



A fair go in Victoria's on-demand economy

VCOSS submission to the Inquiry into the
Victorian on-demand workforce

February 2019

The Victorian Council of Social Service is the peak body of the social and community sector in Victoria.

VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups and individuals interested in social policy.

In addition to supporting the sector, VCOSS represents the interests of Victorians experiencing poverty and disadvantage, and advocates for the development of a sustainable, fair and equitable society.

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VCOSS acknowledges the traditional owners of country and pays respect to past, present and emerging Elders.

This document was prepared on the lands of the Kulin Nation.



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Executive Summary

The Victorian Council of Social Service (VCOSS) welcomes this opportunity to submit to the Inquiry into the Victorian on-demand workforce.

VCOSS is the peak body for social and community services in Victoria. VCOSS members reflect the diverse community services industry and include large charities, peak organisations, small community services, advocacy groups and individuals interested in social policy. VCOSS supports the industry, represents the interests of Victorians facing disadvantage and vulnerability in policy debates, and advocates for a sustainable, fair and equitable society.

The emergence of the on-demand or gig economy presents a number of opportunities and challenges for workers, consumers, businesses and the Victorian economy and society more broadly. While this type of on-call, piece-based work is not new,¹ existing policy, regulatory and enforcement frameworks at both a state and federal level have not kept pace with its growth, leaving many workers vulnerable to exploitation and insecure employment, and consumers at risk of poor services.

VCOSS has a specific interest in the nature and effects of insecure employment on vulnerable people and their families. Gaining secure and meaningful work contributes to individual and community well-being. Stable paid employment provides people with an income and contributes to their sense of identity and wellbeing.

The nature of employment has changed over the past few decades, with many Victorians now employed insecurely and increasing polarization of employment into high skilled, high paying jobs, and low-skilled, low paying roles.² The promotion of independent contracting through the gig economy is an example of insecure work that has flourished in recent times, alongside rising casualisation, sham contracting and labour hire.³

Insecure work affects people in different ways. Some forms of insecure work, such as casual or seasonal work, may suit people at different times in their lives, while others may pursue insecure forms of work as a pathway to more permanent employment. Many vulnerable people, however, have no alternative to insecure work.⁴ People who face multiple disadvantages are more likely to experience insecure work, underemployment and be at higher risk of unemployment. This includes vulnerable young people, Aboriginal⁵ people, people with disability, single parents, older people, women, people with low levels of education, people from culturally and linguistically diverse communities, migrants, people

¹ Jim Stanford, The resurgence of gig work: Historical and theoretical perspectives, *The Economic and Labour Relations Review*, 2017, Vol 28(3) 382-401.

² OECD, *OECD Employment Outlook 2017*, OECD Publishing, 2017, p.85.

³ Frances Flanagan, Theorising the gig economy and home-based service work, *Journal of Industry Relations*, 2018, 2

⁴ OECD, *OECD Employment Outlook 2014*, OECD Publishing, 2014, p.151.

⁵ The term 'Aboriginal' is used in this submission to refer to both Aboriginal and Torres Strait Islander peoples.

living in rural, regional, outer suburban areas, or low socioeconomic communities, and those with a history of contact with the justice system.

People in insecure employment generally experience less protection from termination, limited entitlements and often receive lower pay.⁶ Working as independent contractors or casual employees, many gig workers are not covered by the 10 minimum entitlements under the National Employment Standards, which include annual leave, maximum weekly hours, sick leave, parental leave and notice of termination and redundancy pay.⁷

The rise of the gig economy can also affect government revenue, including by inadequate and inconsistent collection of payroll tax from on-demand businesses, as well as injured workers falling back on the public health care system for medical treatment, or social security for income support. Concerns have also been raised with workers not paying the right amount of tax. A recent Black Economy Taskforce report recommends online platforms report data to the Australian Tax Office and other agencies.⁸

Whilst much attention has focused on online platforms such as Uber, Deliveroo, Airtasker and Airbnb,⁹ the emergence of platforms in the health, social and community services sector is a newer phenomenon. Driven in part by government funding models, it has the potential to dramatically alter the relationships and delivery of quality care, particularly in aged and disability services.¹⁰ This requires a more active response from governments to mitigate the risks and avoid creating an underclass of low-paid care workers, with no minimum employment entitlements. Given that the health and community sector is the fastest growing industry,¹¹ future risks are particularly high.

The *Fair Work Act 2009* (Cth) is the most prominent lever to strengthen employment protections for all workers. However, there are statepolicy levers to effect change, including legislation governing health and safety, workers compensation insurance, and training and qualifications.

⁶ OECD, *OECD Employment Outlook 2014*, op. cit; International Labour Organization, *Digital labour platforms and the future of work: Towards decent work in the online world*, Geneva 2018, p.xviii https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_645337.pdf

⁷ Fair Work Ombudsman, *National Employment Standards*, <https://www.fairwork.gov.au/employee-entitlements/national-employment-standards>

⁸ Australian Government, *The Treasury, Black Economy Taskforce Final Report – October 2017*, https://static.treasury.gov.au/uploads/sites/1/2018/05/Black-Economy-Taskforce_Final-Report.pdf, p.136; Australian Government, *The Treasury, Tackling the black economy: A sharing economy reporting regime – A consultation paper in response to the Black Economy Taskforce Final Report*, January 2019, <https://static.treasury.gov.au/uploads/sites/1/2019/01/Consultation-Paper-A-sharing-economy-reporting-regime-1.pdf>

⁹ Jim Stanford, *The resurgence of gig work: Historical and theoretical perspectives*, *The Economic and Labour Relations Review*, 2017, Vol 28(3) 382-401; Dr Tom Barratt, Dr Caleb Goods, Dr Alex Veen, *Submission to the Select Committee on the Future of Work and Workers*, <https://www.aph.gov.au/DocumentStore.ashx?id=3d4718a5-150d-441f-97dc-52a1f203d70c&subId=563706>; Unions NSW, *Innovation or Exploitation: Busting the Airtasker Myth*, 2016, https://d3n8a8pro7vhm.cloudfront.net/unionsnsw/pages/3135/attachments/original/1474529110/Unions_NSW_Report_into_Airtasker.pdf?1474529110

¹⁰ Frances Flanagan, *Theorising the gig economy and home-based service work*, *Journal of Industry Relations*, 2018, 2; Fiona Macdonald and Sara Charlesworth, *Cash for care under the NDIS: Shaping care workers' working conditions?* *Journal of Industrial Relations* 0(0) 1-20; Unions NSW, *Submission to the Select Committee on the Future of Work and Workers*, <https://www.aph.gov.au/DocumentStore.ashx?id=783165f0-7b6d-4fd4-8d4a-47f4b608da26&subId=563781>

¹¹ Australian Bureau of Statistics, *Labour Force, Australia. Detailed, Quarterly Cat. No. 6921.0.55.003*, May 2017.

Recommendations

- Ensure publicly-funded aged and disability care services are personalised, safe and high quality.
- Gradually introduce minimum qualifications for registered disability support workers and aged care workers.
- Work with the Federal Government to ensure Australia's industrial relations system provides a framework of minimum rights and protections for all workers.
- Ensure all gig workers can access Victoria's workers compensation scheme funded by the collection of premiums from online platform businesses.
- Ensure that all on-demand businesses comply with workplace health and safety laws, and that they are liable for any violations.
- Require all online platform businesses to list relevant union, commission, ombudsman and complaints authorities to report specific issues (e.g. abuse, sexual harassment) or query work conditions (e.g. underpayment of wages).
- Resource community service organisations to assist and represent vulnerable workers in the gig economy navigate complaints systems.

On-demand jobs create insecure work

Insecure work has been defined as *poor quality work that provides workers with little economic security and little control over their working lives*.¹² Insecure work is characterised by:

*unpredictable and fluctuating pay; inferior rights and entitlements; limited or no access to paid leave; irregular and unpredictable working hours; a lack of security and/or uncertainty over the length of the job; and a lack of any say at work over wages, conditions and work organisation.*¹³

Elements of work insecurity exist in different employment arrangements. Insecure work is most commonly associated with non-permanent or non-regular work such as casual work, seasonal work, fixed term contracts, independent contracting and labour hire.¹⁴ Through the use of digital platforms, the gig economy is facilitating an increase in the number of independent contractors and casual employment. Sham contracting, where employers illegally attempt to avoid an employment relationship by misrepresenting employees as independent contractors means many workers are missing out on their legal entitlements.¹⁵

Many gig workers receive no minimum pay, no superannuation, no protection from termination, no sick or annual leave entitlements, have to supply their own tools or equipment (e.g. car), manage tax and insurance, no paid travel time, and are required to be on-call without remuneration. They are also more likely to experience irregular work schedules and fluctuating incomes, which they may need to supplement by working for multiple digital platforms or organisations.

VCOSS members have raised concerns around termination of employment in the gig economy, and the absence of protections available to independent contractors if they are banned from using platforms, impacting people's livelihoods and having little recourse to challenge decisions.

VCOSS members have also reported their concerns regarding the exploitation of international students working in the food delivery sector. Students have reported that they cannot earn enough money to live due to visa restrictions (which caps hours to 20 per week during a semester). In the gig economy, these restrictions are felt more deeply given they

¹² Lives on Hold, *Unlocking the potential of Australia's workforce: Independent inquiry into Insecure work*, commissioned by the Australian Council of Trade Unions, 2012, p.14

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Australian Government, Fair Work Ombudsman, Independent contractors and employees, <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/independent-contractors-and-employees>

are paid per delivery and receive no payment for being online or waiting, while this still counts towards their 20 hours.

In the gig economy, workers bear more of the financial and business risk, experiencing inferior conditions and volatile incomes to permanent employees. As a result, insecure work can increase vulnerability and drive inequality by contributing to financial stress, housing instability, poor health and wellbeing, reduced chances of career progression and professional development, and greater risk of unemployment.

Mark's Uber experience¹⁶

Mark started working with Uber Melbourne after a period of financial debts due to closure of his restaurant business and marriage breakdown. Mark did not own a car so Uber advised they could help him organise a car loan with good conditions and linked him to a credit company to obtain finance. He was advised that he would receive an income of around \$1050 per week, of which he would need to pay the lender \$250 per week.

After receiving the car, Mark discovered he had to complete induction and accreditation before earning money and starting work. This took three weeks after starting with Uber, even though he was already paying for the car. It caused increased stress as he realised he would need to work a significant amount of hours each week to earn any income after paying the loan.

Mark was subsequently admitted into St Vincent Hospital due to high stress levels, however the lender continued to demand payments despite knowing that Mark was in hospital receiving cardiac rehabilitation and treatment for anxiety and depression. The car was then repossessed while Mark was in the hospital and the creditor continues to demand payment for outstanding interest.

Opportunities created by on-demand work

Given the low barriers to entry to obtain work in the gig economy, VCOSS members report the on-demand economy has created some extra opportunities for some people to find work. For example, the gig economy has provided some older workers with an opportunity to supplement their income and earn a little extra on the side, or university students looking to balance study commitments with earning additional income.

¹⁶ Case study supplied by Uniting Victoria and Tasmania

It has also allowed people that may otherwise face barriers to obtaining work or require additional flexibility an opportunity to earn an income. This includes people with an inconsistent work history, mental or physical health issues, caring responsibilities, or newly arrived migrants.

While the gig economy has created some opportunities to obtain work, there remain significant concerns for job security and access to minimum employment entitlements. In many cases, people undertake gig work because they have few opportunities for secure, paid work. This may be due to inadequate education, the need for flexibility to manage caring responsibilities, having to supplement other low paid work or because they receive inadequate unemployment benefits.

On-demand work in Victoria's health and community sector

The social assistance and health industry is already Victoria's biggest employer, projected to grow faster than any other and generate one in four new Victorian jobs over the next five years.¹⁷ In this time, Australia will need nearly 70,000 extra aged and disability carers alone.¹⁸ This is driven in part by population growth,¹⁹ an ageing population²⁰ and greater support for in-home care,²¹ the National Disability Insurance Scheme (NDIS)²² and recent family violence reforms.²³

New digital platforms, such as Hireup,²⁴ Mable (formerly Better caring),²⁵ Find a carer,²⁶ careseekers²⁷ and Newly,²⁸ are seeking to capitalize on the expansion of the disability and aged care sectors, driven by increased public funding from the NDIS, and moves towards Consumer Directed Care funding in aged care.²⁹ Online sites such as Gumtree and Facebook are also being used to connect workers directly with clients or to directly recruit new workers by agencies.

¹⁷ Australian Government Department of Jobs and Small Business, [Employment Projections: Regional Projections – five years to May 2023](#).

¹⁸ Australian Government Department of Jobs and Small Business, [Employment Projections: Occupation Projections – five year to May 2023](#).

¹⁹ Australian Bureau of Statistics, Australian Demographic Statistics, Cat. No 3101.0, June 2017 <http://www.abs.gov.au/ausstats/abs@.nsf/0/1CD2B1952AFC5E7ACA257298000F2E76?OpenDocument>.

²⁰ Australian Bureau of Statistics, Australian Demographic Statistics, Cat. No 3101.0, June 2017 <http://www.abs.gov.au/ausstats/abs@.nsf/0/1CD2B1952AFC5E7ACA257298000F2E76?OpenDocument>.

²¹ Australian Government, Aged Care Financing Authority, Fifth report on the Funding and Financing of the Aged Care Sector, July 2017, https://agedcare.health.gov.au/sites/default/files/documents/08_2017/design_version_2017_acfa_annual_report.pdf

²² Productivity Commission, PC news, August 2017, <https://www.pc.gov.au/news-media/pc-news/pc-news-august-2017/ndis-costs>.

²³ Victorian State Budget, 2017-2018, <https://www.budget.vic.gov.au/priority/family-violence>.

²⁴ Hireup, <https://hireup.com.au/> - note: Australia's first online disability support network, disability support workers are employed as casuals, with the platform covering superannuation, tax contributions and penalty rates. Aligns with level 3.2 of the Social Community Home Care and Disability Services (SCHADS) industry award. NDIA provider.

²⁵ Mable (formerly Better Caring), <https://mable.com.au/> - note: Online platform connecting disability and aged care workers with users. Do not employ the workers on the platform. Care workers can set their own hourly rates, which are displayed on their profile. Charges clients an additional 5% as a service fee and deducts a 10% care worker service fee on the payment received. Provides insurance.

²⁶ Find a carer, <https://www.findacarers.com.au/> - note: Find a Carer is an online marketplace for self-employed carers to promote their services and connect with clients who require in home or community care. Covers Public Liability, Professional Indemnity, and Personal Accident insurances. All Independent Carers are encouraged to consult an insurance broker to see what other insurance covers are relevant to your business as you may be required to take out your own Workers Compensation cover.

²⁷ Careseekers, <https://www.careseekers.com.au/> - note: Careseekers is a digital platform that connects individuals, families and organisations to care and support workers. Working as an independent contractor, workers set their own hourly rates and choose the work that suits your schedule. Most care workers charge between \$25-\$35 per hour on weekdays and have higher rates for weekends and public holidays. You cannot enter an amount less than \$22 per hour on the platform. Covered by a public liability insurance policy placed by CGU. Suggests that workers may want to take out your own personal accident insurance (in case you get injured while working). Careseekers have partnered with Roobyx, who offer affordable personal accident insurance, based only on what you earn. Careseekers charges a 6% fee on top of your worker's hourly rate.

²⁸ Newly, <https://newly.com.au/>. Newly is Australia's first online marketplace connecting carers with providers. Charges subscription fee for providers to access database, fees apply to three different packages: a candidate's profile (\$300); candidate profile and telephone screen (\$500) and candidate that is ready and compliant to integrate into recruitment process (\$800).

²⁹ Australian Government, Myagedcare, Consumer Directed Care, <https://www.myagedcare.gov.au/help-home/home-care-packages/consumer-directed-care-cdc>

Research³⁰ and feedback from VCROSS members suggests that the gig economy and on-demand work³¹ currently represents only a small portion of the health and community services sector. But there is potential for rapid expansion driven by increasing funding, an ageing population, and current low pricing models. VCROSS believes this can negatively affect the quality and safety of care services, and may require extra regulation and oversight.

As Macdonald et al states:

*The fact that the government is effectively the top of the supply chain body in publicly funded social care systems such as the NDIS highlights the need for embedding accountability for labour standards in public policy more generally.*³²

NDIS self-management could drive the gig economy

The NDIS is estimated to create one in five jobs over the coming years.³³ New business models, including online platforms, are emerging in response to service funding changes, especially and self-managed care packages.³⁴

The NDIS provides three models for participants to self-manage their supports including:

- **traditional service provider arrangements** where a service provider is responsible for recruiting, training and managing support workers, as well as payroll, workers compensation insurance, superannuation and working with children and police checks³⁵
- **direct employment arrangements** where participants can directly employ staff, taking on requisite employer responsibilities
- **self-employed contractors**, anecdotally described as the ‘uber’ model, allowing people to use online brokerage platforms to recruit workers, usually as independent contractors, although some offer casual employment.³⁶

VCROSS members report that casualisation of the disability sector workforce is increasing – with workers having to work for multiple service providers or disability employers to earn a decent living. Recent research finds 9 of 10 disability support workers were multiple job

³⁰ Frances Flanagan, Theorising the gig economy and home-based service work, *Journal of Industry Relations*, 2018; Christina David and Raelene West, NDIS Self-Management Approaches: Opportunities for choice and control or an Uber-style wild west? *Aust J Soc Issues*. 2017; 52:331-346. Doi: 10.1002/ajs4.23

³¹ Ian Campbell, Fiona Macdonald and Sara Charlesworth, On-demand work in Australia, forthcoming in Michelle O’Sullivan et al. (eds.) *Zero-Hours and On-Call Work in Anglo-Saxon Countries*, Berlin, Springer Press.

³² Fiona Macdonald, Eleanor Bentham and Jenny Malone, Wage theft, underpayment and unpaid work in marketised social care, *The Economic and Labour Relations Review* 2018, Vol. 29(1) 80-96, p.94.

³³ Australian Government, Productivity Commission, National Disability Insurance Scheme (NDIS) Costs, October 2017, <https://www.pc.gov.au/inquiries/completed/ndis-costs/report/ndis-costs-overview.pdf> p.2

³⁴ Christina David and Raelene West, NDIS Self-Management Approaches: Opportunities for choice and control or an Uber-style wild west? *Aust J Soc Issues*. 2017; 52:331-346. Doi: 10.1002/ajs4.23

³⁵ Ibid. NDIS, NDIS Guide to self management, <https://www.ndis.gov.au/media/1004/download>

³⁶ Christina David and Raelene West, NDIS Self-Management Approaches: Opportunities for choice and control or an Uber-style wild west? *Aust J Soc Issues*. 2017; 52:331-346. Doi: 10.1002/ajs4.23

holders – with some working two or three different roles.³⁷ The main reason nominated by disability support workers that their main job did not provide sufficient income.³⁸ National Disability Service’s workforce analysis also supports rising casualisation, with the permanent disability workforce growing by 3.8% in 2017-18, while the casual growth rate was 26.8%.³⁹

The NDIS’ funding model and pricing structure is driving increased casualisation and greater job insecurity in the sector, especially because disability support work has been underpriced in the scheme.⁴⁰

‘[the NDIS] Reasonable Cost Model [does] not enable minimum Award conditions to be met, and [prevents] employers who offer above-Award conditions from meeting their legal obligations. Prices do not account for what is required to deliver high quality services, and arrangements are not fully enabling disability support workers to deliver services which are personalized, coordinated, responsive or safe.’⁴¹

Further, recent analysis of around 1,500 disability workers has found that:

- Few workers perceive the NDIS to be having a positive impact on participants or their families
- Lower proportions of very experienced employees were working under the NDIS, while proportions of staff new to the industry were higher
- A higher proportion of employees are working for more than one disability service provider
- Those working under the NDIS were no more likely to be satisfied with their pay
- High proportions of staff reported challenges to working under the NDIS:
 - 55.9% reported that they did not have enough time to do their work under the NDIS
 - 72.2% were worried about the future of their job
 - 52.6% disagreed that the NDIS has been a positive change for them as a worker.⁴²

These employment arrangements have the potential to be detrimental to workers conditions, rights and professional career development.⁴³ Similarly Cortis reports that:

Respondents also made a range of comments about how the NDIS was impacting on their working lives. Many linked risks to quality and safety to the use of casual and

³⁷ Fiona Macdonald, Eleanor Bentham and Jenny Malone, Wage theft, underpayment and unpaid work in marketised social care, The Economic and Labour Relations Review 2018, Vol. 29(1) 80-96, p.87

³⁸ Ibid.

³⁹ National Disability Services, Australian Disability Workforce Report, 3rd edition – July 2018, p.7

⁴⁰ Natasha Cortis, Fiona Macdonald, Bob Davidson & Eleanor Bentham, Reasonable, necessary and valued: Pricing disability services for quality support and decent jobs, June 2017, Social Policy Research Centre, UNSW Sydney, p.1.

⁴¹ Ibid, p.1

⁴² Natasha Cortis, Social Policy Research Centre, Working under the NDIS: Insights from a survey of employees in disability services, 2017, 5-6

⁴³ Fiona MacDonal and Sara Charlesworth, Cash for care under the NDIS: shaping care workers’ working conditions’, Journal of Industrial Relations, March 2016, 1-20.

agency staff, and untrained staff entering the sector. Others expressed concerns about pay and conditions, including coverage of costs of private vehicle use, loss of penalty rates, subcontracting, short shifts, payment for travel time, and roster changes which could result in fewer hours. Respondents also noted that the NDIS was placing pressure on their employment classifications and pay rates, and some raised concerns their work was misclassified. Related, workers' comments attest to their high levels of stress, with many reporting unsustainable workloads and time pressure (including unpaid work) and poor job security, corroborating the other survey findings.⁴⁴

The gig economy could erode service quality

Low levels of regulation in the gig economy is creating potential safety risks for consumers and support workers. Care services operate in private spaces, working directly in people's homes and assisting with daily living tasks.⁴⁵ Support workers also perform personal and intimate work, including assisting people with showering and bathing, grooming and dressing, and bowel care support.⁴⁶ Significant manual handling is often required, including lifting, pushing, pulling or moving clients or objects, alongside repetitive tasks such as cleaning.⁴⁷ Many tasks involve manual handling, potentially placing workers at risk of injury.⁴⁸

Without an employee-employer relationship, no opportunity currently exists for 'gig' care workers to debrief about a client, receive support from a supervisor or colleague, undergo additional training or professional development, or make a complaint about health or safety concerns.

Correct manual handling techniques are essential for care workers, but there are no minimum qualifications to work in the aged and disability care sectors. Many disability service employers require staff to hold a minimum of a certificate III in personal support. However, reduced barriers to entry in the gig economy means that unqualified and unsupported workers are able to work in the sector, compromising quality of care.

As Macdonald and Charlesworth note:

⁴⁴ Natasha Cortis, Social Policy Research Centre, Working under the NDIS: Insights from a survey of employees in disability services, 2017, 5-6

⁴⁵ Christina David and Raelene West, NDIS Self-Management Approaches: Opportunities for choice and control or an Uber-style wild west? Aust J Soc Issues. 2017; 52:331-346. Doi: 10.1002/ajs4.23

⁴⁶ Independence Australia, Disability Support Workers - What to expect, <https://www.independenceaustralia.com/careers/disability-support-workers/what-to-expect>

⁴⁷ Independent Australia, Care Now Carers' Guide – caring for individuals with disabilities, <https://www.independenceaustralia.com/uploads/dept/community%20services/docs/CareNowCarersGuide.pdf>

⁴⁸ Ibid.

Quality of care and of care work become issues where consumers have a high degree of choice of worker and there is a lack of external control and monitoring of care labour and outcomes.⁴⁹

Platform providers have an uncertain role or responsibility to ensure people receive quality services. No clear mechanism exists to remedy a poor quality service in these circumstances. In traditional employment models accountability for quality service rests with the employer, who can undertake extra training or performance management in response to a complaint. Online digital platforms operating independent contracting arrangements often do not take responsibility for managing quality, and may instead just ban the worker from the platform.

Concerns around quality of care have also been raised by community organisations, with Carers NSW noting in a recent Senate submission that:

Many carers are also concerned about the high turnover and limited skill set of paid care workers, which can leave carers feeling frustrated, needing to describe the care needs of the person they care for as each new care worker arrives, reducing their ability to take a break from their caring role.⁵⁰

Delivering high-quality personalised care depends on workers forming ongoing, trusted relationships with people. This requires good workforce supervision and support, as well as access to professional development and ongoing training. The goals of the NDIS and aged care reform will be undermined if regulatory and pricing decisions fail to create an environment in which high quality care can be delivered.

Deliver safe, high quality aged and disability care services

Recommendations

- Ensure publicly-funded aged and disability care services are personalized, safe and high quality.
- Gradually introduce minimum qualifications for registered disability support workers and aged care workers.

People with disability and older people have the right to be safe and receive high quality services. Currently there are no minimum qualifications or ongoing professional development requirements to work in the aged and disability care sectors. This is despite the

⁴⁹ Fiona MacDonald and Sara Charlesworth, 'Cash for care under the NDIS: shaping care workers' working conditions', *Journal of Industrial Relations*, March 2016, 1-20, p.4

⁵⁰ Carers NSW, Submission to the Select Committee on the Future of Work and Workers, <https://www.aph.gov.au/DocumentStore.ashx?id=630cff9e-84b9-48b1-83b0-894174d08f96&subId=563959>

Federal Government recognising aged and disability workers as skill level 4 occupations, generally requiring a Certificate II, III or equivalent. Risks are created for both workers and consumers if they are matched through an online provider platform without any safeguards. These include workers not having minimum qualifications, access to ongoing professional development and training, or the requisite skills, experience or qualifications to be able to provide high quality services.

Some of these concerns will be addressed through Victoria's new registration and accreditation scheme for Victoria's disability workforce, but implementation must be monitored. At present, the system is premised on negative licensing for registered workers, and a Code of Conduct which sets a minimum level of conduct expected of unregistered workers.⁵¹

A qualified workforce has significant benefits. Appropriate, professional training helps maintain high quality, personalised services. Gradually introducing minimum qualifications for registered disability support workers will help lift service quality across the sector, and provide greater protection for both people with disability and workers. A professionalised workforce also helps address supply challenges through providing occupational progression, including training entitlements and pay progression.

As unregistered workers will be regulated by the new Disability Worker Commission, service delivery occurs needs ongoing review to ensure that consumers receive high quality services, including considering mandatory training requirements. A real risk in the gig economy is that more unregistered workers enter the sector driven by the NDIS' low pricing model, compromising standards of care.

⁵¹ Victorian Government, NDIS Victoria, Registration and accreditation scheme for Victoria's disability workforce <https://www.vic.gov.au/ndis/registration-and-accreditation-scheme-for-victoria-s-disability-workforce.html>

Regulating on-demand work in Victoria

Reform industrial relations laws

Recommendation

Work with the Federal Government to ensure that Australia's industrial relations system provides a framework of minimum rights and protections for all workers.

Australia's industrial relations laws have not kept pace with changing technology and labour market conditions. Greater workforce casualisation and increasingly insecure work means many workers are not afforded basic rights, entitlements and employment protections that most Australians take for granted.

As Stewart and Stanford note:

*it is clear that a growing number of gig workers will face working conditions, insecurity, and compensation that most of Australian society would consider unacceptable ... desperate workers will be pressured by economic circumstance to put up with those conditions.*⁵²

VCOSS members have raised concerns regarding sham contracting arrangements. Currently, to receive clarity around whether they are eligible to basic entitlements and protections under the *Fair Work Act 2009* (Cth), workers must challenge their employment arrangements in the Fair Work Commission.⁵³ Placing the onus on vulnerable workers to initiate a claim in the Commission puts a disproportionate burden on employees, particularly when employers have greater resources to defend a claim. Greater legislative clarity around employment status and access to entitlements can reduce this burden.

In reviewing the adequacy of Australia's industrial relations laws, multiple options are available to strengthen existing provisions and protections. A recent Senate inquiry into the Future of Work recommended that:

- The definition of 'casual' work be reviewed;
- Improving workplace health and safety and superannuation rights for workers who are not classified as employees;

⁵² Andrew Stewart and Jim Stanford, Regulating work in the gig economy: what are the options, *Economic and Labour Relations Review*, 28(3), 393

⁵³ *Mr Michail Kaseris v Rasier Pacific V.O.F* [2017] FWC 6610

- A crack down on sham contracting arrangements;
- Broadening the definition of employee to capture gig workers;
- Introducing a national labour hire licensing scheme.⁵⁴

In addition, VCOSS members identify that securing sufficient employment flexibility remains a significant issue for many people. Single parents, people with caring responsibilities, people experiencing mental or physical health issues or people with disability often require flexible working arrangements. These include permanent part time hours, staggered starting and finishing times, job sharing, flexible leave, or the option of working from home.

Flexibility is often cited as one of the main reasons people work in the gig economy.⁵⁵ However, is driven by Australian employers' general unwillingness to accommodate flexible work arrangements. Creating more flexible roles has enormous benefits, including greater employee engagement and productivity, and lower staff turnover.⁵⁶ Further reform of Australia's industrial relations laws can better support Australian workers to access flexible arrangements. For example, providing a right of conversion from casual to permanent employment,⁵⁷ and allowing employees to challenge an employer's rejection of a request for flexible arrangements on reasonable business grounds.⁵⁸

Reforming industrial relations laws helps address rising inequality, and avoid creating an underclass of low paid workers without minimum rights and employment protections.

Promote the health, safety and wellbeing of every worker

Recommendations

- Ensure all gig workers can access Victoria's workers compensation scheme funded by the collection of premiums from online platform businesses.
- Ensure that all on-demand businesses comply with workplace health and safety laws, and that they are liable for any violations.

⁵⁴ The Senate, Select Committee on the Future of Work and Workers, Hope is not a strategy – our shared responsibility for the future of work and workers, https://www.aph.gov.au/~media/Committees/future_of_work_and_workers_ctte/report.pdf?la=en, p.91-92

⁵⁵ Andrea Broughton, Rosie Gloster, Rosa Marvell, Martha Green and Alex Martin, The experiences of individuals in the gig economy, Department for Business, Energy and Industrial Strategy (United Kingdom), Institute for Employment Studies (IES) HM Government, February 2018, <https://apo.org.au/sites/default/files/resource-files/2018/02/apo-nid220126-1332211.pdf>, p.20

⁵⁶ Ernest Young, Untapped opportunity – The role of women in unlocking Australia's productivity potential, July 2013, [https://www.ey.com/Publication/vwLUAssets/Untapped_opportunity_-_The_role_of_women_in_unlocking_Australias_productivity_potential/\\$FILE/EY-Untapped-opportunity-The-role-of-women-in-unlocking-Australias-productivity-potential.pdf](https://www.ey.com/Publication/vwLUAssets/Untapped_opportunity_-_The_role_of_women_in_unlocking_Australias_productivity_potential/$FILE/EY-Untapped-opportunity-The-role-of-women-in-unlocking-Australias-productivity-potential.pdf)

⁵⁷ ABC news, Casual workers win right to request permanent employment after 12 months under Fair Work ruling, 5 Jul 2017, <https://www.abc.net.au/news/2017-07-05/fair-work-decision-decision-on-full-time-employment-casuals/8680892>

⁵⁸ Maddocks, Not enough to say no: What the changes in modern awards will mean for discussing and refusing flexible work requests, 10 October 2018, <https://www.maddocks.com.au/changes-modern-awards-mean-for-refusing-flexible-work-requests/>

Many tasks in the health and community sector involve manual handling, placing untrained workers at risk of injury.⁵⁹ This is reflected in national figures, showing the health and social assistance industry has the highest number of serious injury claims, greater than in manufacturing or construction.⁶⁰

In the food delivery and transportation sectors, workers are also at risk of being injured, through an accident or assault. Depending on the circumstances (e.g. if a motor vehicle is involved), workers may be covered by Victoria's transport compensation scheme,⁶¹ but this does not apply in all circumstances (e.g. if you fall off your bike).

In most cases in Victoria, employers must register for WorkCover insurance if they employ any workers in the state.⁶² However, sole traders, individuals in a partnership, or individual trustees of a trust that don't employ anyone, do not need to register.

Under the current regulatory scheme, online digital platforms operating independent contracting models are not required to provide workers compensation insurance (some offer personal supplementary income protection insurance, at worker's expense). If injured at work, a worker's medical bills are not covered, and they do not receive any form of income assistance if they are unable to work. Not only does this have implications for the individual as they try to recover from an injury and pay their bills, but also for government expenditure as injured workers rely on health system for treatment or access income support payments if they are unable to work.

The Victorian Government should ensure that all workers can access Victoria's workers compensation scheme⁶³ funded by the collection of premiums from online platform businesses. This will not only help ensure all workers are protected if they are injured at work, but also help increase revenue and more fairly distribute the costs.

Victoria has retained autonomy of workplace health and safety laws. The Victorian Government should ensure that all on-demand businesses comply with workplace health and safety laws, and be liable for any violations.

⁵⁹ Ibid.

⁶⁰ Safe Work Australia, Disease and injury statistics by industry, Serious claims for disease and injury: Industry, Number of serious claims by industry 2000–01 to 2014–15, <https://www.safeworkaustralia.gov.au/statistics-and-research/statistics/disease-and-injuries/disease-and-injury-statistics-industry>

⁶¹ Transport Accident Commission, Who can make a TAC claim?, <http://www.tac.vic.gov.au/what-to-do-after-an-accident/who-can-claim-with-the-tac>

⁶² WorkSafe Victoria, Do I need to register for WorkCover insurance, <https://www.worksafe.vic.gov.au/do-i-need-register-workcover-insurance>

⁶³ Accident Compensation Act 1985, the Accident Compensation (WorkCover Insurance) Act 1993 and the Workplace Injury Rehabilitation and Compensation Act 2013.

Better regulation of online platforms

Recommendations

- Require all online platform businesses to list relevant union, commission, ombudsman and complaints authorities to report specific issues (e.g. abuse, sexual harassment) or query work conditions (e.g. underpayment of wages).
- Resource community service organisations to assist and represent vulnerable workers in the gig economy navigate complaints systems.

One concern highlighted by VCOSS members is the gig economy creating increased worker isolation. There is no clarity about where workers can raise issues, with no-one onsite to report back to or a co-worker or supervisor to speak with. Many workers do not know who the relevant union, commission, ombudsman or complaints authority is in the event of a dispute. This is particularly relevant where workers are employed directly by consumers, or through independent contracting arrangements.

The Victorian Government should require all online platform businesses to list relevant union, commission, ombudsman and complaints authority to report specific issues (e.g. abuse, sexual harassment) or query work conditions (e.g. underpayment of wages).

VCOSS members have also reported that many workers, in particular vulnerable workers have difficulty navigating complex matrix of commission, ombudsman or complaints authority to enforce their rights. Funding for community service organisations, such as community-based employment law services and legal centres should be considered to help ensure individuals receive the legal support they need from a trusted community organisation.



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