

# REPORT INTO THE VICTORIAN ON-DEMAND WORKFORCE: OPPORTUNITIES FOR FLEXIBLE AND REWARDING WORK

February 2019

DIGNITY  
OF WORK



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 **Institute of  
Public Affairs**



# REPORT INTO THE VICTORIAN ON-DEMAND WORKFORCE: OPPORTUNITIES FOR FLEXIBLE AND REWARDING WORK

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## About the authors

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He was awarded a Public Service Medal in 2004 for outstanding service in the field of workplace relations, particularly his contribution to the Royal Commission into the Building and Construction Industry.



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# Introduction

1. The Institute of Public Affairs (IPA) is an independent policy think tank dedicated to preserving and strengthening the foundations of economic and political freedom.
2. The Inquiry's terms of reference are very broad ranging. However, the issue being examined according to the Foreword in the Inquiry's Background Paper involves "only a tiny proportion of those working in the labour market."
3. The Inquiry's terms of reference and background paper presume that on-demand work should attract more regulation. A strong imputation emerges that the Inquiry will find more regulation is justified. The themes of the background paper are that on-demand workers are open to exploitation, longing for the reassurance of a regular employment position and incapable of managing their own interests.
4. The IPA believes that such a finding and the associated themes are in error.
5. Almost all on-demand workers embrace this mode of work. It offers them opportunity, independence, a capacity to maximise the earning potential of their skills and avenues to balance work and private life obligations. For some, on-demand work in spare time supplements income earned from other work. For others, it is the path to opportunities in the international market place.
6. Prescriptive regulation of on-demand workers by the Victorian Government would be a retrograde step. It would risk suppressing creative work and business activity. This would have adverse consequences for the state's economy. Much on-demand work is highly mobile and can readily move to jurisdictions with non-intrusive regulation.

# On-Demand Workforce

7. Attempts to define or compartmentalise a form of work can lead to problematic outcomes. The nature and form of work constantly changes. New forms of work emerge for a variety of reasons, such as:
  - being created by technological innovation;
  - as a response to outdated or repressive regulation;
  - meeting a demand or preferences by customers;
  - obsolete products or services being withdrawn from production; or
  - making use of market, location or cluster advantages.
8. A delineation between employee and independent contractor sufficed for many years as a means of categorising economic activity by people offering their labour in return for remuneration. Labour hire later emerged as an adjunct to independent contracting. Most forms of on-demand work align more closely with independent contracting rather than employment. Accordingly, the principles to be referenced for any regulation of on-demand workers should be derived from contracting rather than employment. The IPA submits that on-demand workers be treated as being engaged in economic activity rather than as working for a wage. A light touch regulatory approach is highly recommended.
9. An associated feature of on-demand work is that it comes in many forms and covers numerous activities. Its reach spans highly skilled information technology workers through to labourers and cleaners. It seems though that the majority of participants are to be found amongst the more skilled disciplines. This is where most future growth is expected to come from.
10. Considerations like the engagement, work arrangements, parties involved, business relationships, performance assessment processes and remuneration practices vary markedly. The particular approach will be determined by the nature of the on-demand work, the platform used and the business relationship between the parties. It would seem impossible to design a regulatory scheme to effectively control such manifest variety.
11. It appears that we are at the early stages in the growth of on-demand work. Digital transformation, big data and artificial intelligence for example are influences whose impact on work is relatively recent. Such influences and discoveries yet to be made will likely increase the flexibility and further alter the nature of work. Extreme care must be applied to ensure the opportunities for future growth are not thwarted by excessive regulation now.

12. It is reasonable to expect that on-demand work will grow in the future. Other countries are experiencing such growth. One in three working Americans is an independent worker<sup>1</sup>. Other developments support the trend such as the expansion of co-working spaces and tapered work models for older workers as the population ages.
13. It is important that those responsible for making decisions about the regulation of on-demand work are mindful of what is called Amara's Law. The adage states that people have a tendency to overstate the short term impacts of technological change while underestimating its long term effects. A decision in the near future to regulate on demand work would be premature and damaging to this form of work reaching its full potential.
14. The forces and issues shaping on-demand work mean that attempts to settle an agreed precise definition are largely futile and a waste of time.

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<sup>1</sup> Tomorrow's Digitally Enabled Workforce: Megatrends and scenarios for jobs and employment in Australia over the coming twenty years, CSIRO Brisbane.



# Impact of on-demand work

15. A disturbing notion in the background paper is encapsulated by a statement that on-demand work “does not encourage negotiations, collective bargaining or representation by unions or other advisers.”
16. Most on-demand workers choose and embrace this form of economic engagement. It is not surprising that they, like most Australian workers, shun representation by unions. The latest data shows that only 9% of workers in the private sector have elected to join a trade union<sup>2</sup>.
17. The commentary by trade union leaders about on-demand work is often directed at promoting the notion of “insecure work.” This simplistic slogan is a shallow and erroneous representation of the facts. It creates a false perception that the only avenue to guarantee a fair and beneficial work arrangement is through the traditional employer – employee model. Further, union leaders infer that only unions are capable of meaningfully representing the interests of workers.
18. Most on demand workers are more than capable of managing their own affairs. They can engage with other parties and structure work and remuneration to suit their preferences. They are not obliged to accept any arrangement proposed to them that is unsuitable. No evidence exists of a call for collective representation from the sector.
19. A CSIRO study has found that 88% of freelancers would continue freelancing even if offered a full-time position<sup>3</sup>.
20. It would be a serious retrograde step to introduce trade unions and traditional workplace relations regulation into the on-demand workforce. It would stifle a sector that is innovative, creative and disruptive. Union leaders, focussed on strategies to arrest declining membership, would stifle innovation and flexibility and endanger the on-demand sector.
21. Every labour force arrangement will contain some rapacious and unethical operators who seek to exploit the vulnerable. This has always occurred in the past and will continue into the future. A targeted effort to limit such practices achieves the best results. Prescriptive and oppressive regulation that stifles initiative leads to a growth in black market activity. This is the experience of many heavily regulated European labour markets.
22. The background paper in commenting on young workers observes that “Research suggests entry level job opportunities are increasingly casual, temporary and part-time.” It adds that young workers are at “high risk of exploitation while at work.”

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2 ABS Characteristics of Employment, Australia, August 2016 – 6333.0

3 Tomorrow’s Digitally Enabled Workforce: Megatrends and scenarios for jobs and employment in Australia over the coming twenty years, CSIRO Brisbane.

23. It is extremely problematic to link these features of young peoples' work experience to on-demand work. The fact that fewer job opportunities are for full time or regular work reflects the cost of employing entry level workers in our over-regulated labour market. The extent of non-wage conditions and penalties for irregular hours are largely to blame for the focus on casual, temporary and part-time engagement. Entry level work has historically been more precarious and it will continue to be so in the future. Also, the higher proportion of young workers complaining of exploitation has been a feature of the labour market over many years. It will continue to be so and is a disparity in statistics that will never be eradicated.
24. It is to be expected that some young workers will embrace the on-demand sector. This is encouraging as it suggests that they are confident in their skills and ability to do so. Most will have the drive to succeed in this sector. It is patronising in the extreme to suggest that they are not capable of understanding their legal rights.
25. A move to regulate on-demand work has the potential for serious adverse consequences for young entry level workers. A study in 2017 by McKinsey Global Institute found that the accommodation and food services sector was the most readily automatable sector in the USA economy. It concluded that 73% of activities performed by workers in that sector had the potential to be automated.<sup>4</sup> Clearly excessive regulation has the potential to hasten labour substitution by automation in such entry level industries.
26. A fundamental attribute of a successful market economy is choice for consumers. Competition amongst businesses generates innovation and a strong focus on service quality.
27. It is natural that not every business or service will satisfy consumers' expectations. Recourse for faulty or deceptive conduct is available. Although, it should be said that regulators in many parts of the economy have a patchy record in achieving redress for consumers.
28. On-demand businesses and their workers are likely to have a similar record to other parts of the economy in satisfying consumers. It is difficult to fathom why they should be subject to any special or additional regulation in this area.
29. It is a common business complaint that over regulation is a serious anti-competitive constraint for Australian firms. Growth and innovation are being held back by over regulation. Additional regulation would only add to these problems. Additional regulation would not be in the interests of businesses, on-demand workers or consumers.

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4 McKinsey Global Institute, 2017, A future that works: Automation, employment and productivity.

## Regulatory Landscape

30. It is legitimate to question what Victoria can do in this space. It is a single state within a federation. Business and labour regulation is predominately federal in nature. It would be inadvisable for Victoria to strike out on its own. The Victorian labour force is about 3.4 million persons<sup>5</sup>. The number of on-demand workers in Victoria, reflecting the estimates in the discussion paper, could range from 21,000 to 50,000 people. The estimates may be on the low side of actual numbers. At the same time, while the numbers are small it is a precarious segment of the labour force given the capacity to move jurisdictions if opportunity is constrained by oppressive regulation.

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<sup>5</sup> ABS Labour Force, Australia - 6202.0

## Conclusion in Summary

31. Most on-demand workers choose and embrace this form of work. They are not anxious about their prospects. They do not yearn to change to a traditional employment relationship. They value the independence, earning capacity, flexibility and opportunity that on-demand work offers.
32. The regulation of on-demand work should be minimal and aligned with the regulation of independent contractors. A regulatory response that was burdensome and oppressive would reduce on-demand work participation. It would also limit innovation and investment in the state's economy. Such adverse effects would be amplified if Victoria chose to impose regulations that were excessive when compared to other jurisdictions.
33. Trade union activity amongst the on-demand workforce, in keeping with modern work practices, is minimal. Any regulatory initiatives to facilitate trade union engagement would be most detrimental to the growth and independence of the on-demand workforce.



