

# Turning ‘Gigs’ Into Decent Jobs

*Submission to:*  
*Inquiry into the Victorian On-Demand Workforce*

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**6 February, 2016**

**To: Natalie James, Chair**

**Inquiry into the Victorian On-Demand Workforce**

**By email: [OnDemandInquiry@ecodev.vic.gov.au](mailto:OnDemandInquiry@ecodev.vic.gov.au)**

**Dear Ms. James;**

It is our pleasure to present the attached submission to your Inquiry. It synthesises the main findings of previous research we have conducted into the nature, conditions, and consequences of on-demand or platform work in various forms, and makes some suggestions regarding policy measures which could improve those conditions and better protect workers in these jobs.

We look forward to the results and recommendations of your inquiry, and stand ready to provide any additional information that may be useful.

Thank you for your interest, and best wishes with your deliberations.

Sincerely,



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## Contents

About the Centre for Future Work.....	4
Introduction: Technology, Choice, and the Future of Work.....	4
Keeping Technology in Perspective .....	6
What Are Gig Jobs, and How Many Are There?.....	11
Gigs Are Old, Not New .....	14
The Resurgence of Insecure Work.....	16
Digital Monitoring and Surveillance .....	17
Net Incomes of For-Hire Drivers .....	19
Gigs and Public Services .....	21
Policy Options: Macro Level .....	22
Policy Options: State Level .....	25
A level playing field in workers compensation .....	26
A level playing field for payroll tax.....	27
Leveraging other regulatory tools to address labour standards .....	28
Enforce existing laws .....	29
Access to training and skills for on-demand workers.....	30
Portable training entitlement for care workers.....	30
Support for cooperative worker-run platforms .....	31
Public access to data from on-demand businesses.....	33
Commitment to produce public services in-house.....	33
Conclusion .....	34

## About the Centre for Future Work

The **Centre for Future Work** is a research institute based in Sydney and associated with the Australia Institute (Australia's leading progressive think tank). We undertake and publish research into a wide range of labour market, employment, income, and related issues. We are independent and non-partisan. This submission synthesizes much of our previous research on precarious work and the “gig” economy. Please see our website to access any of our reports, at <http://www.futurework.org.au/>.

## Introduction: Technology, Choice, and the Future of Work

The world of work is being transformed by a set of varied, interacting forces, and this has sparked a legitimate concern among many Australians about the future of work. In the realm of technology, we hear often about the transformative nature of new technology and computers, which can perform an increasingly diverse set of tasks (including those involving judgment and discretion). This has reignited a long-standing but understandable concern that many workers will be replaced by machines, with negative consequences for them and their families. Of course, these concerns have been expressed repeatedly in history, dating back to the early years of the Industrial Revolution. In general, technological change has not produced long-lasting mass unemployment: mass unemployment *does* exist, but usually because of other reasons, not technology. Nevertheless, technological change certainly can cause dislocation and hardship for large numbers of affected workers, and that hardship (if not actively addressed with assistance and support) can damage families, communities and regions.

But technology is not the only force transforming work. Work is an inherently social undertaking: we always work, directly or indirectly, with other people, and the nature of those relationships is a crucial determinant of both the quantity and the quality of work. Changes in work organisation and employment relations are already having an impact on the working lives of Australians that is likely more important than the much-hyped development of robots and artificial intelligence. The traditional ideal of a stable, permanent, full-time, paid job with normal entitlements (like sick and holiday leave, and superannuation entitlements) is increasingly out of the reach of many Australians – especially young workers. Indeed, less than half of employed Australians are now engaged in one of those “standard” positions.<sup>1</sup> Temporary, part-time, casual, irregular, and nominally independent or self-employed positions have become the norm for a majority of workers (and the overwhelming reality for most young workers). And some jobs are now being replaced by “gigs”: digitally mediated, on-demand, piece-work tasks allocated and compensated through faceless digital platforms. Growing concern over poor conditions and exploitation in these positions is the focus for this timely Inquiry.

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<sup>1</sup> See Tanya Carney and Jim Stanford (2018), *Dimensions of Insecure Work: A Factbook* (Sydney: Centre for Future Work), [https://www.futurework.org.au/the\\_dimensions\\_of\\_insecure\\_work](https://www.futurework.org.au/the_dimensions_of_insecure_work).

It is important to place these various concerns over the future of work in perspective. Amidst all the speculation about the disappearance of work as we have conventionally understood it – whether workers are replaced by robots, or jobs are replaced by “gigs” – there are actually some enduring features of paid work that ensure it will remain the cornerstone of our economy, and the major pillar of financial well-being for most households. In other words, work certainly has a future. Human labour, broadly defined, is the only way our economy produces value-added: converting resources we harvest (hopefully sustainably) from the natural environment into useful goods and services. And paid work is the dominant source of income for most members of society over their lifecycle. But whether the future of work is hopeful, or dystopian, depends entirely on the deliberate choices we make as a society about how to value work and workers, how to structure and regulate work, and how to manage the change that confronts the world of work. Those choices are ours to make: there is nothing inevitable or irresistible about new technology or new methods of work organisation that require work to be organised, or workers to be treated, in any particular way. In that regard, we applaud the Victorian state government for initiating this inquiry, and for its ambitious terms of reference which make it clear that the future of work (including on-demand work) will indeed be shaped by the deliberate choices we collectively make in society.

This submission will present evidence from several different strands of research undertaken by our Centre over the past three years, all of which touch in different ways on the challenges and opportunities associated with on-demand or “gig” work. We cast doubt on the common assumption that this way of organising work is essentially novel or innovative, and is being facilitated primarily by advances in digital technology; to the contrary, we point to long historical antecedents for the contingent employment practices which underpin the business models of most digital platform companies. We argue that while the current extent of on-demand work is relatively small in the context of Australia’s overall labour market, if unchecked (through appropriate regulations and safeguards) these practices could spread into other industries and occupations – including public services. The current application of Australian labour laws has, to date, allowed most digital platform firms to avoid the normal obligations and costs associated with employing workers. This has provided businesses which rely on gig labour with an unjustified competitive advantage relative to their competitors who utilise conventional employment practices; it thus puts downward pressure on compensation and working conditions for workers in all firms (both new digital businesses and more conventional firms). Another source of concern regarding on-demand work is the extent to which these businesses (and others) are misusing digital surveillance and evaluation technologies to monitor, discipline and even discharge workers. These practices raise serious concerns regarding dignity, privacy and fair process for workers. Our submission concludes by highlighting several policy options to better regulate the practices and conditions of on-demand work, and improve the well-being of those working in these positions. Some policy responses to the rise of on-demand work lie beyond the scope of state-level legislative and regulatory capacities; we discuss them anyway, in order to fully describe the challenges involved in regulating on-demand work and gigs. But we also include several policy recommendations that fall well within the traditional realm of state-based policy-making.

We applaud the establishment of this Inquiry, and we urge you to be ambitious in your investigations and recommendations. We believe that thanks both to the pro-active commitment to social inclusion demonstrated by recent state policies in Victoria, and the strong regional economic base which underpins labour market conditions here, ***Victoria could become a leader in Australia, and even globally, in ensuring that the on-demand economy adopts fairer and more sustainable practices in employing, compensating and supporting its workforce.***

## Keeping Technology in Perspective

The media breathlessly report on the amazing capacities of new technologies and their potential to transform work. Some economists estimate that close to half of existing jobs could be replaced within a few years by computers and machines, on the basis of technology that already exists.<sup>2</sup> The use of digital technologies to organise and dispatch work, match producers with consumers, and even evaluate, hire and fire the workers is also transforming work in many industries and occupations – including through on-demand platform businesses. However, the extent to which changes in the world of work are truly driven by technology, rather than other factors, should not be overestimated.

Indeed, while recent breakthroughs in technology are certainly dramatic, the general process of applying tools and technology to enhance the productivity of work is hardly new: it has been occurring steadily for hundreds of years. Moreover, while some jobs and occupations have been dramatically changed in recent years by new technology, the aggregate evidence does not support the contention that automation is accelerating in a general sense, nor that aggregate labour market outcomes are being negatively affected.

For example, if technology was truly leading to the faster replacement of labour input by machines, this would be reflected in accelerating labour productivity growth (measured by real output per hour of labour). But in Australia, and across the industrialised world more generally, the growth of aggregate labour productivity has actually slowed in recent years – especially since the Global Financial Crisis. This suggests that the current generation of technical change, while capable of performing amazing tasks in laboratories (and potentially disrupting specific jobs and industries), is not yet leading to substantial changes in labour across the national economy.

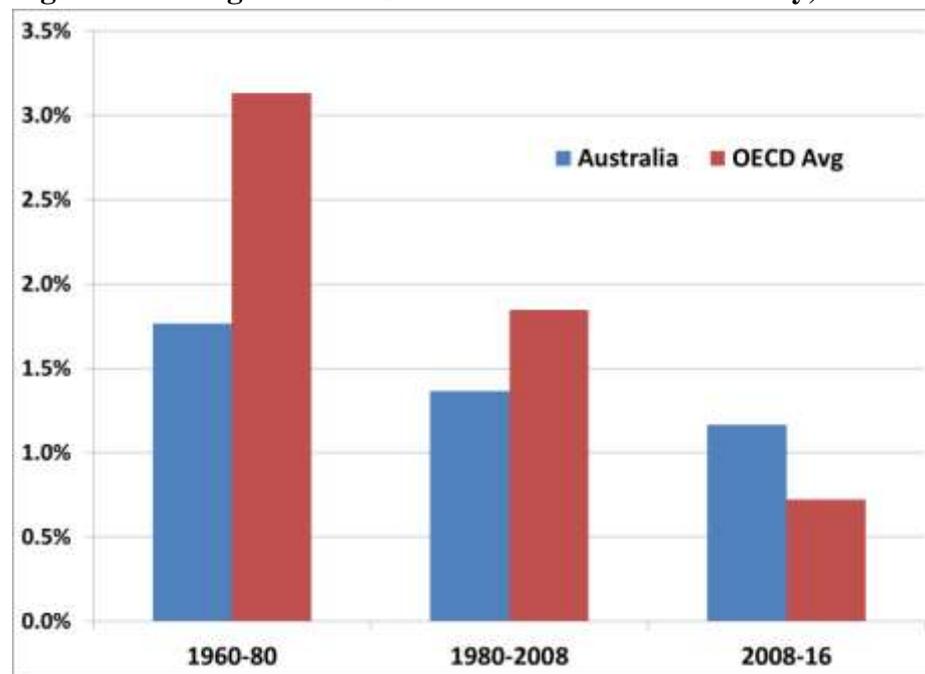
Figure 1 reports long-run average labour productivity growth rates for Australia, and for the OECD as a whole, in recent decades. Productivity growth was rapid and sustained during the postwar expansion (up to the late 1970s). During this time unemployment rates were relatively low (in large part because of the emphasis of economic policy at that time on maintaining full employment), so there was no obvious connection between rapid

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<sup>2</sup> Most cited in this regard is the work of Carl Benedikt Frey, and Michael A. Osborne, *The Future of Employment: How Susceptible are Jobs to Computerisation?* (Oxford: Oxford Martin School, 2013).

technological change and job loss. Productivity growth then slowed down in the 1980s and 1990s, in the wake of the market-oriented restructuring undertaken in most countries (including Australia). It is ironic that these policies (including monetary and fiscal restraint, international liberalisation, labour market deregulation, and privatization of public assets) were always described as avenues for improving efficiency; yet in fact productivity (and overall economic growth) have decelerated notably under these policies. Since the GFC, meanwhile, productivity growth has been even slower.

**Figure 1. Average Annual Growth in Labour Productivity, 1960-2016.**



*Source: Authors' calculations from OECD Economic Outlook database. Australian data begin in 1964.*

There are concrete reasons why the on-the-ground implementation of new technologies, and their impact on jobs, may prove to be slower than expected (or feared) given the impressive capacities of the new machines in laboratory settings. To be widely implemented in the real economy, new innovations must typically overcome numerous pre-requisites, including:

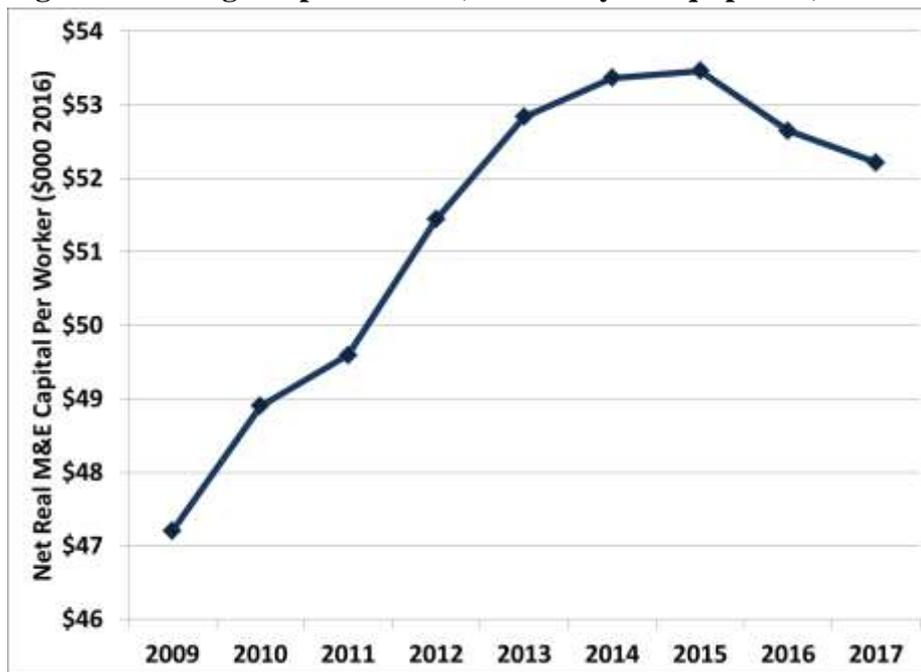
- Safety and quality testing.
- Regulatory approval.
- Major capital investments by producers, suppliers, and other firms.
- Infrastructure improvements.
- Training and workforce development.
- Public acceptance.
- Security and insurance considerations.

These barriers explain why many specific transformative innovations – like driverless vehicles, for example – will not be widely implemented (outside of limited controlled

environments) for many years. These lags in the implementation of technology mean that in most cases, stakeholders have time to pro-actively prepare for change, and take measures to facilitate adjustment – so long as they are willing to do so, rather than waiting for change to overtake them.

Another indicator that the real-world implementation of labour-saving and labour-replacing technology is in fact proceeding slower than expected, is the weak pace of new investment in machinery, equipment, software, and other technology by private businesses. To have a real impact on productivity, most innovation must be physically embodied in new machinery, equipment, and software. The process of renewing and expanding a business’s capital stock is the path through which new technologies are applied in real production. Past waves of technical innovation (including railways in the 1870s, assembly lines in the 1920s, new techniques of mass production and transportation after the Second World War, and personal computers in the 1990s) sparked lasting upsurges in business capital spending. In addition to directly facilitating the application of new technologies, that increased investment spending also eased the absorption of workers who might have been displaced by new technology – by strengthening job-creation throughout the economy. Strong business investment (backed up by expansionary fiscal policy by government) is a major reason why strong postwar productivity growth was accompanied by very *low* unemployment – not mass displacement and joblessness.

**Figure 2. Average Capital Stock (Machinery & Equipment) Per Worker**



*Source: Authors’ calculations from ABS catalogues 5204.0 Table 63 and 6202.0.*

The current macroeconomic juncture, however, is typified by very weak business capital spending. In Australia’s case, business investment spending has declined markedly in absolute and relative terms since the peak of the mining boom in 2012 – despite favourable regulatory and tax measures which were supposedly intended to enhance business confidence

and spur more investment. Business after-tax profits have remained strong, but business investment has been chronically disappointing. In Australia's case, the decline in business capital spending has been so severe that the average capital-intensity of production has actually fallen since 2013 (as indicated in Figure 2). New investment spending has been insufficient to keep up with the depreciation of the existing capital stock and the growth of the workforce, so the amount of capital invested per worker (representing, in essence, the overall value of the "tools" which the typical worker uses in their work) has perversely started to decline. Other indicators of weak innovation and capital investment further attest to weak business leadership in the innovation process: including a significant decline in R&D spending by Australian business over the past decade.

***Changes in the nature and quality of jobs in Australia, including in the on-demand economy, cannot therefore be ascribed to a generalised replacement of workers with machinery.*** While specific technologies (including digital platforms, mobile phone apps, scheduling and matching software, and others) play an important supporting role in the development of on-demand businesses, the fact remains that the actual work involved in most of these businesses remains rather menial and labour-intensive. The aura of 'innovation' and 'progress' which surrounds these companies should not distract from the grim fact that most of the jobs involved in on-demand businesses are in reality old-fashioned, badly-paid, and unproductive: driving passengers, delivering fast food, performing home repairs, and similar low-tech low-wage vocations.

Indeed, a key factor in the surprising decline in aggregate capital-intensity in Australia's economy has been the rapid expansion of employment in relatively low-productivity, low-wage service industries (industries which invest less in real capital than other sectors). Industries dominated by part-time, low-wage, and insecure work – including hospitality, retail, and personal services – have been among the fastest job-creators in the economy in recent years. While these jobs provide important income opportunities for workers unable to find better-paying and more secure work in other sectors, their growing prevalence is clearly a sign of structural weakness in the economy, not strength. The growth of on-demand employment in some of the most menial and labour-intensive occupations in our whole economy has therefore reinforced this perverse growth in old-fashioned, low-productivity endeavours. These activities do not constitute the "leading edge" of innovation and economic growth – even if some of the specific technologies used to organise, dispatch, and pay these workers are modern. To the extent that digital on-demand platforms make it easier to recruit workers into these types of jobs, they would seem to be pushing the economy toward a less sophisticated and productive sectoral and occupational structure.

New technology affects the quality of work as well as the quantity of labour demanded. And technology interacts with changes in work organisation and employment practices in ways that can substantially change working conditions – for better, or for worse. To be sure, there are positive opportunities to use technology to make work safer, easier, and less monotonous. Indeed, many boring, repetitive, and physically challenging tasks are among the jobs most amenable to automation. So long as safety and ergonomic factors, and the preferences and

interest of workers, are taken into account in designing and implementing new technology, these benefits can be important.

At the same time, some employers put technology to work in more nefarious ways, to intensify the pace of work through faster and more demanding production cycles, electronic monitoring of work and workers, and using technology (like digital work scheduling platforms) to undermine or evade traditional employment responsibilities. In the on-demand economy, the use of digital technologies to organise work scheduling and dispatch functions has allowed employers to more profitably match labour allocation to the normal swings of customer demand. This facilitates a shift of the cost and risk associated with business fluctuations from employers (who in earlier times would have borne the costs of “carrying” momentarily surplus labour through slow periods) to workers (who can now be more directly and immediately disemployed, whenever business conditions do not require their presence). Converting workers from waged employees to nominally ‘independent’ contractors is another manifestation of this ongoing effort by employers to evade costs which were conventionally associated with employing labour. ***The technology of digital platforms has allowed businesses to staff their operations with a minimum of paid staff, reducing both the risk and cost of their operations. This enhances the cost-competitiveness and profitability of those businesses, but produces great insecurity in hours of work and income for on-demand workers.***

It is important to remember that this asymmetry in work organisation is neither inevitable, nor somehow ‘built in’ to the digital matching technologies which are used by these firms. A company could use modern digital methods to recruit and service customers, and allocate workers to perform specific tasks, without requiring that the workers be paid solely on a piece-work basis (thus bearing all of the risk of demand fluctuations), and denying them normal protections and entitlements (like minimum wage, paid leave, and superannuation). The claims by digital platform businesses that these labour practices are a *necessary feature* of the technology are false and self-serving. Indeed, ***if the matching and dispatching technologies are indeed inherently more efficient and productive, it should be easier for these companies to pay minimum wages and meet other standard employment obligations.***

It is not technology, in other words, that explains why on-demand workers are being denied these traditional protections and entitlements. Rather, these problems are arising because of the social, economic, and regulatory context within which those digital matching technologies are being applied. There is no inherent requirement that these technologies must be associated with insecure, badly-paid, exploitive jobs; that this association is visible in practice attests not to inherent features of the technology, but rather to the greed of business owners and the failure of our regulatory institutions to protect workers. Adopting a more ambitious and pro-active approach to regulating employment practices in the face of these new technologies and business practices, will be essential to enhance the social benefits and reduce the social costs associated with their use and mis-use.

## What Are Gig Jobs, and How Many Are There?

The complex interaction between technology and the organisation of work is very apparent in the expansion of digitally-mediated temporary and contract work – the so-called ‘gig economy’. Indeed, for some observers, the growing importance of irregular and independent work casts doubt over the future relevance of employment. The economy of tomorrow, it is breathlessly suggested, will not consist of ‘jobs’, but rather ‘gigs’: whereby workers perform a series of one-off tasks, coordinated through on-line digital platforms, and compensated for each task through digital transfers. Via the internet, buyers and sellers meet more easily, and an unlimited digital marketplace facilitates exchange in everything, including work – but also sparks a more unforgiving and transparent race to the bottom, as individuals compete in a larger, more unified market to support themselves. It is often assumed that the traditional minimum standards, protections and entitlements of paid employment are simply no longer relevant in this digital world.

To be sure, the growth of digitally-mediated on-demand positions, typified by isolated workers recruited and managed through on-line platforms, paid according to completed tasks, poses fundamental challenges to the traditional model of employment, and to traditional methods for regulating work and ensuring minimum standards. It is not clear that existing labour regulations apply to independent or gig workers (and in some cases it is explicitly clear that they do not<sup>3</sup>) – let alone that those rules are being effectively enforced. In some cases, evading traditional regulations and employment responsibilities is a fundamental motive for the growth of independent-contractor-style practices in the first place.

Digital platform businesses aim to connect market participants who subsequently engage in exchange (directly or indirectly). Once a particular platform reaches a critical mass, strong economies of scale and scope (since larger networks have a great advantage over smaller ones) reinforce its growth.

Matching platforms come in two broad categories: those facilitating the exchange of assets, and those facilitating actual work and production.<sup>4</sup> Participants in asset-trading networks (such as eBay) undertake to buy or sell items which have already been produced. Other than the (modest) incremental value-added associated with the tasks of intermediation and shipping, there is little new production or work involved in this exchange; eBay constitutes, in essence, a centralised, digitised flea market. In contrast, digital platforms which facilitate actual work and production will exert a bigger influence on labour markets and working conditions. Some activities reflect a mixture of asset-trading and actual production: Airbnb rentals, for example, reflect a combination of renting supposedly excess or idle space in a

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<sup>3</sup> For more discussion on the categorisation and extent of on-demand work, see Andrew Stewart and Jim Stanford, “Regulating Work in the Gig Economy: What are the Options?”, *Economic and Labour Relations Review* 28(3), 2017, pp. 420-437.

<sup>4</sup> See Diana Farrell and Fiona Greig, *Paychecks, Paydays, and the Online Platform Economy: Big Data on Income Volatility* (New York: JP Morgan & Chase Co. Institute, 2016).

residence, but supplemented by actual labour and production associated with preparing, cleaning, booking and managing that space.<sup>5</sup>

In turn, digital platforms which facilitate actual labour and production come in different forms. De Stefano (2015) identifies two broad categories: ‘crowdwork’ platforms and ‘work-on-demand’ systems. Crowdwork platforms provide a simple ‘marketplace’, in which end-users<sup>6</sup> can advertise for hired help, usually to perform discrete time-limited tasks. Producers bid on the work; if selected by the end-user, arrangements are made to perform, deliver, and compensate the work. These platforms, for the most part, are digital extensions of old-fashioned bulletin boards or classified advertisements in newspapers. Web technologies allow those advertisements to reach a larger population (of both producers and end-users); in some cases (such as programming or other computer-related tasks) the work itself can be delivered electronically. Crucially, web-based payment systems also facilitate control over revenue flows by the intermediary or platform, which collects a fee (expressed as a proportion of total cost and/or fixed unit costs per transaction). The platform provider claims to be simply running a marketplace, and takes no responsibility for the terms of the work conducted, or the quality or conditions of the activity. Fees for work are agreed between the producer and the end-user, but payment is typically controlled through the platform. Airtasker is a leading Australian example of a crowdwork business.

In contrast, work-on-demand businesses incorporate a more continuous employment relationship. The on-demand work allocation function is integrated within a larger business undertaking, which the lead firm manages and controls. Fees for the service are controlled by the lead firm, as are key terms and conditions of service. It is far-fetched in this context to claim that workers are genuinely independent; they have no control over the price of their work, they have no control over revenue flows, and they must ascribe to the terms of service which are specified by the platform. Workers have some choice regarding when they can ‘sign on’ to work through the platform (in most cases there are no shifts or schedules for the work) – although this choice is constrained by the reality that workers are effectively compelled to work when customer demand conditions justify their presence.

Whether in crowdwork or on-demand formats, digitally-mediated production typically incorporates the following five broad characteristics:

- Work is performed on an on-demand or as-needed basis. Producers only work when their services are immediately required, and there is no guarantee of ongoing engagement.
- Work is compensated on a piece-work basis. Producers are paid for each discrete task or unit of output, not for their time.

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<sup>5</sup> With recent rapid expansion, Airbnb rentals have seen a transformation in the nature of labour performed in the business: an increasing share of Airbnb properties represent dedicated space (not temporary vacancies), with ancillary functions (cleaning, etc.) performed by paid labour.

<sup>6</sup> End-users could be individual consumers, or they could be other businesses hiring labour to perform input functions to their own firms.

- Producers are required to supply their own capital equipment. This typically includes providing the place where work occurs (their home, their car, etc.), as well as any tools, equipment and materials utilised directly in production. Because individual workers' financial capacity to provide these up-front investments is limited, the capital requirements of platform work (at least that used directly by workers) are small.
- The entity organising the work is distinct from the end-user or final consumer of the output, implying a triangular relationship between the producer, the end-user, and the intermediary.
- Finally, some form of digital intermediation is utilised to commission the work, engage the producer, supervise it, deliver it to the final customer, and facilitate payment. In the modern economy, this last criteria is hardly extraordinary: virtually any job imaginable today relies on some form of digital task allocation or management (whether automated digital platforms, or 'old-fashioned' e-mails and text messages). So the use of digital technology in the allocation and management of on-demand work should not, on its own, be interpreted as 'proof' of the gig economy's supposed technological leadership.

Despite the considerable media attention which digital platform businesses have generated, the scale of employment engaged in on-demand work so far is rather modest. Precise statistics are not available, as conventional statistical surveys have not yet been updated to fully capture these new forms of paying work.<sup>7</sup> Survey evidence, academic research, and unconventional sources of data (such as meat-data gathered by payment processing firms) portray a reasonably consistent portrait of on-demand employment: the number of people engaged in productive work organised through a digital platform is small (less than 1% of the labour force), and a large (likely majority) proportion of those rely on on-demand work for only a minority of their total income.<sup>8</sup> Many people have signed up to perform work through one or more of these platforms, but do not stay with the platform long,<sup>9</sup> and/or do not work many hours in the role. The number of individuals who earn their main income through digital platforms is therefore almost certainly very small. The menial, low-paying, and insecure nature of this work ensures that it will not become a major feature of Australia's labour market. That being said, if regulators continue to turn a blind eye toward the exploitive practices of some of these businesses (including failure to pay minimum wages, offer normal entitlements associated with employment, fair dismissal and job security practices, etc.), then the model will likely spread to other businesses and industries.

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<sup>7</sup> Many on-demand workers, for example, may not consider themselves 'employed', but also might not consider themselves owner-managers of their own business; in this regard, they may not be captured in traditional labour force surveys.

<sup>8</sup> Studies which have reported results consistent with this general conclusion include Diana Farrell and Fiona Greig, *Paychecks, Paydays, and the Online Platform Economy: Big Data on Income Volatility* (New York: JP Morgan & Chase Co. Institute, 2016); Lawrence F. Katz and Alan B. Krueger, "The Rise and Nature of Alternative Work Arrangements in the United States, 1995–2015," National Bureau of Economic Research, NBER Working Paper No. 22667, 2016; Jim Minifie, "Peer-to-Peer Pressure: Policy for the Sharing Economy," Report No 2016-7 (Melbourne: Grattan Institute, 2016); and Larry Mishel, "Uber is not the future of work," *The Atlantic*, 16 November, 2015.

<sup>9</sup> Studies have estimated the annual turnover of Uber drivers, for example, at above 90%; see Amir Efrati, "How Uber Will Combat Rising Driver Churn," *The Information*, 20 April 2017, <https://www.theinformation.com/articles/how-uber-will-combat-rising-driver-churn?>

## Gigs Are Old, Not New

Another stereotype that needs to be challenged in considering on-demand work is the common claim that these employment practices are novel and innovative. Here it is crucial to distinguish between the technical innovations which these businesses utilise, and the changes in work organisation which those models also introduce. In fact, the major organisational features of digital platform work are not new at all. These practices have been used regularly in labour markets for hundreds of years; what is novel is the use of digital technologies for organising, supervising, and compensating work in that manner. As we have noted, the growth of insecure or precarious work practices is not an essentially technology-driven phenomenon. Rather, *the growing precarity of work, including in digitally-mediated on-demand jobs, reflects the evolution of social relationships and power balances, more than technological innovation in its own right*. Appreciating the social and regulatory dimensions of technology and work organisation contributes to a more holistic and balanced understanding of the rise of on-demand work, its consequences, and its potential remedies.

As summarised in Table 1, the core features associated with on-demand work are long-standing.<sup>10</sup> The practice of on-call or contingent labour – whereby workers are employed only when directly needed – has been common for hundreds of years. In an Australian context, a famous example is the former practice of dockworkers lining up each morning (for example, along Sydney’s ‘Hungry Mile’) in hopes of attaining employment that day; other examples are common in other sectors (including minerals, forestry, manufacturing, and agriculture). Home-based work, and other systems in which workers supply their own capital equipment, have also been common in many applications and contexts – from the ‘putting out’ system for manufacturing textile products and housewares in the early years of the industrial revolution, to the important role played by owner-operators in many modern industries (including transportation, resources, fisheries, and personal services). Piece-work compensation systems also have a long if uneven history. Employers have long aimed to tie compensation directly to output (as a way of shifting responsibility for managing work effort and productivity onto workers). Yet at the same time, the use of piece-work is constrained by numerous well-known problems, including difficulties in applying them in situations which require an emphasis on quality, not just quantity of output (like most service sector activities), and where work is performed jointly by teams or larger groups of workers.

Finally, the triangular relationship that is evident in the on-demand economy between the worker/producer, the ultimate end-user of their labour (whether a business or a consumer), and an intermediary/‘middleman’ business is also very familiar from economic history. Past examples include labour hire services, “gang-masters,” and other forms of labour supply

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<sup>10</sup> For a comprehensive discussion of the long historical pedigree of modern on-demand jobs and other forms of insecure work, see Michael Quinlan, “The ‘Pre-Invention’ of Precarious Employment: The Changing World of Work in Context,” *Economic and Labour Relations Review* 23(4), 2012, pp. 3-24; and Jim Stanford, “The Resurgence of Gig Work: Historical and Theoretical Perspectives,” *Economic and Labour Relations Review* 28(3), 2017, pp. 382-401.

intermediation. Under this triangulated model of employment, it can be unclear who is the actual ‘employer’; this ambiguity opens the possibility for various negative practices and outcomes, which have been recognised for years in legislation, regulation, and jurisprudence. An example is Australia’s long-standing rules regarding ‘sham contracting’, and more recent initiatives to regulate labour hire businesses in Queensland and Victoria.

<b>Table 1</b>	
<b>Historical Antecedents for “Gig” Work</b>	
<b>Work Practice</b>	<b>Historical Antecedent</b>
On-Call Scheduling	Stable weekly schedules were unusual prior to mid-20 <sup>th</sup> century; contingent hiring was common (example: Sydney’s ‘Hungry Mile’).
Piece Work Compensation	Common in many applications in manufacturing, agriculture, resources, services; but not effective in many jobs (requiring team work, emphasis on quality, etc.).
Home Work / Own-Provision of Tools	Workers in many jobs have been required to provide place of work and/or tools: ‘putting out’ system; cottage industry; forestry, fishing, resources; transportation; personal services.
Intermediary / Labor Hire Triangulated Responsibility	Gangmasters and labour hire services have operated for hundreds of years as middlemen between producers and end-users.
Method of Coordination	Digital platforms allow easier, inexpensive coordination of on-call labour and collection of payments.
Source: Adapted from Jim Stanford, “The Resurgence of Gig Work: Historical and Theoretical Perspectives,” <i>Economic and Labour Relations Review</i> 28(3), 2017, pp. 382-401.	

These core features of on-demand work are not novel; and claims that this way of organising work is ‘new’ are not valid. Rather, on-demand businesses reflect a resurgence of very old business practices, that date back hundreds of years. For a time (most notably in the initial decades of the postwar expansion of the 20<sup>th</sup> Century), economic, political and regulatory developments combined to curtail these contingent and precarious work practices. Pushed by tight labour market conditions, ambitious regulatory initiatives, and higher expectations among workers, employers came to offer more permanent and stable arrangements. This period marked the ascendancy of the so-called ‘standard employment relationship’: defined by steady, indefinite work, at the employer’s place of business, with the employer providing the capital equipment, in return for a wage or salary and commensurate entitlements. This form of work became more common in the decades after the Second World War, although it was never universal; women, new immigrants, and young workers were always more likely to work under less stable arrangements, even during the peak periods of the postwar expansion.

## The Resurgence of Insecure Work

In contrast, in recent years insecure work has become more common throughout the economy; the growth of on-demand businesses represents just one dimension of this broader trend. This resurgence of precarious employment practices is visible in several forms: including independent contracting, self-employment, casual and temporary jobs, and on-demand positions. To be sure, technology plays a role in this shift back to more contingent and precarious employment relationships: mostly by facilitating new models of management and control, rather than altering the fundamental process of production itself.<sup>11</sup> Broader macroeconomic conditions also play a role in the historical resurgence of precarious employment. In particular, the chronic existence of a large pool of underutilised labour (reflected in high levels of unemployment, underemployment, and marginally attached non-employed) facilitates insecure staffing strategies on the part of employers. If they were not confident that incremental labour inputs could be quickly and confidently recruited whenever needed, then employers would face greater compulsion to offer more secure and permanent jobs. The flip side of the same coin is the pressure that workers feel in a chronically weak labour market to accept any work available, no matter how insecure or irregular. If they had access to more permanent, predictable, and better-paying work opportunities, many workers currently offering their services through digital platforms would choose a more stable form of employment.

Another factor facilitating the expansion of precarious work practices in general (and gig work in particular) has been the generally passive, inconsistent application of traditional labour regulations and standards. In some cases (such as independent contractors in the Australian context<sup>12</sup>), existing regulations (like minimum wage laws, collective bargaining rights, and other minimum standards) explicitly exclude non-standard workers. Regulators have been slow to recognise the risks posed to labour standards and the quality of work by the expansion of precarious work and the resulting subversion of traditional labour regulations; they have failed to adapt regulatory models to encompass workers in these growing categories of nominally independent labour. In other cases, the applicability of existing regulations is uncertain; but regulators have still been slow to test the robustness or applicability of existing laws. In still other cases, it is clear that existing regulations should protect contingent workers, yet the widespread non-enforcement of those rules undermines their real-world effect. The epidemic of wage theft documented in numerous Australian franchise-based businesses in recent years, which have avoided paying even minimum wages to thousands of employees, is a good example of this regulatory failure.<sup>13</sup>

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<sup>11</sup> In this regard, consider that there is no evident difference in how an on-demand for-hire driver and a conventional taxi driver produce their service – other than the use of a different dispatch and payment system.

<sup>12</sup> See Richard Johnstone and Andrew Stewart, “Swimming Against the Tide? Australian Labour Regulation and the Fissured Workplace,” *Comparative Labor Law and Policy Journal* 37(1), 2015, pp. 55-90.

<sup>13</sup> See Louise Thornthwaite, “The Government Needs to Better Enforce the Laws it Creates, to Protect Franchise Workers,” *The Conversation*, March 3, for a summary.

In sum, it is clear that the resurgence of insecure or contingent employment practices in recent years cannot be understood as a technological outcome. To be sure, modern technologies have allowed the application of tried-and-true insecure employment strategies to a new set of functions and circumstances. But the actual nature of the production process undertaken as part of modern digital platforms is not generally different from the production process used in previous business models; and it is entirely possible to imagine the application of new digital management systems within the context of conventional employment relationships.<sup>14</sup> The modern technology used by on-demand businesses is mostly used to facilitate work organisation, management, and compensation (as opposed to changing the way actual work is performed). These changes in work organisation should be analysed and understood in the context of the often-conflicting economic and social interests (confronting workers and employers) which have always shaped the employment relationship. *The exploitive nature of current on-demand work practices is neither inevitable nor technologically determined; these practices are expanding because macroeconomic, labour market, and regulatory circumstances have allowed them to expand.*

## Digital Monitoring and Surveillance

The ubiquitous use of electronic surveillance, monitoring, and evaluation technologies is an especially damaging mis-use of technology in workplaces.<sup>15</sup> An obvious concern is that intense digital surveillance offends the dignity and privacy of workers. It can undermine the quality of work, and heighten stress levels – since workers realise their output, location, and even conversations is always subject to surveillance and recording. Time pressure is intensified by the expectation that every moment of work time must be used for productive purposes – an expectation reinforced through omnipresent systems of monitoring, performance measurement, and surveillance. This intensified stress has negative implications for mental and physical health.

The mis-use of digital surveillance and discipline techniques may have broader economic impacts, as well. It likely contributes to the suppression of wages, by altering the trade-off between positive incentives and negative punishments in employers' management models. Employers always rely on a combination of positive incentives ('carrots') and negative sanctions ('sticks') to motivate and discipline their employees. One important consideration influencing the choice between 'carrots' and 'sticks' in employers' staffing strategies will be the relative cost and effectiveness of each. Digital monitoring and surveillance systems have made it cheaper and more effective for employers to compile a detailed and timely portrait of

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<sup>14</sup> For example, digital apps to dispatch taxis are now widely used by conventional taxi fleets, which still hire taxi drivers on a conventional rather than on-demand basis.

<sup>15</sup> For a more comprehensive overview of the frequency, nature and abuses of digital monitoring, surveillance and discipline systems in Australian workplaces, see our report *Under The Employer's Eye: Electronic Monitoring & Surveillance in Australian Workplaces*, by Troy Henderson, Tom Swann and Jim Stanford (Sydney: Centre for Future Work), November 2018, [https://d3n8a8pro7vhmx.cloudfront.net/theausinstitute/pages/893/attachments/original/1542703563/Under\\_the\\_Employer's\\_Eye\\_Formatted.pdf?1542703563](https://d3n8a8pro7vhmx.cloudfront.net/theausinstitute/pages/893/attachments/original/1542703563/Under_the_Employer's_Eye_Formatted.pdf?1542703563).

the performance of their workers. They no longer have to pay human supervisors to collect this information; machines are cheaper and likely more reliable. Moreover, existing legislation and jurisprudence in Australia imposes relatively spare and inconsistent limits on the ability of employers to gather data from these digital systems, and to wield it in disciplining or even discharging employees. When surveillance of employees can be both comprehensive and inexpensive, and when the results of that surveillance can be utilised relatively freely as a powerful tool of workplace discipline, then employers will be more likely to choose intrusive intensification strategies (rather than eliciting effort through positive incentives) in managing their workforces.

We believe this growing reliance on digital ‘sticks’ has contributed to the deceleration of wage growth in Australia’s overall labour market in recent years. Employers are less concerned with motivating and retaining employees on the basis of positive incentives (like job security, promotion, and wage increases). Digital surveillance and freedom to fire give them greater power to elicit compliance in workplaces with the threat of negative sanction. Combined with weak labour market conditions (as evidenced by widespread underemployment, especially among certain groups of vulnerable workers such as migrants and youth), this can compel workers to accept relatively low wages while still meeting desired effort and productivity benchmarks.

Using digital performance data to evaluate and discipline employees is very common in on-demand jobs. These systems include detailed operational and performance data collected automatically from workers (via the apps which assign them tasks), as well as unverifiable consumer ratings collected digitally from customers. On-demand companies may even discharge (or ‘de-activate’) workers from their jobs solely on the basis of on-line customer evaluation systems. Workers whose consumer ratings fall below company benchmarks may be assigned less work (through the digital platform) or even be disconnected from working through the app entirely. For workers who may have invested thousands of dollars and great amounts of time to undertake these jobs, being subject to unilateral dismissal is a huge risk. ***On-demand workers have little recourse to challenge false or misleading consumer reports, and no access to normal processes of progressive discipline and fair dismissal procedures.*** This in large part is because the on-demand firms maintain their workers are not employees, and hence cannot be ‘discharged’ – whether fairly or unfairly. Research has shown that on-line consumer ratings reflect biased judgments and prejudices on the part of participating customers.<sup>16</sup> Providing on-demand workers with protection against arbitrary, anonymous and automatic discipline or discharge, even if they are not strictly defined as employees, would constitute an important improvement in their job security and well-being.

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<sup>16</sup> See Naomi Leong, “The Sharing Economy has a Race Problem,” *Salon*, November 2 2014, [http://www.salon.com/2014/11/02/the\\_sharing\\_economy\\_has\\_a\\_race\\_problem/](http://www.salon.com/2014/11/02/the_sharing_economy_has_a_race_problem/).

## Net Incomes of For-Hire<sup>17</sup> Drivers

The positioning of gig work as a form of independent entrepreneurship makes it difficult – for gig workers and regulators, alike – to obtain precise information on the actual incomes these workers are being paid for their efforts. Workers are paid by the task rather than for a unit of time, and generally are responsible for covering various costs associated with their work (including provision of capital equipment, raw materials and inputs, and other operating costs). The net income received by these workers after covering these expenses is hard to calculate; it certainly can fall below the earnings associated with typical paid employment, and below statutory minimum wage levels.

To investigate the various factors affecting net incomes for one important group of on-demand workers, for-hire drivers, in 2018 the Centre for Future Work developed a comprehensive economic simulation model describing revenues and expenses faced by Uber-X drivers in six Australian cities.<sup>18</sup> First the model catalogued the Uber-X fare structure (at the time of the study), and compared it to fares for conventional taxi services in the six cities. Uber-X fares vary from city to city, but consistently undercut conventional taxi rates for equivalent rides by 30% or more. The lower price reflects, in large part, lower realised compensation for the drivers.

The model then disaggregated the revenue associated with typical urban fares into its various components, including:

- Booking fee and commission collected by Uber (which absorbs close to 30% of total revenue).
- Taxes (including GST and taxi/for-hire levies, equivalent to around 6% of total revenue).
- Vehicle operating costs (including amortisation and depreciation, fuel, registration and fees, insurance, accounting for over 30% of total revenues).
- Net income remaining for the driver (amounting to just over one-third of total revenue).

Discussions with for-hire drivers, and conversations posted in online blogs and chat rooms, indicate that many drivers do not initially appreciate the extent of vehicle expenses and tax obligations when they sign up to work. As those expenses cumulate, drivers become more aware of their limited take-home pay; this deferred realisation is a factor behind very high turnover rates reported in the industry.<sup>19</sup> The drivers' responsibilities for all operating

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<sup>17</sup> We use the term 'for-hire driving' to refer to the industry of on-demand taxi-like services. The common term 'ride-share' is inaccurate in this case, since most of those cars are not 'sharing' rides, but rather are transporting customers on a dedicated point-to-point basis. The inaccurate use of 'ride-share' terminology is just one dimension of the broader and misleading use of the term 'sharing economy' to refer to digital on-demand businesses – most of which have no dimension of genuine asset-sharing.

<sup>18</sup> The model and its findings are reported fully in *Subsidising Billionaires: Simulating the Net Incomes of UberX Drivers in Australia*, by Jim Stanford (Sydney: Centre for Future Work), March 2018, [https://www.futurework.org.au/innovation\\_or\\_exploitation\\_simulating\\_net\\_hourly\\_incomes\\_of\\_uberx\\_drivers](https://www.futurework.org.au/innovation_or_exploitation_simulating_net_hourly_incomes_of_uberx_drivers).

<sup>19</sup> Published studies indicate that as many as 95% of new Uber drivers leave their positions within the first year of work; see Efrati (op. cit).

expenses must be kept in mind when considering how much for-hire drivers “make”: most published estimates of hourly for-hire driver incomes do not take into account vehicle expenses.<sup>20</sup>

Converting the drivers’ one-third share of total revenue into an hourly equivalent wage then requires additional assumptions regarding time spent on a typical fare, time spent waiting for dispatch to a new job (unpaid), and the time spent driving to pick up the assigned passenger (also unpaid). On the basis of conservative assumptions (our base case assumes a 10-minute wait for assignment to a new fare, and 2 minutes spent driving to collect that passenger), hourly net income (after expenses) was estimated to average \$14.62 across the 6 cities included in the simulation. Estimated hourly income in Melbourne was even lower: just \$12.88 per hour. This is because Uber-X fares in Melbourne are lower than in other cities, presumably because conventional taxi fares are also relatively low in Melbourne – and Uber clearly sets its fares in order to ensure a price advantage relative to taxis.

***These stimulated average hourly incomes of for-hire drivers fall well below statutory minimum wages.*** The national minimum wage in Australia was \$18.29 per hour when the study was completed.<sup>21</sup> The six-city average simulated hourly income was 20% lower than the national minimum wage; the simulated hourly net income in Melbourne was 30% lower than the national minimum wage. But the underpayment of for-hire drivers is actually worse than this. Note that the terms of the relevant Modern Award provides for higher hourly wages for people working in passenger transportation services – along with penalty rates for evening, weekend and holiday work (which are necessary in this industry).<sup>22</sup> A weighted-average Modern Award rate in this industry (including pro-rated penalty rates for evenings, weekends and holidays) is about \$30 per hour; that is more than twice the simulated hourly net incomes of Uber-X drivers in the six cities. Aggregated across the hours worked by a full-time driver in a year, this amounts to underpayment (relative to Award minimums) of \$30,000 per worker. This amounts to an involuntary subsidy paid to Uber by its drivers worth hundreds of millions of dollars per year across Uber’s Australian network. Without the ability to pay effective wages far below statutory minimums, Uber’s apparent cost advantage relative to conventional taxis would disappear; in other words, the reason Uber fares are lower than taxi fares is not due to any inherent economic ‘efficiency,’ but rather primarily reflects the structural underpayment of its workers.

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<sup>20</sup> For example, a recent Australian survey of ride share drivers indicated average hourly income of \$16 – but that was before deducting vehicle expenses including fuel. See Simon Thomsen, “A New Survey of Uber Drivers in Australia Finds the Vast Majority are Unhappy With What They’re Being Paid,” *Business Insider Australia*, 24 October, 2018, <https://www.businessinsider.com.au/a-new-survey-of-uber-drivers-in-australia-finds-the-vast-majority-are-unhappy-with-what-theyre-being-paid-2018-10>.

<sup>21</sup> The minimum wage increased to \$18.93 on 1 July, 2018; however, Uber-X fares and hence driver incomes have also changed, so comparisons should be made to the minimum wage at the time the study was conducted.

<sup>22</sup> The relevant award is #MA00063, the “Passenger Vehicle Transportation Award.”

## Gigs and Public Services

The most common applications to date of on-demand business models have been in relatively menial private service industries, such as for-hire drivers and food delivery. However, the use of digital platforms for dispatching, matching and compensating piece-work production could spread into other parts of the economy. There are even several potential applications of this business model in the realm of public services. Given that public services are organised and funded to meet an identified public need and hence enhance social well-being, they presumably should face a higher standard of accountability regarding the overall impacts of their operations (including social and equity considerations).

One group of publicly-funded services that is already experiencing incursion by digital on-demand business models is the disability, aged and home care industries. Australia has adopted a funding model whereby many of these services are provided by independent enterprises (including private for-profit businesses, along with non-profit and community agencies), but the cost is ultimately covered by public payments. The new National Disability Insurance Scheme (NDIS) is an important example. The scheme will cost the Commonwealth and state governments an estimated \$22 billion per year in public funding once fully rolled out, but the market-based delivery model of the scheme relies primarily on decentralised private providers to respond to service requests from individual scheme participants. Unit prices are established for specific services; individuals contract independently (possibly advised by a plan manager) with service providers, paying for those services with funds from their personal NDIS allocated budget. Private firms, as well as some non-profit agencies, are already using digital platforms to connect with NDIS participants seeking particular services; incoming requests are then allocated to individual providers who have signed up to the platform (much as for-hire drivers sign on to Uber or Lyft). Of course, the company operating the platform captures a significant share of the resulting revenue in commission and administration fees.

***The application of on-demand business models to publicly-funded human and caring services raises many concerns.*** The ability of individual service providers to earn a decent and stable income through this method of job allocation and scheduling is doubtful. The siphoning off of public funds to the profit margins of digital intermediaries seems to violate the social goals of the program. Downward competitive pressure will inevitably be experienced on incomes, training and qualification levels – and that will inevitably lead to a deterioration in the quality of services provided, contrary to the vision of the NDIS (and similar programs) that this mode of delivery should lead to more individualized and flexible services for clients and participants.

Another public service vulnerable to the application of on-demand systems is public transportation. Already, some Australian jurisdictions (including NSW and ACT) are experimenting with contracting out some public transportation services to private platform and car-hire businesses (including Uber itself). Customers receive public subsidies to book

privately-provided hire cars, instead of taking a public bus. Advocates point to some U.S. cities which have completely replaced former public transportation services with subsidised for-hire services.<sup>23</sup> The implications of this application of private for-profit on-demand business models to public transportation services are also concerning: both for workers in the industry, and for the quality, safety and accountability of the services.

## Policy Options: Macro Level

The on-demand economy, and insecure work more generally, have expanded as a result of a conjuncture of important macroeconomic, regulatory, and political developments. As discussed earlier, the core employment practices of on-demand businesses – rooted in contingent employment, piece work compensation, and the requirement that workers supply their own capital equipment – have existed for centuries. As discussed above, those practices became less common in the 20<sup>th</sup> century, especially during the long post-war economic expansion, when employers felt compelled to provide more permanent and secure positions, for a range of reasons:

- Very strong labour demand and low unemployment created an incentive for employers to ‘lock in’ scarce labour supply, rather than hiring on a contingent basis.
- Labour market regulators were more determined and ambitious in their efforts to lift employment standards and establish a structure of inclusive growth.
- Workers’ own expectations reinforced upward pressure on wages and conditions.

All of these circumstances have been reversed in recent years. Labour demand conditions have been weak in most regions and industries in Australia for several years: as indicated not only by officially reported unemployment, but also by high underemployment and large numbers of discouraged or non-participating workers. Regulators have become more passive: failing to update and strengthen their policy levers in the face of new developments (like the expansion of digital on-demand businesses), and tolerating the widespread non-enforcement of existing laws and standards. In some cases policy-makers may not even support the principles of progressive intervention that informed Australia’s postwar labour policy regime in the first place, instead accepting the vision that a more competitive and deregulated labour market is preferable. Regarding the labour practices of on-demand businesses, regulators were likely also cowed by the initial public infatuation which often greeted the advent and growth of these firms: cracking down on unfair practices on the part of businesses which were widely seen as ‘innovative’ and even ‘cool’ seemed politically risky and unpopular. At the same time, expectations of decent treatment have diminished among many Australian workers, especially in those segments of the labour force which are

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<sup>23</sup> One high-profile case is Altamonte Springs, Florida where the government launched a pilot program with Uber in 2016, subsidising all fares within the city’s limits by 20% – and by 25% for trips beginning or ending at the rail station. See ITS International, “Florida’s Altamonte Springs uses Uber pilot program with Uber to Expand Transportation Coverage,” 2017, <http://www.itsinternational.com/sections/nafta/features/floridas-altamonte-springs-uses-uber-pilot-program-with-uber-to-expand-transportation-coverage/>.

effectively excluded from more appealing jobs (such as new immigrants, international students, younger and older workers, and other desperate groups). For these workers, accepting a series of insecure gigs may seem like the best the labour market has to offer.

None of those conditions are inevitable; all are subject to deliberate choice and change. However, the capacity of an individual state government to bring about measurable change in these macro-level trends is obviously limited. ***It should nevertheless be noted, however, that the viability of the on-demand economy is contingent on the existence of a large pool of underutilised, desperate labour, and the passivity of labour market regulators who are willing to accept (or at least overlook) violations of conventional fair treatment that in the past would have elicited a more active and effective response.***

Committing to a macroeconomic vision of full employment, with job-creation as the top priority, would help to limit the lure and growth of on-demand jobs – because workers would have many better alternatives to choose from. So would the provision of targeted skills programs and employment services to the groups of workers most likely to be recruited by on-demand businesses: displaced workers, young workers who can't break into conventional jobs, international migrants, students and others. Stronger training and vocational services, and better employment services to support these workers in their job hunt, would provide those workers with more options than just accepting another gig.

In Australia, as discussed further below, most labour market and industrial relations policies are governed at the Commonwealth level, and hence are outside of the purview of this state-level Inquiry. However, the importance of those federal policy levers in establishing a fairer regime for on-demand workers should nevertheless be registered.

Many advanced economies are presently exploring how collective bargaining may be used as a tool to improve regulation and the pay and conditions of on-demand workers. In Australia, the collective bargaining system is already exhibiting signs of serious stress, with only 12 per cent of employed people in the private sector covered by a current enterprise agreement in 2017.<sup>24</sup> It is crucial to explore initiatives for extending collective bargaining rights to the on-demand sector.

As a first measure, the Commonwealth government (perhaps through the Fair Work Commission) could establish a working group involving state policy-makers, unions, academic experts, and platform business representatives to investigate the applicability of collective bargaining models for on-demand work. That initial research could survey international examples where collective bargaining is being used to improve the conditions of workers outside of protections of formal employment. For instance, New Zealand is tabling legislation this year to extend collective bargaining rights to film industry workers on an occupational level (e.g. technicians and actors); these workers are often employed on an on-

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<sup>24</sup> See Alison Pennington, *On the Brink: The Crisis in Private Sector Collective Bargaining* (Sydney: Centre for Future Work), December 2018, [https://www.futurework.org.au/on\\_the\\_brink\\_the\\_crisis\\_in\\_private\\_sector\\_collective\\_bargaining](https://www.futurework.org.au/on_the_brink_the_crisis_in_private_sector_collective_bargaining).

demand basis, and the plan is to ensure they have access to collective bargaining rights despite their contractor status. In Canada, a category of worker called ‘dependent contractor’ is given explicit rights to negotiate incomes and conditions on a collective basis. In Denmark, a path-breaking collective agreement has been created for on-demand cleaners (who are hired through a digital platform); upon completion of 100 hours work through the app, workers qualify for coverage of a collective agreement negotiated between the platform and the relevant union, providing entitlements such as sick leave and annual leave, and set rates of pay with protections against job cancellation. Studying and learning from these and other experiments (and testing them where possible) will be integral to building the case for future collective bargaining reform in the on-demand economy.

Ultimately, however, full and fair protection for on-demand workers will require the Commonwealth level of government to go beyond studying the problem. The Commonwealth government needs to develop and implement important reforms to several aspects of the current industrial relations and business law framework governing digital on-demand businesses. These initiatives must eventually include:

- Clarifying that workers in productive activities which are managed and effectively controlled by a lead business are, in effect, employees of that business. This will involve extending the definition of ‘employee’ in existing statute to apply to on-demand businesses where workers do not genuinely possess the independence, ability to set prices and control revenue streams, diversity of customers, and other features of a truly independent business. Application of a sensible and pragmatic test to weed out sham or artificial arrangements would allow more on-demand workers to receive the basic protections afforded to other workers.<sup>25</sup>
- As the definition of ‘employee’ is clarified and extended, federal regulators (including the Fair Work Commission) should be empowered and instructed to ambitiously ensure that normal labour standards (including minimum wages, penalty rates and casual loading, the terms of relevant Modern Awards, National Employment Standards, protections against unfair dismissal, and more) are fully applied to on-demand businesses, on a par with other firms.
- On-demand workers (and other nominally independent workers) must be provided with the right to negotiate collectively with the entity they work for. That would give those workers more bargaining power in negotiating commission rates and other contractual arrangements with the platforms that constitute their primary source of income. At present, federal competition law prevents contractors from banding together to achieve a

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<sup>25</sup> The U.S. state of California has implemented a new 3-part test; if any of these 3 criteria do not apply to a worker, they are deemed to be an employee: the worker is free from the control and direction of the hiring entity in connection with the performance of the work; the worker performs work that is outside the usual course of the hiring entity’s business; and the worker is customarily engaged in an independently established trade, occupation, or business. By these pragmatic standards, many Australian on-demand workers would indeed be classified as employees. See Bryan Benard, “California Supreme Court Changes Test for Independent Contractor Status,” *Employers’ Lawyers Blog*, 3 July, 2018, <https://www.employerslawyersblog.com/2018/07/california-supreme-court-changes-test-for-independent-contractor-status.html>.

better price – even if those contractors deal with an effective monopsony (that is, a single large customer with the power to suppress prices).

- The provisions of contract law, including those governing small businesses, should be strengthened to protect on-demand workers against the arbitrary and punitive terms presently contained in the standard contracts utilised by many digital platform firms (including the common mis-use of terms which limit their ability to pursue legal action against the digital intermediary).

## Policy Options: State Level

The main focus of this Inquiry, understandably, is on policy responses which could be taken by the state of Victoria to address widespread concerns with the conditions and stability of on-demand work. Australian federalism has featured a historic tendency to shift state government powers to the federal jurisdiction. This trend is certainly clear in the area of labour law: most of the major labour-related laws and policies are set and governed at the Commonwealth level (including the Fair Work Act, minimum wages, National Employment Standards, contract law, and more). As such, with diminished jurisdiction over most employment and industrial relations matters, states face obvious constraints in considering solutions to contemporary labour market problems – like the problems of on-demand work.<sup>26</sup> However, despite these limitations, states still possess considerable opportunities to develop policy responses to many labour market issues. A good example is the recent ambitious labour hire licensing scheme implemented by the Victorian government in 2018. While Commonwealth-level policy levers may be ‘off-limits’ for the Victoria government in addressing the challenges of the on-demand workforce, numerous complementary options are clearly available to policy makers who are determined and creative in addressing the glaring needs of on-demand workers for fairer treatment.

Strategically, policy inertia at the Commonwealth level has also placed states in a position to exercise tactical leadership in policy development. They have an opportunity to step in and fill the democratic void created by the paralysis and dysfunction of Commonwealth politics, with their own progressive policy initiatives. The states can thus reassert a proactive role for government in the economy, after decades of neoliberal dominance in public policy, and in so doing reignite public engagement with and confidence in Australia’s democratic institutions. This potential was nowhere more evident than in the recent state election in Victoria. The outcome reflected a strong public desire for activist government: including public spending on infrastructure, health, and education, and support for strengthening workers’ rights and wages. In this context, *the Victoria government should feel confident in pushing the policy envelope to take a pro-active and creative stand on the side of fairness and security for gig workers.*

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<sup>26</sup> In Victoria’s case, almost all industrial relations and employment policy matters were transferred to the Commonwealth by the Kennett government in 1996.

This section considers several policy responses that are potentially available to a Victorian government seeking to respond to the regulatory challenges of the rise of digitally enabled on-demand work. These proposals are not advanced as ‘hard and fast’ solutions, but rather are suggestions that lay the groundwork for a more comprehensive multi-dimensional policy response to on-demand business practices. The ultimate goal is to shift some of the costs and risks borne by platform workers onto the businesses that effectively employ them, and to establish a more equitable regulatory regime.

### **A level playing field in workers compensation**

States hold full responsibility for the design, funding and operation of workers compensation systems. And Victoria (unlike several other states) has retained autonomy in its workplace health and safety laws, rather than fully integrating those laws with the harmonized ‘model laws’ described at the federal level. There is already an important precedent in Australian occupational health and safety policy that protection of safety for workers should be independent of the formal legal status of those doing the actual work. In other words, workplace health and safety (WHS) laws already reflect a deliberate effort to extend protection beyond the confines of the employment relationship:<sup>27</sup> they apply to anyone carrying out work in any capacity (employee, contractor, or other status), who has been engaged by a ‘person conducting a business or undertaking’ (PCBU), or whose work is fundamentally directed or influenced by a PCBU. This approach was explicitly intended to prevent businesses from shedding their responsibilities for health and safety merely by changing the precise contractual relationship with the person doing the actual work.

The Victoria state government should endeavour to establish a health and safety and workers compensation regime which is fully equivalent and equitable for workers in on-demand businesses. This regime should:

- Ensure that on-demand businesses are fully subject to WHS requirements.
- Clarify that on-demand businesses are responsible and liable for WHS violations, including those that occur within places of production that they do not directly own (eg. vehicles operated by for-hire drivers).
- Provide workers compensation coverage and benefits to on-demand workers.
- Collect workers compensation premiums from digital platform businesses and on-demand providers, commensurate with their safety experience and identified risks (as occurs for any other line of business).

The full extension of health and safety and workers compensation protections to gig workers would be an important, incremental improvement in the stability and security of their work lives. Many common gig jobs (such as for-hire driving or food delivery) are very dangerous, and many accidents and assaults have occurred – imposing enormous, often uninsured costs

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<sup>27</sup> See Richard Johnstone and Andrew Stewart, “Swimming Against the Tide? Australian Labour Regulation and the Fissured Workplace,” *Comparative Labor Law and Policy Journal* 37(1), 2015, pp. 5–90.

and losses on those workers. Digital providers try to wash their hands of any responsibility to assist affected workers, claiming that since they were not ‘employees’ the platform business is not required to bear any of the resulting costs.<sup>28</sup> Some on-demand businesses invite workers to purchase (typically at their own expense) supplemental personal injury and other insurance, but that is not an adequate substitute for full and fair coverage under workers compensation principles.

In addition to the extra protection directly offered to gig workers, establishing a level playing field in WHS and workers compensation policy would also set an important precedent: namely, that these businesses can and should be subject to the same responsibilities and obligations as other employers. That would accelerate the necessary extension of other labour standards and regulations (including those governed at the Commonwealth level) to on-demand businesses.

### **A level playing field for payroll tax**

Similar logic applies to requiring on-demand businesses to pay payroll taxes on all work-related incomes paid to their workers – including net incomes received by on-demand workers who are not paid hourly wages. After all, payroll taxes are another important fiscal lever which remains in the purview of state governments. In theory, Victoria’s payroll tax system is intended to cover payments made to contractors (not just direct employees), but the enforcement of that principle for on-demand businesses has been inadequate and inconsistent.

By clarifying the precise wording of enabling legislation and regulation, the state government should indicate that work-related incomes paid to gig workers are fundamentally equivalent to wages for purposes of payroll taxes, and establish collection systems through which parent firms must submit payroll taxes at the same rate on those incomes as do traditional employers. This will require a reporting system whereby platform businesses report incomes paid to the on-demand drivers, after allowable deductions (at agreed benchmark rates) for reasonable expenses.<sup>29</sup> Establishing this level fiscal regime would eliminate an important effective subsidy (equivalent to 4.85% of wages) for on-demand firms which currently evade normal payroll tax obligations in Victoria. It would also raise hundreds of millions of dollars in new revenue to support essential public services in the state. Again, this measure would establish an important precedent for other jurisdictions (including the Commonwealth) in ensuring that on-demand businesses are not subsidised through effective avoidance of regular taxes.

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<sup>28</sup> Just one shocking example was Uber’s refusal to contribute to health expenses and other costs incurred by an Uber driver assaulted while working; Uber wrote to the driver that, “As made [clear] in our driver-partner terms of use, we do not take any financial responsibility for loss or damage caused to driver-partners when using the Uber app. As such, this incident remains a matter for the involved parties to resolve directly.” See Preetinder Grewal, “Melbourne Uber Driver Too Scared to Return to Work,” *SBS Online*, 4 February 2018, <https://www.sbs.com.au/yourlanguage/punjabi/en/article/2018/02/01/melbourne-uber-driver-too-scared-return-work>.

<sup>29</sup> For example, a for-hire driving business would report gross incomes paid to its drivers along with imputed vehicle operating expenses (estimated on the basis of existing ATO parameters for allowable vehicle expenses per kilometer), and then forward payroll tax to the state government on the net amount.

We note that with considerable delay, ATO officials have been considering various systems for collecting information regarding the incomes received by on-demand workers – to scrutinise whether those workers are fulfilling their own individual tax obligations. For example, a recent ATO discussion paper proposed several strategies for collecting income from on-demand firms regarding their payments of income to workers.<sup>30</sup> It is hardly fair that the focus of tax enforcement should be directed solely at these workers, who already experience low and precarious incomes, and great financial and safety risks, without at least an equivalent effort to ensure that the digital platform businesses are also complying with their full fiscal obligations.

### **Leveraging other regulatory tools to address labour standards**

As acknowledged above, most of the direct tools of labour market and industrial relations policy are controlled at the Commonwealth level (although several important levers remain in state hands, and should be invoked to the maximum degree possible to address the problems of on-demand work). However, there are many ways that state governments could indirectly address the problems of on-demand work, by attaching labour-relevant conditions to other regulatory measures for which they are responsible.

A good example of how this could occur is through the state’s regulatory authority over transportation services. State governments retain full responsibility for licensing and regulating intra-state transportation services (including public transit, urban transportation, trucking, taxis and other for-hire driving businesses, etc.). It is possible for the state government to consider labour issues as a key criterion in the course of designing and enforcing relevant regulation and legislation. The justification for this linkage is to ensure that those transportation services are provided in a safe, fair, and sustainable manner. Examples of the sorts of conditions that could be attached by a state government to any transportation service it licenses or regulates (including those provided through on-demand platforms) include:

- Adequate screening, training, and licensing of drivers.
- Safety conditions, including minimum standards for equipment, provision of safety systems (including, for passenger transportation, on-board security and rescue technologies), and road safety matters.
- Fiscal parameters for transportation services (including effective minimum wage rates that are compatible with safe and fair work).

An important international example of the use of transportation regulation to establish better conditions for on-demand workers has been provided by the New York City Taxi and Limousine Commission’s recent decision to establish a minimum hourly wage for on-demand

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<sup>30</sup> See, for example, Nassim Khadem, “ATO Hunts Hidden Income from Uber, Airbnb and Other Gig Economy Workers,” *ABC News Online*, 23 January 2019, <https://www.abc.net.au/news/2019-01-23/ato-hunts-australians-hiding-income-via-uber-and-airbnb/10742528>.

for-hire drivers.<sup>31</sup> The rationale for this type of measure exactly parallels the rationale for establishing standard rates for conventional taxi services: namely, to ensure that the fares are compatible with safe, sustainable operation of the vehicles, and a sustainable minimum income for the workers. New South Wales legislation regarding minimum effective rates for some classes of professional drivers is another relevant example. The state of Victoria could play a pioneering role in extending this principle to car-hire drivers and similar categories of on-demand workers.

## Enforce existing laws

Simply committing to the effective enforcement of existing laws for on-demand businesses would mark another step in the direction of a level regulatory playing field. For example, Victoria traffic laws place severe restrictions on the use of phone-based apps by drivers, as described in this excerpt from VicRoad's safety materials:

“Using a mobile phone while driving is prohibited, except to make or receive a phone call, to use its audio/music functions or perform a navigational (GPS) or intelligent highway vehicle system (in vehicle warning system) function:

- is secured in a commercially designed holder fixed to the vehicle, or
- can be operated by the driver without touching any part of the phone, and the phone is not resting on any part of the driver's body.

All other functions (including video calls, texting, emailing, task management, photography, social media, shopping and share economy apps) are prohibited.”<sup>32</sup>

These rules make it clear that operating a for-hire app while driving is both dangerous and illegal. Yet the business model of on-demand for-hire cars effectively requires drivers to do this routinely. They typically allow only a limited amount of time (as little as 15 seconds) to ‘accept’ a job offer, before it is withdrawn and reallocated to another driver; if a driver pulls over and parks in a safe place before operating the app (as required by law), they will almost certainly lose the job. Moreover, thanks to the algorithm which manages the dispatch of potential rides, a driver who fails to quickly accept enough job offers will receive less work (or less desirable fares) in the future. Police have enforced laws regarding operating the app while driving, on a very inconsistent basis – and with the resulting punishment directed solely at the drivers.<sup>33</sup> Yet the ultimate responsibility for the systematic violation of this basic traffic safety requirement surely lies with the company which designs and operates the technology, and recruits workers on the implicit assumption that they will optimise its use regardless of its legality. The companies’ claims that they do not ‘force’ drivers to break the law (even

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<sup>31</sup> The minimum wage is established at \$17.22 (U.S.) per hour after vehicle expenses, equivalent to \$26.51 per hour gross. See Shirrin Ghafary, “New York City has Set the Nation’s First Minimum Pay Rate for Uber and Lyft Drivers,” *Recode*, 4 December 2018, <https://www.recode.net/2018/12/4/18125789/uber-lyft-drivers-wage-minimum-new-york>.

<sup>32</sup> See VicRoads, “Mobile Phones, Technology & Driving,” Safety and Road Rules, <https://www.vicroads.vic.gov.au/safety-and-road-rules/driver-safety/mobile-phones-and-driving>.

<sup>33</sup> See, for example, Timna Jacks, “Uber Drivers Complain they are Forced to Break the Law to Do their Jobs,” *Sydney Morning Herald*, 11 January 2019, <https://www.smh.com.au/business/workplace/uber-drivers-complain-they-are-forced-to-break-the-law-to-do-their-job-20190110-p50qm8.html>.

though their business structure clearly encourages it) is a shallow and irresponsible effort to pass the buck, on a matter which literally jeopardises lives. The state of Victoria could take a clear stand in favour of safety and fairness by requiring any of these companies to establish systems and implement equipment which is compatible with the state's existing traffic laws – instead of turning a blind eye to a practice that is both unfair and dangerous.

### **Access to training and skills for on-demand workers**

On-demand workers are more likely to be migrant workers, international students, and low-wage workers pushed into these precarious roles as a result of poor labour market conditions and lack of access to conventional occupational opportunities. On-demand businesses benefit from the exclusion and desperation faced by these workers, many of whom feel they have no other option but to accept the low and insecure incomes that come from on-demand work. Enhancing the skills and capacities of on-demand workers could help to open up alternative career options for them.

On-demand workers are also more likely to work in sectors of the labour market where formal qualifications are not a requirement, such as cleaning, delivery, and courier and passenger transport services. These workers are left dependent on insecure income streams, with no access to occupational progression (including training entitlements and pay progression). These workers would benefit greatly from targeted job-relevant training to build their qualifications, obtain higher credentials, and open greater possibilities for transitioning out of their precarious on-demand jobs.

Targeted training initiatives could include funding for on-demand workers seeking to gain first or new qualifications and training from Victorian post-secondary institutions. This would complement the Victorian government's ambitious plan to rebuild and expand the public vocational education sector. Of course, skills and training alone will not guarantee that on-demand workers (who choose to) will successfully transition into secure employment. However, targeted public supports for training for these (and other) vulnerable workers would enhance their personal career options, and contribute to a more skilled and productive Victorian workforce.

### **Portable training entitlement for care workers**

A specific and timely example of the need to provide targeted training opportunities to workers in on-demand businesses is the burgeoning care work sector. A growing proportion of service delivery in the home care, aged care, and disability services industries is being provided by independent or individualised workers, who are often assigned to and paid for individual visits or treatments. The use of on-demand digital platforms to organise this work, and recruit and compensate care-givers, is growing. The fragmentation of care provision in this manner is a consequence of the marketised model of care delivery which has been adopted in many of these sectors: the public bears the ultimate cost of providing the services, but public funds are channeled to private suppliers (including for-profit businesses), which

then utilise on-demand business models to reduce their own costs and enhance their profits (copying the success of on-demand firms in conventional private sector activities like for-hire driving, food delivery and cleaning). For example, the market-based model of the NDIS is facilitating this approach to service delivery in the growing disability services sector.

In human services industries, the fragmentation and precarity of work poses an additional challenge regarding the qualifications of carers, and the consequent quality of care. When individual providers have no continuity in employment or income, it becomes impossible for them to accumulate improved skills and qualifications over time; both the quality of their jobs, and the quality of care received by their clients, inevitably suffers as a result. One innovative solution to this challenge is the proposal for a portable training entitlement for workers in human services sectors.<sup>34</sup> Workers would accumulate credits to career development training, based on the amount of work they complete (including jobs assigned and compensated through on-demand platforms).<sup>35</sup> The cost of tuition, materials, and lost wages would be covered through the training program (potentially funded on the basis of an additional levy on contracted services). These entitlements would be transferable as workers moved between positions, and could be exercised on topics and at times of the workers' choosing. Complementary training programs and qualifications would be developed through non-profit vocational institutions (with a focus on TAFEs).

Through this type of initiative, working through an on-demand platform could still lead to accumulation of skills and qualifications, advancement in job responsibilities, and higher incomes over time (so long as the unit fees set for relevant services keep step with the rising qualifications of the workers). Trial projects for this type of portable training scheme are being considered in various jurisdictions in Australia. The state of Victoria could be a leader in this process, by working with other stakeholders (including the NDIA, community agencies, and relevant unions) to pilot this type of portable training credit system. This would both establish an important precedent regarding the effectiveness of training in lifting the quality and incomes of on-demand work, and constitute a major step in ensuring that publicly-funded human services are delivered with maximum commitment to quality.

## **Support for cooperative worker-run platforms**

Workers in on-demand businesses are usually responsible for paying the operating and capital costs associated with their work, and they bear all the financial risks associated with inadequate or volatile consumer demand, accidents and insurance, and other expenses. This

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<sup>34</sup> This proposal is described in detail in the context of disability services by Rose Ryan and Jim Stanford, *A Portable Training Entitlement System for the Disability Support Services Sector* (Sydney: Centre for Future Work), April 2018, [https://www.futurework.org.au/portable\\_training\\_system\\_would\\_help\\_to\\_address\\_staff\\_crisis\\_in\\_ndis\\_services](https://www.futurework.org.au/portable_training_system_would_help_to_address_staff_crisis_in_ndis_services). The proposal was also endorsed by the Joint Standing Committee on the National Disability Insurance Scheme in its recent report; [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/National\\_Disability\\_Insurance\\_Scheme/MarketReadiness/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/MarketReadiness/Report).

<sup>35</sup> In the NDIS example mentioned in the previous footnote, workers would receive one hour of paid training for every 50 hours of completed compensated work; that is sufficient, given average hours of disability service workers, to provide 3 days of paid training and professional development per year (similar to training provisions governing many other professions, such as educators, medical professionals, and lawyers).

begs an obvious question: why do they even need the on-line platform to do their jobs, when they put up most of the direct capital, operating costs, and risks? The intermediary's 'basis to claim' in the revenue chain derives from its monopoly market-making capacity: its services are necessary to match each producer with a willing customer. While there are some costs associated with providing that matching function, they are small relative to the overall expenses of the industry – and would not seem to economically or morally justify the platform firm taking such a large share of total revenues (close to one-third of all income in the case of on-demand for-hire driving).

For this reason, the argument has been made that on-demand workers could establish their own digital dispatch systems, to eliminate the power of the 'middleman' and give the actual producers a larger share in the total income from the services they produce.<sup>36</sup> The logic for workers coming together to jointly provide an infrastructure service which benefits them all, and reduce their exploitation from a monopsony customer or middleman, has a long history in other industries. Producer co-ops have often been developed to offset the power of intermediaries in agriculture, fisheries, forestry, personal services, cleaning, and other industries in which small-scale production is facilitated by centralised marketing, wholesaling, and infrastructure. For example, taxi drivers in many cities long ago organised driver co-ops to provide central dispatch services while sidestepping the market power of previous private fleet owners; exactly the same logic could apply to the cooperative provision of digital ride-hailing apps today.

The state government could support the formation of cooperative, non-predatory on-demand platform services, to help on-demand workers attain a fairer position in the value-chain of their industry. The centrepiece of a digital on-demand platform is a dispatch website with associated mobile applications. While the capital costs and other prerequisites for establishing this type of infrastructure is not onerous, it is beyond the spontaneous capability of workers to facilitate on their own (especially given their limited means and general economic insecurity). Support for developing cooperative alternatives to the existing platforms could be provided in various forms, including:

- Providing incubator and management training services to assist groups of on-demand workers to organise themselves and establish new cooperative businesses.
- Assisting worker cooperatives in identifying and accessing start-up capital.
- Streamlining procedures regarding registration and incorporation of cooperative businesses.

Worker-run cooperative platforms would receive this support on condition of their own commitment to democratic governance and full respect for minimum labour standards. These cooperative platforms would be able to pass on a greater portion of total revenues to the

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<sup>36</sup> A survey of recent initiatives to establish cooperative on-demand platforms is provided by Eillie Anzolotti, "Worker-Owned Co-ops are Coming for the Digital Gig Economy," *Fast Company*, 31 May 2018, <https://www.fastcompany.com/40575728/worker-owned-co-ops-are-coming-for-the-digital-gig-economy>.

workers (rather than being siphoned off in profit margins), and give workers more agency to control the operations and conditions of the business.

### **Public access to data from on-demand businesses**

The activities of on-demand businesses have important implications and spillovers for public services, public infrastructure, and the quality of life in communities. Policy-makers need access to data from these businesses in order to understand and plan for their impacts on transportation patterns, road safety, community zoning, health and safety issues, and other legitimate public policy priorities. It is also incumbent on government to monitor the impacts of on-demand business models on incomes and working conditions of workers; this also requires access to data regarding gross incomes, hours worked, operating expenses, and other parameters. On-demand platforms have certainly taken full advantage of public data to build their own business models: for instance, public transit data has been crucial to the development of private on-demand transport services. The flow of information should go both ways. Globally, the demands on digital platform firms to provide publicly-relevant data on their operations are growing; in the U.S., for example, numerous states and cities now require on-demand businesses to provide regulators with comprehensive data regarding the scope, cost, and social impacts of their activities.<sup>37</sup>

The Victorian government should require the provision of publicly-relevant data from on-demand businesses as a condition of their business license. Commercially sensitive data would be held confidentially by government (as is the case with tax and regulatory information which any businesses normally submit to government). Where there is a public policy benefit to full transparency of the data, that could be facilitated by government through a public register of relevant on-demand statistics. Such a register would improve public understanding and accountability of on-demand businesses and their impacts on community well-being.

### **Commitment to produce public services in-house**

The expansion of commercial on-demand platforms into the realm of traditional public service delivery (in fields such as caring services and public transportation) constitutes an especially concerning threat to social standards and accountability. A simple way for the Victorian state government to prevent this from happening, is to simply establish the principle that public services will not be delivered this way. Instead, publicly-funded programs and services should be delivered wherever possible through public agencies – which are held to a higher standard of fair treatment and accountability than private providers. The risks to both the working conditions, incomes, and safety of workers, and to the quality of service for the public, of delivering public services through private on-demand

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<sup>37</sup> See Owain James, “Uber and Lyft are lobbying states to prohibit local regulation,” *Mobility Lab*, 24 July 2018, <https://mobilitylab.org/2018/07/24/uber-and-lyft-are-lobbying-states-to-prohibit-local-regulation/>, and Aarian Marshall, “Dying to Know Uber’s Secrets, Data-Hungry Cities Get Creative,” *Wired*, 3 August 2018, <https://www.wired.com/story/uber-lyft-data-research-driver-pay/>.

platforms are significant. While various measures could be taken to try to support better outcomes (for both workers and the service-consuming public) in services that are delivered this way, in many cases it is more effective to simply avoid the risks altogether – by requiring that publicly-funded services be delivered through accountable public channels rather than being outsourced to private provision (in which case on-demand business models will move in).

The state government has considerable authority to commit to the in-house production of publicly-funded services, even in programs (like the NDIS) which are cost-shared with the Commonwealth level of government.<sup>38</sup> This commitment would be important and effective in ensuring that future publicly-funded services in the state – including caring services, education, public transportation, and more – are off-limits to the sorts of insecure and exploitive practices which have become common in private-sector settings, including through on-demand platforms.

## Conclusion

The use of digital on-demand platforms to organise and supervise work is often presented as a futuristic innovation, driven by the inexorable advance of technology. In fact, the employment practices typically utilised by these businesses are hundreds of years old. Choices regarding how workers in these businesses are hired, managed, compensated, supervised and disciplined are not pre-ordained, ‘coded’ into digital technology. Rather, they are deliberate and discretionary choices that at present are made exclusively by the owners of these businesses, motivated by their effort to maximise profit margins. ***The fact that work is organised through an app or an algorithm, in no way should allow these businesses to escape the legislative, regulatory, and moral imperatives which constrain the actions of other businesses and employers in Australia.***

Digital platforms have potential to enhance the efficiency of certain kinds of production and exchange. Where that is true, then this technology creates additional economic space to treat workers in these industries with respect and fairness. Pay and security should improve, not deteriorate, thanks to the supposed efficiency and productivity of these technologies. Instead, too many of on-demand businesses are becoming digital sweatshops: recruiting workers from vulnerable groups, who lack access to more secure and better compensated jobs, to perform menial, often dangerous jobs, with no stability or security of schedules or incomes, and wages that often fall well below social norms and legal minimums. The pairing of modern digital technology with primitive and exploitive employment practices is not inevitable; it is only occurring because we are collectively allowing it.

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<sup>38</sup> For example, the state government of Western Australia recently announced a commitment to convert up to 23,000 public service positions from casual or labour-hire status into permanent jobs; this measure was not explicitly intended as a way to limit the growth of on-demand work, but it will have that effect indirectly. See “Thousands of State Government Workers to Receive Job Security,” Media Announcements, Government of Western Australia, 9 August 2018, <https://www.mediastatements.wa.gov.au/Pages/McGowan/2018/08/Thousands-of-State-Government-workers-to-receive-job-security.aspx>.

To be sure, many of the conventional policy tools which would normally be invoked to address issues of unfair treatment in workplaces are governed at the Commonwealth level. The state government in Victoria should press the Commonwealth, other states, and all stakeholders to use those tools to address the increasingly obvious problems in the quality and fairness of on-demand work (through reforms in federal labour and industrial relations laws). At the same time, however, the state clearly retains important policy discretion and responsibility in a number of areas. That authority could be invoked in important ways to improve the conditions of on-demand work, or – in some cases – to stop its spread directly. The most promising opportunities in this regard include:

- Ensuring that fiscal parameters (such as payroll taxes and workers compensation) are applied evenly to on-demand businesses.
- Ensuring that existing laws and regulations (like traffic laws) are applied evenly to on-demand businesses.
- Requiring access to data from on-demand businesses, where relevant for public planning and regulation.
- Supporting on-demand workers with tailored access to training and qualifications opportunities – both to improve the quality of their existing jobs, and to increase their opportunities to find better work.
- Supporting on-demand workers to build their own digital management and dispatch capabilities, so they can escape the monopsonistic power of existing platforms, and build a truly ‘sharing’ economy.

We thank the Inquiry for this opportunity to present our views.