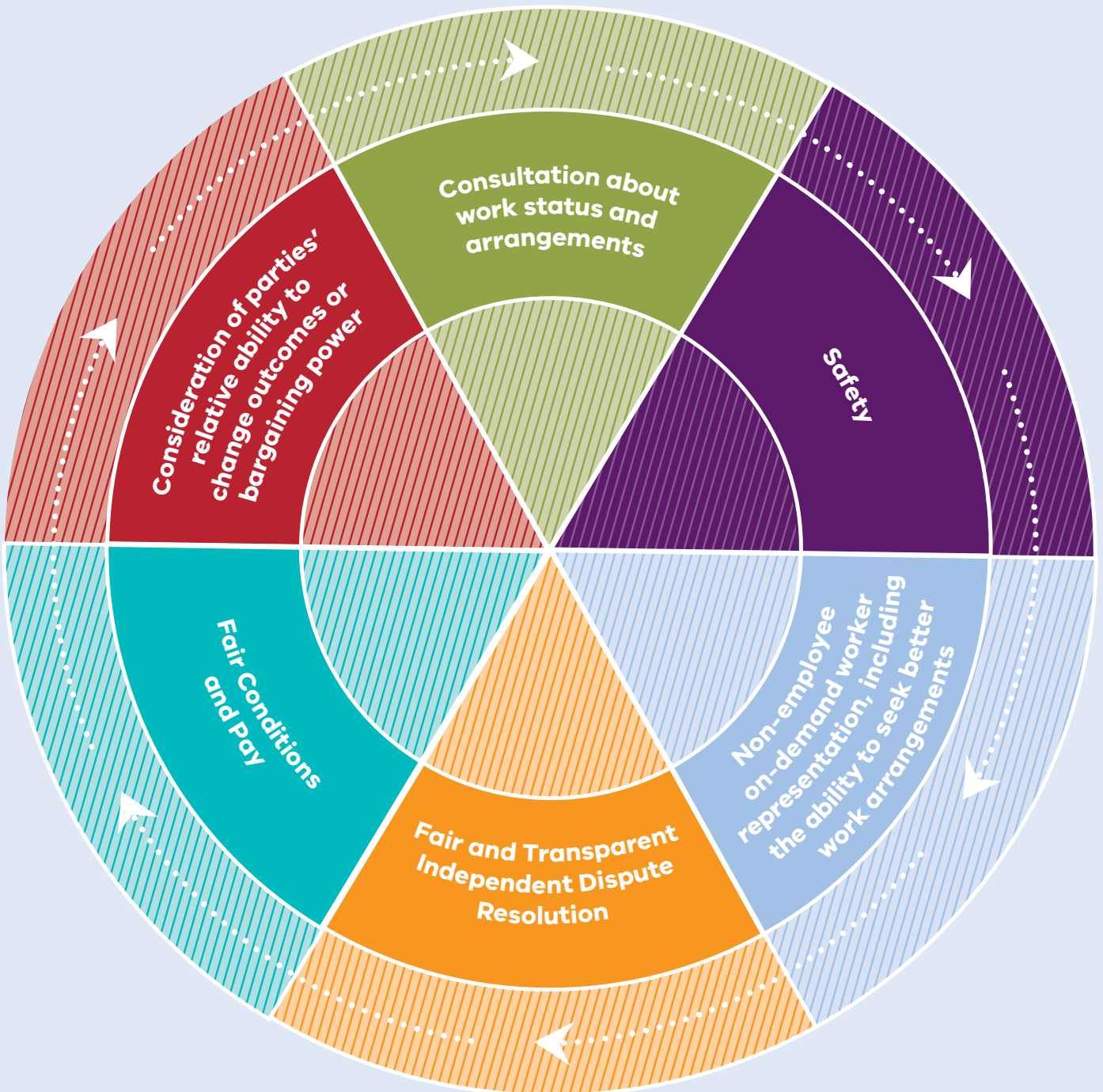


Voluntary Fair Conduct and Accountability Standards for Platforms



Implementing Recommendations
13 and 14 of the Inquiry into the
Victorian On-Demand Workforce

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Acknowledgement of Country

The Victorian Government proudly acknowledge Victoria's Aboriginal peoples as the traditional custodians of the lands on which we live and work. We pay our respects to them and their Elders past, present and future, and honour their unique relationship to Country. We hope that our work contributes towards a positive future for the Aboriginal community.

Accessibility

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Message from the Minister for Industrial Relations

On-demand platforms and on-demand workers have become an indispensable part of everyday life for so many Victorians. We ask on-demand workers to arrange the delivery of our food, medicines, groceries and other goods. We ask them to provide us with some of the most personal support services. We also ask that they transport us wherever we want to go, day or night. We can engage gig workers whenever we need help to get things done, be it caring for our loved ones, fixing a fence, moving a couch, designing a web page or taking photographs.

In return, it's not hard to accept that on-demand workers might ask that they be paid fairly or that they should have minimum standards of work. However, to date on-demand workers have been afforded few benefits or protections, as a result of being characterised as non-employee workers (formally engaged as independent contractors).

With these Fair Conduct and Accountability Standards, the Victorian Government aims to improve the position of non-employee on-demand workers who perform gig work. This will be achieved by inviting platforms to be transparent with workers about their work arrangements and by providing workers with greater choice, certainty and fair conduct in relation to how those arrangements are determined.

These Standards are the first to be developed by any government in Australia. They clearly signal the Victorian Government's expectations concerning the engagement and treatment of on-demand workers in Victoria. This initiative is directed at supporting the many on-demand workers who are not engaged as employees and often have little bargaining power - factors that make it harder for them to earn a decent and fair income.

The Standards implement recommendations 13 and 14 of the *Inquiry into the Victorian On-Demand Workforce*: to develop standards that foster fairer conditions for non-employee on-demand workers and greater operational transparency by platforms.

This initiative forms part of the first phase of reforms being introduced by the Victorian Government. The soon to be established Gig Worker Support Service will from early 2023 administer the Standards by publishing, educating, advising and promoting them. The establishment of a support service to assist and support on-demand workers is also a national first.

As part of the second phase of reforms, the Victorian Government intends to take steps to introduce the strongest possible legislative enforcement model that it can, to assure compliance with the Standards.

I would like to thank those workers, trade unions, peak union bodies, businesses (platform and non-platform), community groups, academics and others who shared their views about the Standards with my former Parliamentary Secretary, Nick Staikos MP. That feedback has informed the final content of these Standards.

This initiative builds on others delivered by this Government to support secure work arrangements and make work fairer in Victoria.

A handwritten signature in black ink, appearing to read 'T. Pallas'.

Tim Pallas, MP

Minister for Industrial Relations

Introduction

Voluntary Fair Conduct and Accountability Standards for On-demand Platforms

The Standards seek to encourage platforms to further improve their practices to ensure work arrangements are fair and transparent. They will assist participating on-demand platforms to provide fairer and safer conditions for on-demand workers.

These Standards specify practices that are to be applied across all industries and sectors in which platforms operate. This includes a standard on how to communicate with workers about their terms and conditions and consult and negotiate about changes to them. It includes standards on how to set remuneration and make payments. And it includes a standard on effective dispute resolution, performance management and complaint handling practices. The Standards it is hoped will benefit the community by also improving safety on the road and in workplaces. To achieve this, platforms must ensure business models operate fairly and equitably for all users, women and men, people with disability and people of cultural and linguistically diverse backgrounds.

There are six standards focusing on:

- consultation about work status and arrangements
- consideration of parties' leverage or bargaining power
- fair conditions and pay, including gender pay equity
- fair and transparent independent dispute resolution
- worker representation, including the ability to seek better work arrangements, and
- safety.¹

¹ Employers have obligations under Victoria's *Occupational Health and Safety Act 2004* to their employees, independent contractors (referred to as non-employee workers under these Standards) and other people who are impacted by their conduct. Platforms must consider if they have duties under this Act. If the platform is an employer and non-employee workers are engaged as independent contractors, then they could be deemed employees for the purpose of section 21(3) of this Act in matters that the platform has control of.

Implementing the Victorian Government's commitment to addressing gender inequality, the Standards also include principles for addressing discrimination and improving conditions for women workers and workers with culturally diverse backgrounds in the gig economy.

The Standards have been subjected to an independent cost benefit analysis commissioned by the Victorian Government and extensive consultations with stakeholders, including platform businesses, employer and employee organisations, community sector organisations and academics. In December 2021, the Victorian Government released a Consultation Paper outlining the proposed Standards. Stakeholder feedback received through submissions and consultations has been considered and informed the final content of the Standards.

Commencement

The voluntary Fair Conduct and Accountability Standards will commence operating from early 2023.

Where to get help

Gig Worker Support Service

The Gig Worker Support Service provides information and general advice, education and support to assist on-demand workers make informed decisions about undertaking platform work. It can also be contacted for information to assist workers to understand their rights and obligations under relevant workplace and related laws and avenues available to them to pursue a dispute. The service will also provide referrals to other relevant government agencies or regulators.

Platform businesses can also contact the Gig Worker Support Service for general advice about the Standards.

Victorian Small Business Commission

The Victorian Small Business Commission's (VSBC) dispute resolution processes are available. Non-employee on-demand platform workers can make use of services offered by the VSBC. The VSBC has broad powers to facilitate and encourage the fair treatment of small businesses in their commercial dealings with other businesses.

This may involve assisting with the resolution of disputes about terms in business-to-business contracts, including by advising small businesses (non-employee on-demand workers) about their rights and obligations, providing pre-mediation assistance, and offering low-cost mediation.

Generally, the VSBC does not enforce compliance with laws but acts as an impartial dispute moderator. It can however arbitrate certain disputes under the *Owner Drivers and Forestry Contractors Act 2005* (Vic) (ODFC Act). The VSBC may therefore be able to arbitrate disputes between platforms and workers who transport food or other goods (but not ride share).

It is expected that platforms communicate to workers that they may appeal the outcome of any dispute or disciplinary process to a relevant low-cost independent decision-making body such as the VSBC.

WorkSafe Victoria

WorkSafe is Victoria's health and safety regulator and workplace injury insurer. Information about WorkSafe can be found at <https://www.worksafe.vic.gov.au/about> or by calling the advisory line on 1800 136 089.

In Victoria, the *Occupational Health and Safety Act 2004* (OHS Act) provides a broad framework to reduce work-related illness and injury. Among its objects are to eliminate risks to, and secure the health, safety and welfare of employees and other persons at work.² The Victorian *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) (WIRC Act), establishes the WorkCover scheme to provide for workers compensation and rehabilitation for workers who are injured or become ill as a result of work.³

Both frameworks provide obligations and protections to employees, and both, in different ways, extend certain entitlements and obligations to non-employee on-demand workers.⁴ These Standards operate alongside the obligations in the OHS Act and do not exclude the application of any of the obligations contained in the OHS Act.

The OHS Act imposes on businesses employers and certain other persons (including platforms in some circumstances) various health and safety duties to their independent contractors (and any employees of those independent contractors) – including to ensure, so far as reasonably practicable, that the workplace is safe and without risks to health and

² *Occupational Health and Safety Act 2004* (Vic), s 2(1)(a) and (b).

³ See *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 10.

⁴ *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), Schedule 1; see also for example *Occupational Health and Safety Act 2004* (Vic), s 21(3)(a), (b). Under this provision independent contractors and their employees are 'deemed' to be employees and are owed the same obligations as other employees.

safety.⁵ Self-employed persons also have duties under the OHS Act.⁶

Employers (which may include platform businesses) also have a duty under the OHS Act to consult (so far as is reasonably practicable) with employees who are, or are likely to be, directly affected about certain matters listed in section 35 of the OHS Act. This consultation obligation also applies to independent contractors and their employees.⁷

Depending on the circumstances, non-employee on-demand workers may be able to access workers compensation entitlements under the WIRC Act.⁸

Transport Accident Commission

The Transport Accident Commission is a Victorian Government-owned organisation whose role is to promote road safety, support those who have been injured on our roads and help them get their lives back on track. Information about the Transport Accident Commission can be found at: <https://www.tac.vic.gov.au/about-the-tac>.

Scope of the Standards

The Standards apply to on-demand platforms that operate in Victoria and/or engage workers in Victoria through the platform as independent contractors (who we describe as non-employee on-demand workers).⁹

An on-demand platform is a digital platform (website or app) which connects workers with clients, usually in response to an end user or client requesting services through the platform. Many platforms actively set working conditions and arrangements for their workforce. The Standards apply to all platforms, including both 'horizontal' and 'vertical' platforms.

A horizontal platform is one on which end-users (consumers or businesses) select workers based on worker profiles uploaded to the platform and sometimes based on offers or bids made by workers. End users and workers may then negotiate specific terms such as rates of

5 *Occupational Health and Safety Act 2004* (Vic), s 21(3)(b).

6 See for example *Occupational Health and Safety Act 2004* (Vic), s 24.

7 WorkSafe Victoria, Guide for workers: Consultation, representation and resolving health and safety issues, accessed 1 October 2021. See also *Occupational Health and Safety Act 2004* (Vic), s 35(2).

8 Schedule 1, Cl 9 of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) provides information about the test that is used to determine if a worker can be deemed an employee.

9 The term non-employee on-demand worker is used to refer to independent contractors that work for platforms. In other words, workers who would not satisfy the common law definition of "employee".

pay, although frequently platforms have guidelines or standard terms. A vertical platform selects between workers who are logged into the platform and allocates tasks directly to selected workers. The vertical platform usually sets fees payable for tasks and standards by which jobs, gigs or tasks must be performed.

The Standards are consistent with and complement existing workplace laws. Platforms that adopt the Standards must also continue to comply with their legal obligations under all relevant laws, including the:

- *Commercial Passenger Vehicle Industry Act 2017* (Vic)
- *Competition and Consumer Act 2010* (Cth)
- *Equal Opportunity Act 2010* (Vic)
- *Fair Work Act 2009* (Cth)
- *Independent Contractors Act 2006* (Cth)
- *National Disability Insurance Scheme Act 2013* (Cth)
- *Occupational Health and Safety Act 2004* (Vic)
- *Owner Drivers and Forestry Contractors Act 2005* (Vic)
- *Sex Discrimination Act 1984* (Cth)
- *Superannuation Guarantee (Administration) Act 1992* (Cth)
- *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).

Application

The Victorian Government encourages platforms to adopt and comply with the Standards.

Contact

These Standards are administered by the Gig Worker Support Service within the Department of Premier and Cabinet (Victoria). For general inquiries about the Standards, the Gig Worker Support Service can be contacted from early 2023 by phone or email.

Standard 1

1 Consultation about work status and arrangements

- 1.1 Platforms and their representatives¹⁰ should consult and negotiate with non-employee on-demand workers and their representatives¹¹ on work-related matters, including major changes to work arrangements, work status or contractual terms.
- 1.2 Platforms should provide consultation processes, forums or committees to allow for discussions with non-employee on-demand workers and their representatives on work-related matters.
- 1.3 Platforms should not penalise non-employee on-demand workers for raising concerns regarding work-related matters.

¹⁰ This might include for example an employer association or legal representative or other persons/bodies.

¹¹ This might include for example a registered organisation or legal representative or other persons/bodies.

Standard 2

2 Consideration of parties' relative ability to change outcomes or bargaining power

- 2.1 Platforms should ensure that the terms and conditions of the applicable contract are clear and able to be understood by non-employee on-demand workers. Platforms should also ensure that the terms and conditions are consistent with the nature of the actual engagement.
- 2.2 Platforms should establish a process with non-employee on-demand workers and their representatives to assess whether a work contract is fair, for example:
- are the risks associated with platform work distributed fairly between the platform and non-employee on-demand workers?
 - is liability for damage arising in the course of the performance of work for platforms treated or distributed fairly?
- 2.3 After consulting with non-employee on-demand workers (and their representatives where applicable) on the fairness of existing work arrangements, platforms should consider amending the work contract or consider other ways to mitigate risk for both parties.
- 2.4 Platforms should set up processes so that non-employee on-demand workers and their representatives may challenge decisions made by platforms which affect their terms and conditions of work.
- 2.5 Platforms should provide non-employee on-demand workers a process for responding to an allegation or finding that a worker has breached terms and conditions of their contract.

Standard 3

3 Fair Conditions and Pay

- 3.1 To assist non-employee on-demand workers to make an informed decision about whether to accept work, platforms should provide them with key information in writing about:
- I. what they will earn should they complete a job, and how earnings are calculated
 - II. typical costs associated with the performance of work
 - III. their conditions of work
 - IV. the factors that affect how work is allocated by the platform (such as customer ratings).
- 3.2 Platforms should commit to providing fair and decent remuneration and conditions for the performance of work. This might be implemented by, for instance, publishing typical average earnings, which are benchmarked against the applicable minimum wages or rates.
- 3.3 Platforms that apply penalties (including where non-employee on-demand workers accept work but do not complete the job or gig), should provide workers with clear and accessible information about when such measures might be taken.
- 3.4 Platforms should proactively review algorithms and work practices to ensure that they operate in a gender non-discriminatory way, for instance, by:
- reviewing women's and men's average hourly earnings or earnings per assignment (where the assignment is comparable) to identify if there is a gender pay gap, and if it is found, taking steps to close it
 - reporting publicly on the gender earnings gap for non-employee on-demand workers.
- 3.5 Platforms should implement policies and procedures to prevent discrimination (for example, on the basis of race, sex, disability) and
- take reasonable and proportionate measures to eliminate such discrimination, sexual harassment and victimisation and
 - provide clear support and complaints processes for non-employee on-demand workers who experience any such matters.

Standard 4

4 Fair and Transparent Independent Dispute Resolution

- 4.1 Platforms should provide non-employee on-demand workers with access to a clear and accessible procedure or mechanism for resolving performance concerns or disputes and allow them to be represented in those processes.
- 4.2 Platforms should afford non-employee on-demand workers procedural fairness and the opportunity to respond to complaints made about them (that is, show cause) before action is taken to restrict their access to work on the platform (including for example by suspension or deactivation of their account).
- 4.3 Platforms should set up processes so that non-employee on-demand workers may challenge decisions which affect their earnings or access to the platform, for example:
- when a worker is not paid for services performed
 - where a platform wishes to suspend or deactivate these workers from gaining work from the platform.
- 4.4 Platforms should not treat non-employee on-demand workers detrimentally if they choose to raise a concern via the dispute resolution process or challenge a decision made by the platform.
- 4.5 Platforms should keep confidential, matters raised in dispute resolution processes.
- 4.6 Platforms should permit non-employee on-demand workers to disclose information relating to their work contract or arrangements to obtain advice or support.
- 4.7 Platforms should acknowledge receipt of the notification of a dispute in writing (and if possible outline the steps to resolve a matter) within 7 days and deal with disputes in a reasonable time frame.
- 4.8 Platforms should notify non-employee on-demand workers of options to resolve disputes including Gig Worker Support Service contact details.

Standard 5

5 Non-employee on-demand worker representation, including the ability to seek better work arrangements

- 5.1 Platforms should not inhibit non-employee on-demand workers from freely associating to pursue improved terms and conditions relating to their work arrangements, where permitted by law.
- 5.2 Platforms should not inhibit non-employee on-demand workers from collectively discussing and advocating for changes or improvements to work arrangements, where such action is permitted by law.
- 5.3 Platforms should recognise and engage with non-employee on-demand workers and their representatives in good faith and collectively, where permitted by law.

Standard 6

6 Safety

Platforms must comply with their duties under the OHS Act.¹²

- 6.1 Platforms must, so far as is reasonably practicable, provide and maintain a working environment that is safe and without risks to health of non-employee on-demand workers, and others to the extent that the platform has control over those matters.¹³
- 6.2 Platforms must have policies in place to eliminate or minimise health and safety risks, so far as is reasonably practicable, including:
 - managing accidents and injuries
 - taking action to prevent gender-based violence.
- 6.3 Platforms should promote health and safety objectives and must provide information, instruction and training to their non-employee on-demand workers about health and safety policies and enable those workers to perform their work in a way that is safe and without risks to health, so far as is reasonably practicable.
- 6.4 Platforms must consult with non-employee on-demand workers and their representatives on safety matters over which the platform has control so far as is reasonably practicable.¹⁴

12 These Standards operate alongside the obligations in the *Occupational Health and Safety Act 2004 (Vic)* and do not exclude the application of any of the obligations contained in this Act.

13 This is a requirement under section 21 of the *Occupational Health and Safety Act 2004 (Vic)* and cannot be delegated. It should be noted that this type of obligation not only extends to employees, but to the employees of non-employee workers (independent contractors) (see section 21(3)). The duty to manage risks for people other than employees affected by the conduct of the undertaking is found in section 23 of the *Occupational Health and Safety Act 2004 (Vic)*

14 While these standards only apply to non-employee on-demand workers, it is a requirement under section 35 of the *Occupational Health and Safety Act 2004 (Vic)* that employers consult with employees, independent contractors and their employees. Section 35 of the *Occupational Health and Safety Act 2004 (Vic)* outlines which matters an employer must consult about.

- 6.5 Platforms should ensure that non-employee on-demand workers have access to insurance to compensate them for loss of income if they are unable to work due to a work-related injury. This may be through the statutory workers compensation scheme or through purchasing other insurance policies. Platforms should provide clear information about the coverage of these insurance policies.¹⁵
- 6.6 Platforms should have clear guidance for non-employee on-demand workers about how to apply for compensation if injured while working.

¹⁵ An employer has a duty under the *Workplace Injury and Rehabilitation Compensation Act 2013* (Vic) to determine if an independent contractor (non-employee worker) is deemed to be an employee by WorkSafe for WorkCover insurance purposes.

