Inquiry into the Victorian On-Demand Workforce

Submission on behalf of the
Victorian Transport Association

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3.0 SUMMARY
1.0 ABOUT THE VICTORIAN TRANSPORT ASSOCIATION (VTA)

1.1 Introduction

The Victorian Transport Association (VTA) has over 800 members and is dedicated to the service of members and supporters in all sectors of the transport and logistics industry.

With over 100 years' experience and a specific business focus, we possess the industry acumen, market knowledge and industry contacts that enable members to capitalise on the current commercial and regulatory environments.

Recognised as Australia's pre-eminent multimodal prime contractor and employer organisation in transport and logistics, the association works with all levels of government, the unions, statutory authorities and the industry to achieve mutually beneficial outcomes. The VTA is committed to enhancing the image of the industry while helping improving the commercial environment for our members to operate.

The VTA is focussed solely on the owner driver component of the review and will not be commenting or contributing on the issue of forestry contractors.

1.2 Representation

The VTA represents the industry through a variety of means, including (and not limited to):

- Transport Industry Council - the VTA was one of the founding members of TIC
- Ministerial Freight Advisory Council
- Victorian Road Freight Advisory Council
- Australian Road Transport Industrial Organization
- Transport Industry Safety Group
- Enforcement Liaison Council
- New South Wales Road Freight Industry Council
- National Transport Commission – Industry Advisory Group
- National Heavy Vehicle Regulator – Industry Reference Group

1.3 Services

The VTA provides major services to its members and industry around the following matters:

- Industry Regulations & Compliance reference
- Industrial Relations advice and advocacy
- Training and education programs
- Industry KPI's and historical data
- Industry networking and references
- Industry advocacy and representation.
1.4 Industry Regulations and Compliance

The VTA has the experience and expertise to provide valuable information and advice in areas such as:

- Development of company specific fuel levies
- Vehicle Cost Modelling
- Chain of Responsibility
- PBS, HPV’s and Mass Limits
- Load Restraint
- Driving Hours and Fatigue Management information
- B-double and PBS routes
- WorkCover
- Diesel fuel grant scheme
- Local Government restrictions

1.5 Industrial Relations

The VTA provides specialist industry advice on such matters as:

- Award & EBA information
- Dispute settling – Boards of Reference
- Superannuation matters
- Long Service Leave, Termination and Redundancy
- Sub-contractor rates, agreements and compliance
- WorkCover/OH&S advice
- Fair Work Commission representation
- Specialist papers on management issues
- Workshops for industry issues

1.6 Training and Education

The VTA provides Industry based training courses to its members and non-members. The VTA has a large training facility at its Webb site, and is able to provide services to groups of up to 50 people.

The VTA is very committed to a range of key issues and the training include but not limited to such areas as: Risk Management Systems (Chain of Responsibility); Chain of Responsibility Awareness; Load Restraint and Incident Management Workshop. Supported by the Victorian State Government, the VTA Driver Delivery is training new heavy vehicle drivers to be job ready for transport and logistics companies. This Program focuses on teaching the right skills and providing extensive ‘Behind the Wheel’ experience for the candidates. The VTA understands the important of recruiting and attracting young men and women to the industry and this is being achieved through the VTA Cadetship Program.
2.0 VTA’s APPROACH TO THIS SUBMISSION

2.1 Introduction

The Victorian Transport Association (VTA) is fully aware and supportive of the ‘Inquiry into the Victorian On-Demand Workforce’ (the Inquiry) and welcomes this opportunity to provide a response to the Inquiry. As part of the VTA’s past and current on-going advocacy roles, the VTA is very aware of the significantly changing nature of employment relationships associated in transport and logistics sector, as well as, many other industry sectors. The new forms of engagement along with the many technological advances are having a profound impact upon the nature of workforces.

The industrial relations environment in Australia is constantly changing and is now being influenced by global pressures based upon electronic communication. These changes are characterised and being driven by automation, rapid technological advancement, increased globalisation, and the impact of new engagement relationships illustrated by the ‘gig’ economy and labour market deregulation.

Modern society has been fortunate to be able to communicate more rapidly through developing the technological means and platforms. With the advent of electronic engagement a person’s identity, personality and characteristics are now a minor consideration when engaging individuals to work and supply labour.

The On-Demand Workforce (ODW) is now being engaged by these electronic means on an ever increasing scale and with a decreasing regard to local regulations of payment standards, employment contracts, terms and conditions, work instruction, and other entitlements.

The VTA also recognises and acknowledges ‘work’ is an integral part of life for most adult Australians. The standard of living for each individual is determined by their own ability to attract the level of remuneration that enables them to live with satisfaction and engage with families and communities. It is the individual standard of living that is being threatened as the ODW continues to grow in Australia to the detriment of each individual’s standard of living and impacts more broadly across the community.

While a very complex issue, the VTA believes that this Inquiry into On-Demand Workforce is vital and timely. It goes to the fundamental principles whereby we have consistent and effective legal frameworks and systems which ensure a commitment to ‘fairness and shared prosperity’ for Australian workforces and for ‘reward for effort for workers’. This is essential if we desire businesses to invest and operate viable businesses and contribute to a positive Australian economy.
2.2 The VTA’s approach to this Submission.

The VTA has carefully considered its approach for this submission given the significant complexities associated with this topic.

It has reviewed the terms of reference and the issues presented in ‘Inquiry into the Victorian On-Demand Workforce’, Background Paper, December 2018.

The VTA has also reviewed many of the more recent research papers relating to this topic and in particular, the Australian Government, Select Committee on the Future of Work and Workers, Hope is not a Strategy – Our Shared Responsibility for the Future of Work and Workers, tabled in October 2018.

2.3 Defining ‘on-demand’ workers is essential

Before we can discuss the extent and nature of the ODW in Victoria, the need to first define the ‘on-demand’ worker is fundamental in order to identify the issues and develop the solutions. As outlined in the Industrial Realties Victoria Background Paper;

‘The practice of workers being available ‘on demand’ – as needed by a business – is not new. Labour hire arrangements, casual work and independent contracting are longstanding features of our labour market.

What is new is the capacity for technology to facilitate the matching of available workers with those who are seeking services, and the emergence of technology driven businesses existing solely for this purpose.’p7.

While there is a range of terminology used to describe on-demand work as witnessed in the literature, the VTA believes that a definition of the ODW must be first determined in order to define the issues. The VTA believes that the inquiry must be specific about the definition, description and scope of On-Demand Work and that it should not be confused with piece, casual, on call, home based or other labour hire definitions.

There is a perspective that the ODW and the type of work is quite narrow and simply a smaller part of the wider independent workforce. The VTA does not share this perspective. The VTA sees the ODW as a specific issue and the transport and logistic industry is witnessing a negative pressure building on the standards and conditions for other types of employees.

The need to define the meaning of the ODW is crucial. Depending upon how the Inquiry defines the ODW will have major impacts upon the other key issues, such as: payments, contracts and conditions of employment, the types and nature of work, as well as, the impact upon workplace safety and industrial relations issues.

The challenge for this Inquiry will come from being able to meet the demands of individual industries that engage the ODW and still allow market forces determine the level of penetration and coverage in individual markets. The solutions to the fundamental issues are firmly based upon the clear and concise definition of an On-Demand Worker.
The VTA concurs with the Committee view outlined in the Select Committee on the Future of Work and Workers;

'It is therefore critically important that we carefully plan for and then guide the direction of technological change so that the benefits are maximised and equitably distributed across Australian society and potential negative impacts are minimised. Allowing technological change to occur in an unplanned fashion risks creating a range of unintended consequences and will diminish the potential economic and societal benefits that can be derived from such change'. p 5

The VTA maintains that the risk of alienating sectors of the workforce will lead to fractious levels of payment status and reward for effort.

2.4 Legal status of on demand workers

The status of the ODW is significant because it is the key threshold question which determines which regulatory framework applies across a range of areas including: wages and conditions, health and safety, workers compensation and taxation. As we know, Australia’s national workplace laws are generally regulated by the Fair Work Act 2009 (Commonwealth). As outlined in the Inquiry Background Paper, employment entitlements are determined by the existence of an employment relationship which is not defined in the statute but is determined by the nature of the contract and the common law.

The real challenge posed by the ‘on-demand’ workers is to determine how these workers are classified. Many ‘on-demand’ workers are classified as self-employed or independent contractors. Independent contractors achieve some protections under the Independent Contractors Act 2006 (Commonwealth) and the Owner Driver and Forestry Contractors Act 2005. Some carry out roles that have traditionally been covered by minimum entitlements, particularly, modern awards that operate under the Fair Work Act. Another real issue associated with the ODW relates to the scope and diversity of working arrangements.

The status of workers in the ‘on-demand’ economy is a fundamental issue that determines how registering frameworks apply to their work arrangements. The VTA acknowledges there are many such arrangements and the labour hire sector has recently been defined and regulated by the current Victorian government. However, the VTA also submits that given the extent of the levels of fundamental changes in the nature of work as witnessed by the casualization of the workforce, the rise in the gig economy, labour hire arrangements, and prevalence of unpaid work, immediate regulatory changes to better manage the issues is essential.

Whilst the VTA acknowledges that the independent contractors and casual workforces have had and continue to have their challenges over recent decades, the workers employment arrangements and contractor engagements are understood, and on the whole, are manageable in the transport and logistics industry. However, the regulation of the ‘gig’ economy is a different situation and as such, needs immediate attention. This is evident in the payments standards, employment contracts, and adherence to the handling of accruals shift loadings and holidays and entitlements such as family leave, long service leave, superannuation and accident
compensation that are currently not evident in the ODW.

The introduction of digital communication platforms are out of pace with policy makers, regulators and the existing markets. It is view of the VTA that the ODW’s dependance on the digital platforms allows them to avoid their industrial relations responsibilities. Furthermore, the ODW are not covered by basic or adequate protections from an industrial relations perspective. The VTA believes that the current regulatory gaps are being deliberately used to avoid the application of workplace laws and other statutory obligations such as payroll tax and superannuation.

The VTA believes this situation is unacceptable and clearly places those employers and organisations who operate professionally and comply with the relevant industrial laws and within the statutory frameworks are being placed at a very significant disadvantage to operate in the marketplace.

Once again, the VTA submits that the Inquiry must clearly define on-demand workers and distinguish from current employee terminology such as; casual employee, permanent casual, casual contractors. The Inquiry also needs to clarify and consider how on demand workers are to be defined in relation to interfacing and being engaged by multiple employers.

2.5 Application and implications of workplace laws and instruments upon on demand workers.

At the very outset, the transport and logistics industry is very competitive with low margins and low barriers of entry. It is also, a very highly regulated industry and the implementation and compliance to workplace safety, such as, Chain of Responsibility and Heavy Vehicle National Law to name a few is an on-going challenge for businesses. Application and adherence to workplace and industrial law and management of human resources also place significant demands upon compliant businesses.

In its role as the peak prime contractor and employer organisation in transport and logistics, the VTA understands and appreciates the challenges of these businesses and the genuine efforts they make to comply with the relevant workplace laws and instruments. The transport and logistics industry is rated in the top three most dangerous workplace environments and efforts to improve the standards and safety for workers is an on-going challenge.

As outlined in the QUT Business School Work/Industry Futures Research Program contained in the Senate Paper, the ‘gig economy’ is;

'........At its core, the ‘gig’ or ‘on-demand‘ economy depends on digital platforms which 'act as intermediaries using 'algorithmic management‘ to connect individual workers with end-users (enterprises or consumers) seeking specific services.’ p73

The VTA is witnessing and is very concerned by the low level of adherence and lack of commitment to workplace safety for the ODW by many companies across different industries involved in the ‘gig economy’. The ‘gig economy’ is contributing to this situation as this environment allows companies to reduce and in some cases abdicate their responsibilities to
adhering not only to workplace laws but to safety obligations. This also has a direct impact upon vulnerable workers.

An example of this lies with the adherence to safety procedures, the training and monitoring of these procedures and the record keeping that is also necessary to ensure adherence and compliance. Digital platforms do not perform these individuals functions however, it is the individual who is place at risk in the workplace not the digital platform. The worker therefore becomes vulnerable.

As we are aware, vulnerable workers may be more at risk for a range of reasons related to their inherent characteristics such as their gender, visa status, background, age, education or disability. Their location may also contribute to an insecure situation. Vulnerable workers tend to be over represented in precarious forms of work and on demand does not necessarily deliver the security of ongoing work or income. Vulnerable workers may have only limited awareness of their legal rights or how to enforce them.

The VTA is very concerned by this situation and it highlights the need to define 'on-demand' workers so that they are adequately protected in the workplace by the necessary framework which regulate industry.

As indicated in the Inquiry discussion paper, in 2017, Australian youth unemployment between the ages 15-24 was above 12%. In addition, youth under-employment is a significant public policy concern, with many young workers willing and available to work additional hours but unable to gain additional work.

The research also quoted in the Inquiry Background Paper suggests entry level job opportunities for young people are increasingly casual, temporary or part-time. Young workers arguably are less able to access either meaningful or stable work, they are susceptible to irregular work patterns (in part this is considered to be due to growth in the services sectors of the economy) and are vulnerable to losing their jobs. They are also quite likely to engage with platform businesses and make up a fairly large percentage of the on-demand workforce.

The VTA is concerned by this research and potentially growing trend as it does not positively assist ensuring safe workplaces and enhancing the ‘professionalism’ of the industry.

2.6 Current and Future Outcomes

The VTA maintains that the ODW are engaged by businesses that have little connection with the worker as a person or identity and are not concerned with the real outcomes for the many examples of this type of workplace.

Current outcomes include but are not limited to:

a. Poor histories of remuneration and personnel management
b. Exploitation of effort and attempts to diminish the value of services.
c. Lack of building of career pathways.
d. Limited development of skills, experience and knowledge
e. Underskilling of the workforce leading to a defined underclass of workers.

It goes to the fundamental principles whereby we have consistent and effective legal frameworks and systems which ensure a commitment to ‘fairness and shared prosperity’ for Australian workforces. This is essential if we desire businesses to invest and operate viable businesses and contribute to a positive Australian economy.

The ease of engagement by the individual to participate in the ODW through the digital platform has a direct relation to the individual not having to compete, be judged by others or become committed in the workplace.

3.0 SUMMARY

The Victorian Transport Association has dire concerns that as the ODW develops it decrease both on demand workers standard of living and that of the community if left unaddressed by policy makers.

The Inquiry has an opportunity to make recommendations that will prevent confusion of the workers standard of living and safety standards across the community.

The clear and concise definition of the ODW is vital for the development of policy and the implementation of specific solutions.

Once this definition is in place, the outcomes and solutions will become easier to formulate and implement.

The VTA supports of the Victorian Government in the formation of this Inquiry and will remain available for direct consultation in the further development of solutions to the issues based upon the increase in the On-Demand Workforce.

Peter Anderson
CEO – Victorian Transport Association