

31 July 2020

NAT 065/20

Final report and recommendations of the Victorian Inquiry into the On-demand Workforce

SUMMARY

In Member Advice [NAT 001/19](#) Members were advised about the Victorian Inquiry into the On-demand workforce.

On 15 July 2020, the Victorian Government released the Inquiry Report. The Report makes 20 recommendations for legislative and other changes.

Overview

In late 2018, the Victorian Government established an inquiry into the on-demand workforce. The inquiry was chaired by Natalie James, the previous Fair Work Ombudsman.

The inquiry considered the nature, extent and impact of on-demand work in Victoria and the arrangements governing that work.

The inquiry investigated the status of people working with online platforms and whether gig economy contracting arrangements were being used to avoid workplace laws and other statutory obligations.

The inquiry considered workplace relations, work health and safety, superannuation, taxation and accident compensation matters.

During the course of the inquiry Ai Group made detailed submissions and conducted roundtable discussions of members with the Inquiry chair.

Inquiry Report

On 15 July 2020, the Victorian Government released the [Inquiry Report](#).

The Report comments that:

Platforms have greatly enhanced our choices and created flexible work, proving to be highly responsive and agile in enabling people to access services as, and when, we need.

Flexibility and autonomy are highly desirable elements of a modern labour market. And platforms are a new way of facilitating this work, providing access to the labour market for workers who may encounter difficulties getting work.

But platform arrangements also present practical and public policy challenges. The systemised nature of how work is organised is challenging the longstanding foundation of our labour market regulation.

The Report also recognises the vital role that platform businesses have played during the COVID-19 crisis.

Recommendations

The Inquiry Report makes 20 recommendations aimed at:

- (a) Clarifying and codifying the work status of on-demand workers;

- (b) Streamlining advice and support to workers whose work status is borderline;
- (c) Fast-tracking resolution of work status so workers and business do not operate with prolonged doubt about the rules;
- (d) Providing for fair conduct for platform workers who are not employees, through establishing Fair Conduct and Accountability Standards that are principles based and developed through a consultative process with relevant stakeholders;
- (e) Improving remedies for non-employee workers to address deficiencies in the existing approach; and
- (f) Enhancing enforcement to ensure compliance, including where sham contracting has occurred.

The recommendations are **attached**.

The Inquiry Report supports the proposed reform program being led by the Commonwealth, in collaboration with States and in consultation with stakeholders.

However, in the absence of Commonwealth action, the Inquiry Report recommends that the Victorian Government implement the proposed reforms at the State-level.

Do you require further information?

For more information or assistance, please contact the **Ai Group Workplace Advice Line** on 1300 55 66 77.



Stephen Smith
Head of National Workplace Relations Policy

ATTACHMENT

RECOMMENDATIONS OF THE REPORT OF THE INQUIRY INTO THE VICTORIAN ON-DEMAND WORKFORCE

RECOMMENDATION 1

The Inquiry recommends that the Commonwealth Government, in collaboration with state governments and other key stakeholders, lead the delivery of the recommendations in this report regarding the national workplace system.

RECOMMENDATION 2

The Inquiry recommends that, if the Commonwealth does not act, Victoria, in consultation and collaboration with other states, should pursue administrative and legislative options to improve choice, fairness and certainty for platform workers that:

- are constitutionally available;
- align with its broader priorities;
- are appropriate in the current regulatory landscape; and
- meet the needs of the current and future workplace.

RECOMMENDATION 3

The Inquiry recommends governments should, in implementing change, consult and collaborate with stakeholders; including platforms, employees, industry groups and unions.

RECOMMENDATION 4

The Inquiry recommends governments cost the changes and consider those costs alongside the transferred costs of the current systemic uncertainty around work status – the impacts on workers, businesses, the economy and community more broadly.

RECOMMENDATION 5

The Inquiry recommends appropriate government funded surveys and evidence-based research to ensure policy makers are aware of critical developments in platform work.

RECOMMENDATION 6

The Inquiry recommends that the *Fair Work Act 2009* be amended to:

- (a) codify work status on the face of relevant legislation (rather than relying on indistinct common law tests);
- (b) clarify the work status test including by adopting the 'entrepreneurial worker' approach, so that those who work as part of another's enterprise or business are 'employees' and autonomous, 'self-employed' small business workers are covered by commercial laws;
- (c) provide that the:
 - (i) provision of safety protections and entitlements such as superannuation, training, occupational health and safety and worker consultation is not disincentivised because of the potential impact on work status;
 - (ii) party asserting a worker is not an employee, bears the onus of proving work status; and
 - (iii) the relative bargaining positions of each party are expressly considered when determining work status.

RECOMMENDATION 7

The Inquiry recommends that governments review the approach to 'work status' across work laws (e.g. Independent Contractors Act, superannuation, workplace health and safety, tax) with the purpose of more closely aligning them, specifically, considering:

- (a) the need for clarity, consistency and simplicity;
- (b) the policy imperatives of each regulatory framework;
- (c) appropriate coverage for low-leveraged workers; and
- (d) the need to appropriately protect platform workers.

RECOMMENDATION 8

The Inquiry recommends there be a clear primary source of advice and support to workers to help them understand and use dispute resolution or other informal options to resolve their work status.

RECOMMENDATION 9

The Inquiry recommends that a Streamlined Support Agency (whether stand alone or incorporated into the functions of an existing suitable body) should:

- (a) have dedicated and sufficient resources;
- (b) be accessible to and prioritise platform workers, particularly low-leveraged workers;
- (c) help resolve work status through advice and dispute resolution;
- (d) help workers understand the entitlements, protections and obligations of their work status; and
- (e) where work status is borderline, escalate the question to Fast-tracked Resolution (see Recommendation 10) prioritising a determination.

RECOMMENDATION 10

The Inquiry recommends that a fit-for-purpose body provides a mechanism for accessible, fast resolution of work status that:

- (a) produces authoritative and binding determinations for all parties;
- (b) is available to all workers and businesses;
- (c) is as informal as possible;
- (d) is appropriately funded so as to provide access;
- (e) has decision makers with appropriate expertise;
- (f) allows for resolution from the outset of the work arrangement;
- (g) allows groups of workers under similar arrangements to seek resolution;
- (h) is inexpensive and helps fund applications and costs of low-leveraged workers; and
- (i) operates in a coordinated way with the Streamlined Support Agency, enabling seamless referrals and support.

RECOMMENDATION 11

The Inquiry recommends that governments encourage platform businesses with significant non-employee, on-demand workforces to seek a work status determination.

RECOMMENDATION 12

The Inquiry recommends that, if platforms do not voluntarily seek a proactive determination, governments consider requiring platforms to initiate a determination process, or governments could facilitate this.

- (a) Proactive work status determinations should be targeted at enterprises of an appropriate size, maturity and number of workers and consider the costs for businesses, particularly small and emerging businesses.
- (b) Platforms should be given appropriate timeframes to apply and react to potential consequences and effect any changes.

RECOMMENDATION 13

The Inquiry recommends that platforms should be transparent with workers, customers and regulators about their worker contracts. Arrangements should be fair and consider the nature of the work and the workers.

RECOMMENDATION 14

The Inquiry recommends that governments lead a process to establish Fair Conduct and Accountability Standards or principles, to underpin arrangements established by platforms with non-employed on-demand workforces.

RECOMMENDATION 15

The Inquiry recommends Commonwealth competition laws remove barriers to collective bargaining for non-employee platform workers and ensure workers may access appropriate representation in dealing with platforms about their work arrangements.

RECOMMENDATION 16

The Inquiry recommends that the Fair Work Commission work with relevant stakeholders, including platforms and representatives of workers and industry, about the application of modern awards to platform workers, with a view to ensuring fit-for-purpose, fair arrangements that are compatible with work enabled by technology.

RECOMMENDATION 17

The Inquiry recommends that governments clarify, enhance and streamline existing unfair contracts remedies so that they:

- (a) are accessible to low-leveraged workers;
- (b) enable system-wide scrutiny of platforms' arrangements;
- (c) introduce penalties and compensation to effectively deter unfair contracts; and
- (d) allow materially similar contracts to be considered together and orders made with respect to current and future arrangements.

RECOMMENDATION 18

The Inquiry recommends that the Streamlined Support Agency be responsible for and sufficiently resourced to provide effective support to self-employed platform workers and to prioritise actions against systemic deployment of unfair contracts involving these workers.

RECOMMENDATION 19

The Inquiry recommends strengthening provisions to counter sham contracting to:

- (a) reflect the recommendations of previous reviews including the Black Economy Taskforce and the Productivity Commission, to capture conduct where it would be reasonable to expect the employer knew, or should have known, the true character of the arrangement was 'employment', and apply appropriate penalties to this conduct; and
- (b) require a court to consider each party's relative bargaining position and how much genuine choice a worker has over their presumed work status.

RECOMMENDATION 20

The Inquiry recommends that regulators proactively intervene to resolve cases of 'borderline' work status, especially where it is occurring at a systemic level and impacts on low-leveraged workers, including by initiating test cases.