



VOLUNTARY

FAIR CONDUCT

**AND
ACCOUNTABILITY**

STANDARDS

**Guidelines for Platform
Businesses**

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Industrial Relations Victoria

Department of Premier and Cabinet

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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.

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MESSAGE FROM

The Minister for Industrial Relations

On-demand platforms and on-demand workers (gig workers) have become an indispensable part of everyday life for so many Victorians. We ask gig 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 gig workers might ask that they be paid fairly or that they should have minimum standards of work. However, to date gig workers have been afforded few benefits or protections as a result of being characterised as non-employee workers (technically, engaged as independent contractors).

The Victorian Government released these voluntary Fair Conduct and Accountability Standards in October 2022, with the aim to improve the position of non-employee gig 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. In addition, guidelines have been developed to assist on-demand platform businesses to understand and apply the Standards.

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 gig workers in Victoria. This initiative is directed at supporting the many gig 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 gig workers and greater operational transparency by platforms.

I would like to thank those workers, trade unions, peak union and employer bodies, businesses (platform and non-platform), community groups, academics and others who shared their views about the Standards in consultation with my former Parliamentary Secretary, Nick Staikos MP and the Department. 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.

Tim Pallas MP

Minister for Industrial Relations

INTRODUCTION

Guidelines to Support On-Demand Platforms to apply the Voluntary Fair Conduct and Accountability Standards

These guidelines support on-demand platforms (platforms) to apply the Standards. The guidelines will help platform businesses to understand what kinds of arrangements and conditions may assist them to meet the objectives of the Standards.

The guidelines will assist platforms to comply with the Standards by recommending certain information is provided to workers and certain types of arrangements are made. They draw upon material obtained during the Inquiry and provide, at a level of detail, information about how platforms can deal with some of the issues the Standards are intended to address.

The guidelines contain information about how to address circumstances in which gig workers:

- are not certain whether they may be penalised for certain behaviours
- may be disadvantaged by the function of algorithms and processes adopted by platforms
- may be suspended or removed from platforms without adequate right of reply or compensation
- have difficulty raising issues with platforms and are not aware that they may seek representation or support to resolve a dispute
- are not aware of the costs associated with platform work or whether they are entitled to certain benefits, such as superannuation or worker's compensation.

The guidelines also refer to certain workplace laws that may apply to gig work in relation to:

- the kinds of terms that may be considered unfair contract terms
- relevant benchmarks for rates of pay
- compliance with Health and Safety duties, including duties to consult and to do what is reasonably practicable to eliminate risks to health and safety.

Introduction

Voluntary Fair Conduct and Accountability Standards

The Standards seek to encourage platforms to further improve their practices to ensure work arrangements are fair and transparent. They will assist participating platforms to provide fairer and safer conditions for gig 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 intended, 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
- safety.¹

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 have applied on a voluntary basis since May 2023. These Guidelines, to support platforms to apply the Standards, were published and commenced operating in January 2024.

¹ Employers have obligations under Victoria's *Occupational Health and Safety Act 2004* (OHS Act) 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 the OHS 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 the OHS Act in matters that the platform has control over.

Introduction

Scope of the Standards

The Standards apply to platforms that operate in Victoria and/or engage workers in Victoria through the platform as independent contractors (who we describe as non-employee gig workers).²

A platform is a digital platform (website or app) that 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 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 them. The vertical platform usually sets fees payable for tasks and standards according to 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.

This document is designed so that any available guidelines on a particular Standard immediately follows that Standard.

² The term non-employee gig 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".

Introduction

Where to get help

Victorian Small Business Commission

The Victorian Small Business Commission's (VSBC) dispute resolution processes are available to assist non-employee gig workers. 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 providing guidance to small businesses (non-employee gig 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), where both parties to a dispute consent to arbitration. 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 access the services of a relevant low-cost independent dispute resolution body, such as VSBC, if the worker disagrees with the outcome of any dispute or disciplinary process.

Introduction

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.³ The *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.⁴

Both frameworks provide obligations and protections to employees, and both, in different ways, extend certain entitlements and obligations to non-employee gig workers.⁵ These Standards and Guidelines operate alongside the obligations in the OHS Act and do not exclude the application of any of them.

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 safety.⁶ Self-employed persons also have duties under the OHS Act.⁷

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.⁸

Depending on the circumstances, non-employee gig workers may be able to access workers compensation entitlements under the WIRC Act.⁹

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 to 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>

³ *Occupational Health and Safety Act 2004* (Vic), s 2(1)(a) and (b).

⁴ See *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 10.

⁵ *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.

⁶ *Occupational Health and Safety Act 2004* (Vic), s 21(3)(b).

⁷ See for example *Occupational Health and Safety Act 2004* (Vic), s 24.

⁸ 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).

⁹ Schedule 1, Cl 9 of the Act provides information about the test that is used to determine if a worker can be deemed an employee.

STANDARD 1

Consultation about work status and arrangements

- 1.1 Platforms and their representatives should consult and negotiate with non-employee gig workers and their representatives on work-related matters, including major changes to work arrangements, work status or contractual terms.

Guidance Note

Major change may include changes that impact where and when a gig worker can work and on gig workers' capacity to earn, for example, changes that:

- impact the amount of time a gig worker can be logged onto an app and receive offers for work, including placing a maximum cap on the number of hours worked per day or on the number of hours worked consecutively
- impact the commissions payable by the platform to gig workers
- alter the standards for equipment, such as the maximum age of vehicles, vehicle types or equipment for transporting goods
- alter the way amounts payable to workers are calculated
- impact the use of ratings and/or how performance is managed.

Horizontal platforms should meet this consultation and negotiation obligation when they make changes to the terms in agreements between the platform and the gig worker. In this case, platforms should ensure workers are notified of the changes and have an opportunity to review and comment on the new model terms.

Platforms may meet the Standard for consultation and negotiation by providing gig workers with reasonable time to consider contractual terms and proposed changes. Platforms should then demonstrate genuine consideration of feedback and proposals from workers regarding contractual terms and/or proposed changes.

Consultation and negotiation may take place on a one-to-one basis or with workers collectively.



Standard 1. Consultation about work status and arrangements

- 1.2 Platforms should provide consultation processes, forums or committees to allow for discussions with non-employee gig workers and their representatives on work-related matters.
- 1.3 Platforms should not penalise non-employee gig workers for raising concerns regarding work-related matters.

Guidance Note

This Standard is directed at improving platform transparency, consultation with gig workers and their representatives, and worker participation in decision-making that impacts their work arrangements.

This could be achieved by enabling workers to be represented in consultation processes and other processes established in accordance with these standards.

- platforms could use a variety of technologies to supplement consultative mechanisms, including, for example, surveys, polls or question and answer chat rooms
- processes that enable workers and their representatives to discuss work-related matters with the platform would satisfy this standard
- workers should not be treated detrimentally by a platform for their participation in consultation and negotiation. Detrimental treatment may include, but is not limited to, subjecting the gig workers to threatening or discriminatory treatment, or treatment that prevents or restricts the worker from working with the platform.

STANDARD 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 gig workers. Platforms should also ensure that the terms and conditions are consistent with the nature of the actual engagement.

Guidance Note

This Standard is directed at transparent conditions for workers in light of parties' relative bargaining positions.

Terms and conditions should be in plain English.

As best practice, platforms could have contracts translated into the most common languages spoken by their gig workers.

The matters that platforms should make clear to gig workers include:

- whether platforms are required to make superannuation contributions on behalf of the worker, under laws that deem the worker eligible to receive contributions or otherwise
- whether a gig worker may be entitled to benefits under a state-based workers' compensation scheme
- whether the platform has a pre-agreed dispute resolution clause as part of the contract that includes workers taking a dispute to a low-cost independent dispute resolution body, such as the Victorian Small Business Commission, if it cannot be resolved at the workplace
- matters such as expenses involved in performing work for the platform that may impact the earnings of a platform worker
- whether platform workers are entitled to be represented in consultations regarding performance or disputes with the platform.

- 2.2 Platforms should establish a process with non-employee gig 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 gig workers?
 - is liability for damage arising in the course of the performance of work for platforms treated or distributed fairly?

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

Guidance Note

Examples of the kinds of contract terms that may be considered unfair (noting that the fairness of the terms may depend on how they are being applied) include a term that:

- permits the platform but not the worker to terminate the contract
- penalises the worker but not the platform for terminating or breaching the contract
- permits the platform but not the worker to make changes to the contract or key policies affecting the terms and conditions
- permits the platform but not the worker to avoid performing the contract
- limits the right of the worker to sue the platform
- provides the worker performing services remuneration that is less than would be provided to an employee performing similar services
- allows the platform but not the worker to vary the amount to be paid for services performed under the contract.

- 2.3 After consulting with non-employee gig 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 gig 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 gig workers a process for responding to an allegation or finding that a worker has breached terms and conditions of their contract.

Guidance Note

Any process should be consistent with the requirement for procedural fairness set out in Standard 4.

STANDARD 3

Fair Conditions and Pay

- 3.1 To assist non-employee gig workers to make an informed decision about whether to accept work, platforms should provide them with key information in writing about:
- what they will earn should they complete a job, and how earnings are calculated
 - typical costs associated with the performance of work
 - their conditions of work
 - 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.

Guidance Note

This Standard aims to ensure that gig workers are aware of the applicable minimum benchmarks including those for employees doing similar work. Examples of applicable benchmarks include:

- relevant award minimums
- the national minimum wage
- the hourly rates provided by rates and cost schedules made in accordance with the *Owner Drivers and Forestry Contractors Act 2005 (Vic)*, if the worker is engaged in the transport industry.

For benchmarking, platform businesses should, if possible, provide information about average earnings per hour and per week or per month (with information about the time involved in obtaining such earnings).

- 3.3 Platforms that apply penalties (including where non-employee gig 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.

Standard 3. Fair Conditions and Pay

Guidance Note

Platforms should provide clear information to workers if consequences are attached to worker choices or decisions, so that workers are aware of the consequences. Such choices or decisions may include:

- rejecting offers of work
- taking periods of “leave” from the platform
- choosing to work, or not work, at certain times or in certain locations
- choosing to work for short, rather than long, periods or “shifts” or vice versa
- working fewer, rather than many, periods or “shifts” or vice versa.

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 gig workers.

Guidance Note

Measures to ensure that practices operate in a non-discriminatory way could include moderating feedback posted about work performance that irrelevantly or in a discriminatory way links to gender or reviewing earnings to account for linkages to systemic differences between the average rating for males and that for females.

When reporting publicly on the gender earnings gap platforms are encouraged to report on the gender distribution of earnings, including across differing average earnings based on sector differences or based on average hours worked per month or other reasonable period.

Standard 3. Fair Conditions and Pay

- 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.

Guidance Note

Under the OHS Act and the *Equal Opportunity Act 2010*, Victorian businesses have a positive duty to eliminate discrimination, so far as reasonably practicable.

Sexual harassment can also be a cause of workplace physical or mental injury, which employers have a duty to eliminate, so far as is reasonably practicable, under the *OHS Act and the Equal Opportunity Act 2020*.

Gig workers may experience discrimination, sexual harassment or victimisation in a number of circumstances, for example, harassment and/or assault of rideshare drivers by passengers. A gig worker's online profile may also expose them to discrimination or harassment, if it makes available to others significant amounts of personal information (including a photograph).

Some measures to eliminate discrimination, sexual harassment and victimisation may include modifying platform practices or requirements to protect the identity of a gig worker if appropriate, providing training and information to gig workers, as well as a complaints process that is consistent with Standard 4.

Platforms should actively promote awareness among their gig workers of the policies and procedures in place to prevent discrimination.



STANDARD 4

Fair and Transparent Independent Dispute Resolution

- 4.1 Platforms should provide non-employee gig 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.

Guidance Note

Best practice implementation of this Standard may involve a platform designing this procedure or mechanism with input from gig workers and their representatives. It may also include providing gig workers with a means to speak with a person or representative or advocate about a complaint or dispute, should that be needed.

- 4.2 Platforms should afford non-employee gig workers procedural fairness and the opportunity to respond to complaints made about them before action is taken to restrict their access to work on the platform (including for example by suspension or deactivation of their account).

Guidance Note

Types of decisions that a platform may make that affect a gig worker's earnings or access to the platform include:

- suspending or deactivating a gig worker from gaining work on the platform
- applying a fee or deduction from earnings.

The Victorian Small Business Commission may be able to assist in resolving disputes between workers and platforms. Platforms are expected to participate in these processes to assist in resolving disputes.

Standard 4. Fair and Transparent Independent Dispute Resolution

- 4.3 Platforms should set up processes so that non-employee gig 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.

Guidance Note

If requested by a gig worker or their representative, platforms should provide reasons for the decision to restrict a worker's access to work on the platform before that action is taken and allow time for the gig worker to respond. Platforms should consider the response and whether their original decision should be amended, in accordance with this Standard.

Workers should be able to access a dispute resolution process that enables them to take a dispute to a low-cost independent dispute resolution body, such as the Victorian Small Business Commission, if a dispute cannot be resolved at the workplace.

This Standard is not intended to inhibit a platform business from taking necessary action in the case of serious misconduct.

- 4.4 Platforms should not treat non-employee gig workers detrimentally if they choose to raise a concern via the dispute resolution process or challenge a decision made by the platform.

Guidance Note

This Standard is intended to prevent a range of detrimental treatment by a platform against a gig worker. For example, this could include failing to compensate a gig worker for loss of income in circumstances where the worker was suspended from the platform, but the allegation made against the worker was capricious or not substantiated, or the matter was not dealt with in a timely fashion with the worker incurring substantial loss of income. It could also include inhibiting access to dispute resolution processes.

Standard 4. Fair and Transparent Independent Dispute Resolution

4.5 Platforms should keep confidential, matters raised in dispute resolution processes.

Guidance Note

In addition to maintaining confidentiality of matters raised in a dispute resolution process, platforms should also consider any privacy obligations in relation to the parties involved, including witnesses, which could include other gig workers.

4.6 Platforms should permit non-employee gig 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.

Guidance Note

Platforms should aim to at least provide a response to a dispute raised by a gig worker within 7 days, including outlining the next steps and timeline for resolving the dispute. Disputes can be of varying complexity, and this standard recognises that while not all disputes may be able to be resolved within the same timeframe they should otherwise be resolved in a timely manner.

Standard 4. Fair and Transparent Independent Dispute Resolution

- 4.8 Platforms should notify non-employee gig workers of options to resolve disputes including support service contact details.

Guidance Note

Workers may take a dispute to a low-cost independent dispute resolution body, such as the Victorian Small Business Commission, if a dispute with their platform cannot be resolved at the workplace.

The Victorian Small Business Commission may be able to assist in resolving disputes between workers and platforms. Platforms are expected to participate in these processes to assist in resolving disputes.



STANDARD 5

Non-employee gig worker representation, including the ability to seek better work arrangements

- 5.1 Platforms should not inhibit non-employee gig 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 gig 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 gig workers and their representatives in good faith and collectively, where permitted by law.

Guidance Note

The Victorian Government supports industrial relations practices based on the following principles:

- work (or work-like) relationships should be based on consultation and cooperation between employers, their workforce and their unions or representatives
- respect for a person's choice to join or not join a union and be properly represented in the workplace
- supporting fair, cooperative and safe workplaces.

This Standard supports these principles and is directed at enabling workers to freely associate should they wish to do so as permitted by law and provided under the *Victorian Charter of Human Rights and Responsibilities Act 2006*.

This Standard also supports and is directed at giving effect to the following International Labour Organization (ILO) Conventions which Australia has ratified:

- the Freedom of Association and Protection of the Right to Organise Convention 1948 (C87) and
- the Right to Organise and Collective Bargaining Convention 1949 (C98).

These conventions are directed at enabling workers and employers to join organisations and freely associate.

Under the Freedom of Association and Protection of the Right to Organise Convention 1948 (C87), respect for the principles of freedom of association, including the right of both employers and workers to form and join organisations of their choice, is to apply to all workers, 'without distinction whatsoever', including non-employee gig workers.

Standard 5. Non-employee gig worker representation, including the ability to seek better work arrangements

The freedom of association principles in the convention are considered to be a fundamental human right.

Collective bargaining too, is considered one of the fundamental rights recognised by the ILO and under international law in the Right to Organise and Collective Bargaining Convention 1949 (C98). The Convention has been interpreted as providing for participants or parties to determine the level at which bargaining ought to take place and those matters that may be the subject of bargaining.

There may be benefits for platforms, such as achieving greater efficiency in meeting this and other Standards (especially Standard 1) by collectively discussing possible changes to work arrangements with workers.

Platform businesses are encouraged to recognise and value their workforce by consulting and cooperating with gig workers and their representatives, to work constructively and in good faith to reach agreement on fair conditions.

Representatives such as unions, employer organisations and/or community legal centres are some of the bodies that may represent gig workers.



STANDARD 6

Safety

Platforms must comply with their duties under the OHS Act.¹⁰

- 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 gig workers, and others to the extent that the platform has control over those matters.¹¹

Guidance Note

While compliance with the Standards is voluntary for platforms, all platforms must comply with their legal obligations under the OHS Act. Where certain requirements of the OHS Act do not legally apply to platforms, Standard 6 encourages platforms to voluntarily comply with these requirements regardless.

Section 20 (2) of the OHS Act contains information about how to determine what is reasonably practicable to ensure health and safety. The section provides that regard must be had to the following matters:

- a. the likelihood of the hazard or risk concerned eventuating
- b. the degree of harm that would result if the hazard or risk eventuated
- c. what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk
- d. the availability and suitability of ways to eliminate or reduce the hazard or risk
- e. the cost of eliminating or reducing the hazard or risk.

This Standard reiterates safety obligations on platforms towards its gig workers. Platforms should also develop internal processes to ensure that health and safety issues identified by workers are escalated to officers of appropriate seniority. Best practice might include establishment of a health and safety committee or similar body, comprising employer and gig worker representatives for this purpose.

The application of the Standard should include consideration of health and safety issues related to clients and end-users.

¹⁰ 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.

¹¹ This is a requirement under section 21 of the OHS Act 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 OHS Act. Section 26 of the OHS Act, which confers a duty on persons who manage or control workplaces, must ensure, so far as is reasonably practicable, that the workplace and means of entering and leaving it are safe and without risk to health and safety.

Standard 6. Safety

- 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.

Guidance Note

The types of policies that platforms could have in place might, for example, include a policy requiring or providing gig workers with the opportunity to de-brief or be provided counselling or other support, after experiencing certain types of work stresses, or a policy preventing clients who place workers at risk to their health and safety from accessing services via the platform. Platforms should also have policies that establish processes to investigate and respond to reported unsafe work practices and provide mechanisms for workers to decline unsafe work without penalty.

Best practice would include ensuring that representatives and workers are consulted in the development of safety policies, consistent with Standard 6.4.

Part 5 of the OHS Act requires that WorkSafe be immediately notified of certain incidents that expose a person to serious risk to their health or safety, or that result in death or serious injury.

- 6.3 Platforms should promote health and safety objectives and must provide information, instruction and training to their non-employee gig 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.

Guidance Note

Health and Safety training to enable workers to perform work in a manner that is safe and without risks to health and safety should be provided before commencement or as soon as practicable after commencement of that work. Each worker should also receive health and safety refresher training at regular intervals during their tenure with the platform.

Platform businesses should make available up to date health and safety information, instructions and policies (including in languages other than English) for gig workers to have access to at any time.

Standard 6. Safety

- 6.4 Platforms must consult with non-employee gig workers and their representatives on safety matters over which the platform has control so far as is reasonably practicable.¹²

Guidance Note

Best practice might involve the establishment of health and safety forums or committees, so that gig workers can notify the platform of health and safety concerns and are able to elect representatives to raise health and safety concerns on the worker's behalf.

These forums or committees should have the authority and ability to escalate the concerns to management and work with them to resolve the concerns. Platforms should not treat non-employee gig workers detrimentally if they raise a health and safety concern with the platform, WorkSafe, a union or other body.

- 6.5 Platforms should ensure that non-employee gig 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.¹³

Guidance Note

Platforms could provide accident or injury insurance to gig workers or recommend insurance products to gig workers.

Insurance should provide benefits of a Standard that can be compared favourably against the Standard of benefit provided by the statutory workers' compensation scheme.

Platforms should ensure that gig workers are aware of what benefits or support they are entitled to, who to contact for assistance and how to make an insurance claim, prior to an incident or accident occurring.

¹² While these standards only apply to non-employee gig workers, it is a requirement under section 35 of the OHS Act that employers consult with employees, independent contractors and their employees. Section 35 of the OHS Act outlines which matters an employer must consult about.

¹³ An employer has a duty under the *Workplace Injury and Rehabilitation Act 2013* to determine if an independent contractor (non-employee worker) is deemed to be an employee by WorkSafe for WorkCover insurance purposes.

Standard 6. Safety

- 6.6 Platforms should have clear guidance for non-employee gig workers about how to apply for compensation if injured while working.

Guidance Note

Further information about workers' compensation and health and safety obligations can be located at <https://www.worksafe.vic.gov.au/>



