

Fair Conduct and Accountability Standards for the Victorian On-Demand Workforce

Submission by Professionals Australia

February 2022



About Professionals Australia

Professionals Australia is a registered union under the Fair Work Act 2009 and represents over 20,000 professional employees across Australia including engineers, pharmacists, managers, IT professionals, scientists, architects and translators and interpreters.

Our members work in both the private and public sectors, across a diverse range of industries including infrastructure, transport, electricity, information technology, telecommunications, defence and shipbuilding, health science, environmental science, fertility science, community and hospital pharmacy.

We stand for fair, safe, and inclusive workplaces. We support and empower our members to thrive in all stages of their careers and believe that communities, business, industry, and the economy thrive best when professional employees are recognised, respected, and rewarded for their contribution.

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Foreword

Professionals Australia welcomes the Victorian Government's proposed *Fair Conduct and Accountability Standards for the Victorian On-Demand Workforce* (the Standards) to help address the substandard working arrangements and serious disadvantage experienced by the On-Demand workforce. This submission builds on our previous submission to *the Inquiry into the Victorian On-Demand Workforce*.¹

While On-Demand work is often assumed to be the domain of transport and logistics sectors, professional services such as translating and interpreting are increasingly being delivered through these platforms. We have noticed a troubling increase in the use of On-Demand platforms in the delivery of translating and interpreting services during the COVID-19 pandemic and are concerned that more professional services will be delivered in this way in the future.

Translating and interpreting is a profession that is already characterised by precarious work, low levels of remuneration and poor working conditions. The use of On-Demand platforms for the delivery of translation and interpreting services creates even greater insecurity for translators and interpreters and undermines their remuneration and working conditions even further.

Professionals Australia supports rigorous fair conduct and accountability standards being established for On-Demand work. While setting these Standards is clearly a step in the right direction, we believe the proposed Standards need to be strengthened in key areas and must be enforceable, as part of a strong regulatory framework to protect those in the On-Demand workforce.

We believe that translators and interpreters must be engaged directly as employees. As the largest consumer of translating and interpreting services, Governments have an obligation to ensure that the language services they procure are not profiting from the insecure work, low pay and poor working conditions of translators and interpreters.

Through its procurement policies and contracts, the Victorian Government must ensure that language service providers in Victoria engage translators and interpreters as employees and provide better pay and conditions to these highly skilled and committed workers, who connect multicultural communities to critical health, legal, education and community services.

As an affiliate of the Victorian Trades Hall Council (VTHC), Professionals Australia notes and endorses the wide-ranging recommendations contained in VTHC submission as part of the consultation on the Standards. Our submission is intended to complement the recommendations of the VTHC.

We thank the Victorian Government for the opportunity to participate in the consultation process for the Standards and trust that the Standards will be further strengthened and enforced as we have proposed, to improve protections for On-Demand workers.

Jill McCabe
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¹ [Submission by Professionals Australia, Inquiry into the Victorian On-Demand Workforce \(2019\)](#).

Background

Translators and Interpreters and On-Demand Work

Professionals Australia represents the industrial and professional interests of Translators and Interpreters (TIs) who are highly skilled professionals, playing a critical role in supporting culturally and linguistically diverse (CALD) communities across the country. The services of TIs are predominantly purchased by governments and their agencies to ensure that multicultural communities receive vital information and support in health, education, legal, community and other settings.

Government is the largest consumer of translating and interpreting services, especially in public health and justice settings. Across the Victorian Government, these services are delivered by private sector Language Services Providers (LSPs). At the Federal Government level, Home Affairs and Services Australia also engage provider services under independent contractor arrangements.

The sector is characterised by insecure work, independent contracting arrangements, low pay, and an absence of basic entitlements. Most interpreters work for multiple LSPs as either casual employees or contractors. In both instances, the work is precarious, undervalued and not adequately remunerated.

Interpreters more so than translators are currently subjected to these precarious working arrangements. While translators are more likely to receive direct requests for their services, it is highly likely that On-Demand platforms will increasingly be used for the posting of and bidding for translation services.

While the proposed Standards appear to be largely targeted at the transport and logistics sectors, there has been greater use of On-Demand platforms for professional services such as interpreting services even though this model is highly inappropriate for these professional services.

A race to remote service delivery

Although interpreting services have largely been delivered on-site in a face-to-face environment, in recent years they have increasingly been performed remotely via telephone or video. While LSPs have often featured an 'on-demand' or 'on-call' element, the emergence of digital technologies and platforms has further enabled providers to compete aggressively for work. This development has fuelled a race to the bottom in terms of fees paid to interpreters, the quality of serviced and risk to end users - CALD communities and frontline health, justice, and public service providers.

While telephone interpreting has existed in a limited form in the past, its use has grown in recent years due to the take up of TI services by private sector consumers, such as utility companies. This has led to an increase in telephone interpreting in the public sector as well.

In 2017-18, as a result of Professionals Australia's advocacy to the Victorian Government, minimum rates of pay for public sector interpreting were increased and an agenda for further reforms was proposed. This included the anticipated development for 'protocols for remote interpreting', where stakeholders would participate as a quality committee in determining settings appropriate for remote interpreting.



The work of interpreters is typically arranged as either pre-booked appointments or on-demand. Processes vary among LSPs, with dominant providers arranging work as either:

- *Booked appointments:* these are sent to interpreters who may accept or decline the offer. Appointments may be on-site, via video conferencing or telephone.

Public sector and community service providers have traditionally been booked in advance with an appointment. However, Professionals Australia members consistently report that clinical appointments are becoming increasingly on-demand despite patient appointments being made well in advance.

- *Automated telephone systems:* these require the worker to be ‘logged in’ in order to receive work. The business model is structured around Interpreters being available and on standby without pay. Some LSPs prohibit or restrict workers from taking work from other LSPs while logged into their system.
- *New platforms:* Since 2020 there has been a rapid rise in new platforms that promote and cater to increasing on-demand services.

Since 2020, LSPs have adopted or developed platforms for remote interpreting. A significant player in the market is Boostlingo, which LSPs can customise for their business. A key issue arising from the deployment of such platforms has been the decrease of customary minimum engagement terms, particularly in remote video work and undermining terms stipulated by the Victorian Government in their initial roll-out of industry reforms. The already inappropriate minimum 1-hour engagement has typically been reduced to a 30-minute engagement at significantly less remuneration than recommended by the Victorian Government’s own standards.

The COVID-19 pandemic has fast-tracked the rollout of remote interpreting and a by-product of this has been lower minimum engagements, which undermine the minimum rates set by the Victorian Government in 2018.

Anecdotal reports also indicate significant reluctance by clinicians to engage interpreters in this way thus denying their patients and themselves proper communication in clinical settings. This is not only contrary to public policy but poses significant risk to clinical care.

General comments

On-Demand and gig economy workers, and non-employees in particular, work in unregulated and precarious environments. These situations extend to professional services such as TI professionals. The general direction proposed by the Standards is therefore welcomed and supported by Professionals Australia.

However, we believe the Standards should be further strengthened. The Standards should be compulsory obligations enshrined in legislation, backed by an independent regulator and independent dispute resolution process that can enforce and/or arbitrate disputes regarding the Standards. Any process created to challenge decisions of platforms must be independent, accessible, efficient, provide rights of union representation and operate as a no-cost jurisdiction. Such processes must also provide binding decisions on the parties.

The role of unions and collective representation of On-Demand workers must be consistently reinforced throughout the Standards and the Standards should provide an express right for unions to represent workers.

Can the community rely on On-Demand professional services?

A bigger question raised by the proliferation of the gig economy relates to the appropriateness of services being provided by On-Demand platforms. Professionals Australia believes that professional language services purchased by governments and delivered to government agencies and the community are best provided under an employment model, which is in line with the Victorian Government's own policy direction, even if it is not currently applied.

If the Standards were applied to On-Demand translating and interpreting work within the community, the question still remains whether the Victorian Government should procure services that rely on such precarious work, particularly considering the vital role TI Professionals play in justice and public health settings. Professionals Australia believes that these services should not be delivered through a precarious and unstable workforce, created by On-Demand platforms.

We also believe the Standards must be strengthened in a number of key areas. For professional services, the quality of the service must also be considered as part of the Standards. The quality of professional services must take account of other service delivery requirements such as qualifications, credentials, ethics, professional codes of conduct, professional certification, registration, and profession liability. The Standards need to encompass these quality considerations for professional services delivered through On-Demand platforms.

That said, we acknowledge the inherent unpredictability of some services, where On-Demand interpreting may be more acceptable. For example, those services designed to be delivered via telephone, such as multilingual utility bill enquiry services. A limitation, however, is that these platforms work across state borders. On-Demand platforms have provided consumers access to a national workforce of Interpreters (who are subject to varying conditions and rates of pay dependent on their State or Territory). Professionals Australia represents the interests of TI professionals nationally. Accordingly, Professionals Australia continues to advocate for a national regulatory response.

Standard 1: Consultation about work status and arrangements

In relation to proposed Standard 1, Professionals Australia supports improved consultation requirements and processes.

The proposed Standards are a step in the right direction. However, they fall short of being best practice given their apparent discretionary nature. The use of the word 'should' at 1.1-1.3 of the Standards needs to be changed to 'must'. If the Standards are to have practical benefit, they need to form part of a strong regulatory framework.

Accordingly, we confirm our support for the position outlined in the VHTC submission regarding regulation and enforcement of the Standards more generally.

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

In relation to proposed Standard 2, Professionals Australia supports the creation of improved Standards regarding the bargaining power of On-Demand workers.



Overall, there needs to be greater emphasis on collective rights and the role of unions to balance bargaining power. From our experience in the TI profession, most contractual agreements with workers are templated. It is artificial to characterise these agreements as bespoke contractual agreements and the Standards should provide for collective representation of workers by unions.

In relation to proposed Standard 2.2, the definition of ‘fair’ must include further indicia, including whether there are restraint of trade provisions or exclusivity arrangements. In the TI profession, some LSPs prohibit or restrict workers from taking work with other LSPs while logged into their system/platform. These exclusivity arrangements can be oppressive in the context of the remuneration provided, noting that the on-call period is routinely unpaid work.

In relation to proposed Standard 2.4, any process created to challenge decisions of platforms must be accessible, efficient, provide rights of representation to unions and be no-cost jurisdictions.

We reiterate our support for the position outlined in the VHTC submission, regarding proposed Standard 2 and stronger regulation and enforcement of the Standards more generally.

Standard 3: Fair conditions and pay

In relation to proposed Standard 3.1, there must be greater clarity surrounding the terms for reviewing remuneration over the life of the engagement.

In relation to proposed Standard 3.2, the benchmarked rate of pay should be the applicable minimum rate of pay under a relevant Modern Award (including casual loading). Reference to the national minimum wage should only occur in the absence of a relevant Modern Award.

In relation to proposed Standard 3.3, any penalties or deductions that are to apply not only need to be clearly articulated but should be expressly agreed between the parties and subject to review under proposed Standard 2.2 in the context of whether the term is ‘fair’.

In relation to proposed Standard 3.5, the obligations of the *Equal Opportunity Act 2010* (Vic) need to be acknowledged and satisfied in any policies or procedures, including protections related to industrial and employment activity.

We reiterate our support for the position outlined in the VHTC submission, regarding Standard 3.

Standard 4: Fair and transparent independent dispute resolution

Professionals Australia welcomes improved processes for dealing with dispute resolution for On-Demand workers.

In relation to proposed Standard 4.1, the dispute mechanism must include escalation to a body independent of the platform that allows for binding decisions. In relation to accessibility, the processes must be a no-cost jurisdiction and afford parties with access to a Translator or Interpreter as required and have regard to the Recommended National Standards of the Judicial Council on Cultural Diversity more generally.²

² Judicial Council on Cultural Diversity, [Recommended National Standards for Working with Interpreters in Courts and Tribunals](#) (2017).



In relation to proposed Standard 4.4, the protections for employment activity (including contract workers) under the *Equal Opportunity Act 2010* (Cth) must be clearly articulated within the Standards.

In relation to proposed Standard 4.6, a mechanism to provide compensation for lost earnings must also be instituted where the dispute process confirms that a suspension or termination of privileges was unfair.

We otherwise further confirm our support for the position outlined in the VHTC submission, regarding Standard 4.

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

Professionals Australia strongly supports improvements in the representation of On-Demand workers.

In relation to proposed Standard 5.1, the protections for industrial and employment activities (including contract workers) under the *Equal Opportunity Act 2010* (Cth) must be clearly articulated within the Standards.

In relation to proposed Standards 5.2 and 5.3, the Standards need to be more robust in requiring platforms to negotiate with workers and their representatives collectively, where permitted by law. Professionals Australia has direct experience in the realities of collectively negotiating for non-employees. We currently have authorisation from the ACCC to collectively negotiate terms of engagement of members who provide translator and interpreter services as independent contractors.

While we are lawfully permitted to negotiate collectively, participation by LSPs remains voluntary. Our experience is that many LSPs have not demonstrated a willingness to engage in good faith negotiations regarding remuneration and conditions for non-employee workers, even though Professionals Australia is lawfully permitted to do so.

Accordingly, the Standards should compel platforms to negotiate collectively in good faith when collective representations are permitted by law. To this end a mechanism like a majority support determination under the *Fair Work Act 2009* (Cth) should be considered to bring platforms to the table to negotiate collectively.

We otherwise further confirm our support for the position outlined in the VHTC submission, regarding Standard 5.

Standard 6: Safety

Professionals Australia welcomes improvements that make workplaces safer for On-Demand workers.

TI professionals are at high risk of vicarious trauma and other psychological health impacts due to the nature of their work supporting underserved, vulnerable, or historically marginalised clients, particularly in health and justice settings. This may include being exposed to accounts of homicide, violent crimes or interpreting during traumatic health events related to terminal medical prognosis or voluntary assisted dying. The potential for On-Demand TI workers to be at risk of vicarious trauma is real and significant.

Accordingly, the Standards must extend obligations regarding 'health' to include mental health of workers. This should include support and debriefing and treatment for workers who have directly or vicariously experienced personal distress or psychological trauma in the performance of their work.



We otherwise confirm our support for the position outlined in the VHTC submission, regarding Standard 6, with particular emphasis on the need to specifically include the obligations of Occupational Health and Safety legislation within the Standards.

Conclusion

Professionals Australia members, particularly TI professionals are facing increased exposure to On-Demand work. By promoting fairer and equitable working conditions for On-Demand workers, the Standards are a welcomed advance. That said, their success requires a scheme that is legislated, independently regulated, and has regard to the particular matters we have raised in this submission.

In addition, the procurement of translating and interpreting services by the Victorian Government continues to be an issue of concern, given the use of On-Demand platforms by an increasing number of LSPs. The Victorian Government must act as a matter of priority to improve its procurement policies and practices for language services and address the precarious and poor working conditions of Tis. While we understand this to be the policy direction of the Victorian Government, it must become a reality.