors by hirers.

It would be apparent from the above that there is distinction between the rights granted to owner drivers against hirers on the one hand and freight brokers on the other. Relevantly, the only clear obligations that a freight broker has to an owner driver are to provide a relevant rates and costs schedule and an information booklet. However, as these obligations are only enforceable in the context of a dispute, which necessarily excludes a contest between an owner driver and a freight broker, the obligation is of little practical effect. There is currently a Bill before the Victorian Parliament to amend the ODFCA, relevantly to create offences and an inspectorate to enable non-compliance with the Act to be enforced by the State rather than solely by the parties themselves. However, the Bill does not address the issue with the poor definition of dispute or expand the coverage of owner driver to include platform drivers. Furthermore, it supplements the definition of freight broker such that it would mean “...a broker or agent in the business of procuring or arranging the engagement of contractors by hirers, including a person who provides an online platform that facilitates the engagement of contractors by hirers”. The addition of the underlined words is significant because it suggests that the Victorian Government accepts the view that platform operators such as Uber merely facilitate engagements without actually engaging anybody (a view most recently implicitly rejected by the UK Court of Appeal, Employment Appeal Tribunal and Employment Tribunal in the Aslam litigation).

A notable element of the definition of freight broker is that it must first be “a broker or agent”. In our view, it is inconceivable that a platform operator of the type we are conversant with could be either. Firstly, it is entirely inimical to the commercial understanding of a broker that such a person only ever offers, arranges or procures dealings on a single set of identical terms of engagement which they themselves exclusively determine (and never on the basis of negotiation). Secondly, a broker generally functions as a lead generator to businesses that otherwise have access to other market channels to sell their business (including other brokers), which is unlikely and certainly not assured (as a practical matter) in the food delivery or platform ride hailing space. Thirdly, a broker is expected to exercise at least some level of care and skill in selecting a product or service for their client which meets their stated needs. A broker is generally also in an agency relationship, which carries with it fiduciary obligations. Whist Uber for example has represented (in the Aslam litigation) that it is the agent of its drivers, it is entirely unclear how it could properly discharge its fiduciary obligations in that setting unless the scope of the agency was extremely limited (for example, to communicate offers and collect payment) because the drivers to whom it owes those duties are in competition with one another.

More important to the issue of agency, though, is the issue of illegality. It is settled in Australia, post the High Court resolution of the Flight Centre litigation, that competition law can apply to agency arrangements. That being the case, there is a real issue as to whether platform operators that function in a similar way to Uber are parties to cartel provisions, or are making or giving effect to a cartel provisions within the meaning of Division 1 of Part IV of the Competition and Consumer Act 2010 (specifically, by reason of the purpose/effect condition in paragraphs (c) and (d) of subsection...
Indeed, an illegal price fixing conspiracy was the central allegation in the Meyer class action litigation against Uber in the United States, on the basis that it was a “hub and spoke cartel”, a species of conspiracy well known in United States Antitrust law. That litigation failed owing to an interlocutory ruling that there was a compulsory agreement to arbitrate in the Uber terms of service (which, even if replicated in terms of service used in Australia, could not bind a regulator such as the ACCC). In our view, policy makers should not be striving to legitimise these arrangements. Instead, the Inquiry could usefully consider re-casting the definition of freight broker to ensure, for the avoidance of doubt, that it expressly encompasses more conventional expectations of the role of broker, such as sourcing quotes from a multiple suppliers on the supplier’s terms, or on terms negotiated with those suppliers, where requested by a client or prospective client and in accordance with the client’s requirements. This could usefully be supplemented by an exclusion, such that a person that provides a booking service within the meaning of the Commercial Passenger Vehicle Industry Act could not be considered to be a freight broker. A regulation-making power to exclude certain persons from the scope of the definition (e.g. “...but not does include any person prescribed in regulations made for the purposes of this paragraph.”) would also, in our view, be valuable to future proof the intention expressed by such an amendment. Clearly, given what we have said above about expanding the reach of the ODFCA, the preferred approach would be to define a broker rather than a freight broker.

That is not to say that it is inconceivable that the ODFCA, certainly at least in its current form, is capable of leading to the result where at least some platform operators are appropriately characterised as hirers rather than freight brokers. Indeed, in the food delivery context the consumer perspective is one where the consumer is ordering food for delivery from the platform. The only way the platform can actually meet its obligation to the consumer is through a driver or rider, and it is hard to conceive of a situation where that would not involve the platform engaging an owner driver under a contract for the transport of goods by that owner driver: the inescapable conclusion in that scenario is that the platform is a hirer as presently defined. But the point of the regulation is to hit the mark all the time, not just sometimes or most of the time. For that reason, it would be appropriate in our view for the Inquiry to consider not only the amendments above, but also amendments to the definition of “hirer” to add an additional limb, for example “...or another person, other than the owner driver or a [freight] broker, who determines some or all terms under which the owner driver is engaged and is entitled to payment under those terms”.

One final observation regarding the ODFCA, both in its current form and as proposed to be amended by the Bill presently before the Victorian Parliament, is that it does not mandate the inclusion of any guidance about the links between safe operation of vehicles, hours of work and rates of pay or incomes in either the rates and costs schedules, code of practice or the information booklet. The proven research connections between these matters were the policy basis for the introduction by the Commonwealth of the Road Safety Remuneration Act 2012, which was ultimately repealed for partisan political reasons. As indicated above, effective regulation of the on-demand economy must ultimately include a body such as the Road Safety Remuneration Tribunal established under the above act, with the ability to enforce nationally-applicable mandatory rates. Whilst the current Owner Drivers Handbook (the name of the information booklet issued pursuant to the Act) does include some rudimentary information about safety, the overall framework for providing guidance seems to be based purely on estimating commercial viability at some level, which might not necessarily lead to the same result as a more holistic approach which sought to ensure safety at the same time. For that reason, the Inquiry could in our view give some thought to providing greater specificity in the types of information that either the rates and costs schedules, code of practice or the Information booklet may or must contain. We would note however that nothing in the ODFCA prevents the information booklet from including such information now.
Going beyond the transport sector, there is nothing of course preventing the Victorian government issuing material akin to code of practice, information booklet or rates and cost schedules for other types of work, that provides some guidance to would be gig economy participants on profitability, overheads, employee earnings and safety issues in the performance of different types of work, either on a stand-alone basis or as part of some voluntary accreditation scheme. Such an approach, taken outside of the ODFCA and which did not confer any rights could not be regarded as offending the covering the field provision in the *Independent Contractors Act.*

I hope our thoughts on these issues are of some benefit to you in any further consultations with the Inquiry that might eventuate. This has been a rather longer communication than I thought it might be when I commenced it, so feel free to simply pass it on if that is more convenient.

In Unity,

[Signature]

Scott Connolly
Assistant Secretary