

To: Inquiry Chair

Subject: AIHS feedback to recommendations from the 'Inquiry into the Victorian On-Demand Workforce'

Dear Chair,

The Australian Institute of Health and Safety (AIHS) acknowledge the substantial contributions to the evidence base instigated by the above inquiry, and welcome the opportunity to provide a response to the proposed recommendations. With a 70-year history the AIHS is the national association for the health and safety profession. Previously known as the Safety Institute of Australia, our vision is safe and healthy people in productive workplaces and communities. Our mission is to proactively shape and improve workplace health and safety now and in generations to come. One of the ways we pursue our mission is by providing a collective voice for the profession.

With more than 4,000 members, we represent the broader community of some 30,000 people practicing health and safety in workplaces across Australia. We have branches in each state and territory; this submission has been led by our Victorian branch.

We have provided responses to the recommendations as proposed by the inquiry. These responses include suggested improvements on these recommendations.

We thank the inquiry for the opportunity to respond to these recommendations.

On behalf of the AIHS:

David Clarke  
CEO

Andrew Heinrichs  
Chair of AIHS Victorian Branch Committee

## Our responses to the recommendations

### Recommendation 1

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

**Our response:** we endorse and support this recommendation. This is a national issue that requires national leadership.

### Recommendation 2

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

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

**Our response:** we endorse and support this recommendation.

### Recommendation 3

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

**Our response:** The traditional tripartite model of workplace consultation on occupational health and safety (OHS) matters between 1) workers, 2) employers and 3) government has served Australia well. But the economy is changing. As the inquiry has identified, technological, demographic, social and risk trends are impacting the very nature of work. The OHS profession stands ready to facilitate dialogue and enable meaningful consultation between workers, managers and regulators through a quadripartite model. The OHS profession brings an independent, evidence-based perspective and expertise to managing workplace risks.

### Recommendation 4

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

**Our response:** We note that recent years has seen proportionally greater costs of workplace injuries and harm being shared by workers and communities, as opposed to governments and businesses. In Safe Work Australia research examining 2012-13 figures, employers bore approximately 5% of these costs, with workers bearing 77% and the community 18% (<https://www.safeworkaustralia.gov.au/statistics-and-research/statistics/cost-injury-and->

illness/cost-injury-and-illness-statistics). In insecure working environments like those the inquiry has heard, these costs are more likely to be borne by individuals and the community.

Whilst it is important to continue to encourage innovation, indeed vital given the job creation opportunities this innovation brings, we urge the inquiry to understand where existing cost burdens lie.

Our view is that it is not just costs and regulation that stifles innovation; rather it is the uncertainty and complexity related to those costs and regulation. Businesses require certainty and simplicity to meet their duties. A re-designed cost framework requires equity, transparency and permanence.

### **Recommendation 5**

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

**Our response:** we encourage any survey framework to explicitly include occupational health and safety matters, such as injuries or harm experienced by workers aligned with platforms. We also encourage this survey to have a direct-to-worker component, in order to ensure data integrity and quality. As an example, we note that universities run annual outcome-focused surveys on graduate completion metrics. This may be a model worth investigating.

### **Recommendation 6**

**Clarify and codify the status of workers in legislation and align definitions across the statute books**

**Our response:** we endorse and support this recommendation.

### **Recommendation 7**

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

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

**Our response:** we endorse and support this recommendation. We support the concept of further harmonisation between states and territories.

### **Recommendation 8**

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

**Our response:** We endorse and support this recommendation. We encourage the inquiry to ensure there is OHS capabilities embedded within any dedicated advice and support service. Ensuring those providing OHS advice have appropriate qualifications and certification would be a sound starting position.

### **Recommendation 9**

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

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

**Our response:** We endorse and support this recommendation. We encourage the inquiry to ensure there is OHS capabilities embedded within any dedicated advice and support service.

### **Recommendation 13**

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

**Our response:** we urge the inquiry to include the OHS profession as subject matter experts in the design of these agreements. In particular, platforms and their workers performing high risk works or other vulnerable roles such as deliveries would benefit from professional OHS input into matters like the standardisation and sharing of higher level controls and practices. We know that community expectations around worker safety are increasing, and we believe that those platforms who are transparent on these matters stand to benefit from lower rates of harm and a positive community reputation.

### **Recommendation 14**

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

**Our response:** we urge the inquiry to include OHS in these Fair Conduct and Accountability Standards, and to engage with the OHS profession as subject matter experts in developing these standards.

### **Recommendation 15**

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

**Our response:** we endorse and support this recommendation. We note that the ability of workers to form designated work groups (DWGs) and appoint health and safety representative (HSRs) under existing OHS laws ensures the ability of work groups to engage in meaningful consultation about OHS conditions and matters. We encourage those amending competition laws to consider the benefits of collective bargaining in this context.

### **Recommendation 16**

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

**Our response:** we endorse and support this recommendation.

### **Recommendation 19**

**The Inquiry recommends strengthening provisions to counter sham contracting to:**

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

**Our response:** we endorse and support this recommendation.

### **Recommendation 20**

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

**Our response:** we endorse and support this recommendation.

### **Other observations**

#### **Risk management principles**

There are many ways in which employers can manage the health and safety risks to their workforce. The OHS Act calls for consideration of the hierarchy of controls. We note that the inquiry was tasked with examining the broader industrial settings of the gig economy, little

attention was given to platform entities implementing higher level controls to protect workers and the public.

### Security

As an example of this principle, cameras do not guarantee safe outcomes. Close circuit television (CCTV) does not always reduce rates of crime. Causal factors and enabling conditions giving rise to people incidents (e.g. occupational violence and aggression) are complex and multi-faceted. We note that the Commercial Passenger Vehicle Association of Australia (CPVAA) asserted that 'An authentic video recording is the only way to ensure that both drivers and passengers are protected, by providing the necessary and irrefutable evidence to support and pursue convictions' (s820). This is inherently contradictory. Cameras cannot simultaneously protect parties and provide evidence of incidents. We encourage platforms to adopt a risk- and evidence-based approach to design risk controls beyond cameras, towards more contemporary measures such as cultural improvement programs including respectful behaviours.

### Fatigue

We note there was discussion in the report on alcohol consumption. We note that fatigue can have an equal or greater influence on cognitive fitness and subsequent OHS outcomes. Fatigue is ultimately linked to rates of pay. Workers will work in order to attain their desired income. Where this income does not meet basic necessities such as housing, utilities, food, and other essentials, they will work more hours.

### Road safety

In terms of road safety, we also note that the inquiry heard that road safety is an issue for many businesses and the broader community. Transport and food make up the highest proportion of gig economy workers (s220). This segment therefore represents a significant proportion of the gig economy risk. We note the inquiry does not call for investment in safer road infrastructure or related recommendations. This may be considered beyond the scope of the inquiry, but represents a missed opportunity, particularly relating to bicycle and pedestrian safety.

### Workers compensation system design

The gig economy is a unique work space. We call for either an amendment to the existing Workplace Injury Rehabilitation and Compensation Act 2013 to contemplate both gig workers and sole traders. We know that sole traders make up a significant proportion of the economy, and subsequently the risk profile and rates of harm. Designing a fit-for-purpose compensation system for this sector would represent world-leading practice in OHS regulation and support.

### Cultural matters

Whilst direct causation in OHS incidents is rare, we know that there is a link between positive organisational culture and OHS outcomes. Platform arrangements remove any basis of a coherent culture, despite some platform workers wearing company livery.

### Embedded supports

We have seen how some industries with highly transient workgroups have successfully implemented industry-wide safety nets. For example, the construction industry has transferrable entitlements such as leave across employers. We urge the inquiry to consider learning from these successful examples.

### The role of the regulator

We noted that the inquiry report did not feature the role of WorkSafe Victoria's advisory and inspectorate arm, which is the preventative division of their organisation. WorkSafe Victoria's contributions largely related to matters involving the compensation scheme, which obviously is only relevant after workers are injured.

We urge the inquiry to consider the regulator's role, in terms of preventative and advisory workplace inspections. Can inspectors attend typical platform workplaces? Further, should the advisory services described in recommendations 8 and 9 be housed within WorkSafe Victoria's existing advisory service for small to medium-sized employers.

### Coronavirus (COVID-19)

Whilst the terms of this inquiry were struck prior to the COVID-19 pandemic, we note that it is likely the gig economy will significantly expand. This will be driven by 1) an increase in people working from home, and 2) unemployment and under-employment. We urge the inquiry to consider adding an addendum which considers these factors. The legal, regulatory and baseline participatory settings examined may not have changed, but the drivers and inputs have.

### Other matters

We agree with the assertions of Dr David Peez, the international and domestic evidence-base indicates that those working in contractor or other less secure settings are more likely to experience greater rates of harm in their work (s830).

We agree with the suggestion that Victorian government consider harmonisation with the national Model Work Health and Safety laws (s831).

We agree with the premise that 'active engagement' of contractors yields positive OHS outcomes (s832).