

The Senate

Select Committee on Job Security

First interim report: on-demand platform
work in Australia

June 2021

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List of Recommendations

Recommendation 1

- 2.66 The committee recommends that the Australian Bureau of Statistics expands its Labour Force Survey to capture quarterly estimates in relation to the number of workers engaged in the on-demand platform sector. These estimates could include the industries and occupations in which they work, the hours they work, their visa status, the nature of their working arrangements relative to other workers, earnings and other demographic characteristics.

Recommendation 2

- 2.67 The committee recommends that the Australian Bureau of Statistics enhances its Work-Related Injuries Survey to capture specific information on the number, and types, of injuries and fatalities for workers engaged in the on-demand platform sector.

Recommendation 3

- 2.68 The committee recommends that Safe Work Australia enhances its national data collection process to capture specific information on the number, and types, of injuries and fatalities for workers engaged in the on-demand platform sector. The committee further recommends that all road crashes involving on-demand workers be officially recognised as workplace incidents and are recorded and investigated as such.

Recommendation 4

- 5.189 The committee recommends that, as a matter of priority, Safe Work Australia develops meaningful, high-level guidelines on the application of the model Work Health and Safety Laws to the on-demand platform (or 'gig') sector. The guidance should be aimed at addressing practices that *incentivise* unsafe behaviour, as well as enforcing compliance with safety rules and obligations. The guidance should not seek to unreasonably circumvent the obligations of on-demand companies through novel interpretations of workers as being a 'person conducting a business or undertaking' (PCBU), particularly when such workers in the on-demand sector are engaged in highly dependent or low-leverage work arrangements.

Recommendation 5

- 5.190 The committee recommends that the Australian Government urgently clarifies, by way of regulation, which persons or entities owe a duty of care as a person conducting a business or undertaking (PCBU) under the Model

Work Health and Safety laws in relation to individual support workers engaged through on-demand platforms like Mable. The law should dictate that:

- a platform that engages individual workers to provide support work under the NDIS or similar schemes, and makes money from the arrangement, is a PCBU and owes a duty of care to that worker, regardless of that worker's work status (employee or contractor), or their visa status; and that
- individual care recipients, such as NDIS participants, are not a PCBU in relation to that worker.

Recommendation 6

5.191 The committee recommends that the Australian Government works with state and territory governments to lead the reform of state-based workers' compensation schemes so that they extend to platform workers, regardless of their visa or work status, and require platform companies to pay workers' compensation premiums for these workers.

Recommendation 7

6.123 The committee recommends that the Australian Government expands the definitions of 'employment' and 'employee' in the *Fair Work Act 2009* to capture new and evolving forms of work. In addition to an expanded definition of 'employment' and 'employee' under the Fair Work Act, there should be a mechanism by which the Fair Work Commission can extend coverage of those rights when necessary to workers falling outside the expanded definition of employment, including low-leveraged and highly dependent workers so they can be provided with standards and protections under the Act.

Recommendation 8

6.124 The Committee recommends that the Australian Government investigates options for a Federal regulator to be empowered to request data from platforms that employ and contract workers, including:

- pay rates;
- hours worked;
- other conditions governing that work; and
- other relevant information needed to appropriately monitor safety, competition and labour rights.

Recommendation 9

6.125 The committee recommends that the Australian Government gives the Fair Work Commission (FWC) broad powers to resolve disputes and make orders for minimum standards and conditions in relation to all forms of work. The expanded remit of the FWC would include:

- adjudicating in cases where there is a dispute in relation to the appropriate status of workers;
- setting binding minimum standards and conditions in relation to non-standard forms of work, regardless of employment status; and
- the capacity to resolve disputes (including where necessary through binding decisions) in a low-cost and effective manner.

The FWC should be empowered to make determinations and orders for groups and categories of workers, not just individuals.

Recommendation 10

6.126 The committee recommends that the Australian Government empowers the Fair Work Commission (FWC) to provide pathways to permanency via arbitrations for casual conversion. Any disputes with regards to work status, contractual arrangements, or casual conversion should be able to be arbitrated via a low-cost, accessible process, whether via the FWC or another body, to ensure workers are able to practically enforce their rights, and both workers and employers can have matters adjudicated quickly.

Recommendation 11

6.127 The committee recommends that the Australian Government provide greater protections for independent contractors who are sole traders by establishing an accessible low-cost national tribunal to advise on, oversee, and make rulings relating to employment relationships involving low-leveraged independent contractors, such as those in the rideshare and other platform sectors.

Recommendation 12

6.152 The committee recommends that the Joint Standing Committee on the National Disability Insurance Scheme give specific consideration to the following matters related to platform-based work in the disability sector as part of its current inquiry into the NDIS Workforce and its ongoing examination of the operation and performance of the NDIS:

- the prevalence of platform-based work in the sector, and the growing and evolving nature of this business model;
- the prevalence of independent contracting through platforms;

- the characteristics of independent contractors providing support work through platforms like Mable;
- the extent to which workers rely on this income, or have other sources of income;
- the typical earnings, insurance coverage, superannuation and access to leave and other entitlements available to these workers;
- the adequacy of training and support provided to workers;
- issues associated with safety, risk, and liability under Work Health and Safety laws; and
- issues relating to the potential for NDIS recipients to be classified as persons conducting a business or undertaking (PCBUs) under existing Work Health and Safety laws.

Recommendation 13

6.153 Taking into account the findings of any relevant inquiries, the committee recommends that the Australian Government considers regulatory options that would ensure support workers engaged to provide services funded through the National Disability Insurance Scheme are provided with fair pay and conditions, including those engaged through on-demand platforms.

Recommendation 14

6.154 The committee recommends that the Australian Government considers working with states and territories to design a national scheme that connects and extends the current state and territory schemes to provide portable long service leave, sick leave and other leave entitlements, and portable training entitlements, to all workers delivering services under the National Disability Insurance Scheme.

Recommendation 15

6.169 The committee recommends that the Australian Government works through the Council on Federal Financial Relations to achieve an intergovernmental agreement that government procurements must require companies engaged by the Federal and state and territory governments to provide minimum standards of pay, safety and insurance, workers' compensation and basic protections for workers.

Chapter 1

Introduction

What is on-demand platform work?

- 1.1 The terms 'gig economy', 'gig work', 'on-demand work' and 'platform work' are often difficult to define, and their meanings can sometimes be contested.
- 1.2 Generally, 'on-demand' work is defined as work in the labour market that is procured 'on-demand'. On-demand workers are those employed 'as needed by a business', rather than on an ongoing basis. In Australia this can encompass casual employees, labour hire employees, fixed-term and independent contractors.¹
- 1.3 Australian employment scholars have suggested on-demand work is increasing, while industrial relations legislation is failing to adequately address the challenges it poses:

On-demand work is a large and significant problem in Australia. Yet adequate regulatory responses have been either missing or misdirected. Protections inherited from the past, such as minimum shifts engagements, the right to request conversion from casual to permanent, and requirements for a regular roster for permanent part-time employees, have failed to prevent the spread of on-demand work. However, there is little sign of any comprehensive debate, which could generate new ideas and new initiatives to limit on-demand work and combat its negative impacts.²
- 1.4 The term 'gig work' emerged during the Global Financial Crisis (GFC) in 2009. At this time many ongoing, full-time jobs were lost, and some workers turned to short term jobs, or 'gigs', as independent contractors, to make a living. Along with gig work, emerged the 'gig economy'.³
- 1.5 Gig work is closely associated with online platforms—a lot of gig work is also 'platform work'. 'Platform work' is 'work accessed through or organised by digital platforms which match workers and clients via internet platforms or "apps"'.⁴

¹ Victorian Government Department of Premier and Cabinet, *Report of the Inquiry into the Victorian On-Demand Workforce*, June 2020 (Victorian on-demand workforce report), p. 11, <https://engage.vic.gov.au/inquiry-on-demand-workforce> (accessed 13 June 2021).

² Iain Campbell, Fiona Macdonald, and Sarah Charlesworth, 'On-Demand Work in Australia', forthcoming in: *Zero-Hours and On-Call Work in Anglo-Saxon Countries*, Berlin: Springer Press, pp. 25–26, https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/4815/5684/6829/Campbell_Iain_-_Charlesworth_Sara_-_Macdonald_Fiona.pdf (accessed 21 June 2021).

³ Victorian on-demand workforce report, p. 11.

⁴ Victorian on-demand workforce report, p. 11.

1.6 The Australian Institute of Employment Rights described those doing 'gig work' as 'workers hired through digital platforms to undertake tasks, on a piece-work basis', and submitted that:

Data on the extent of 'gig economy' employment in Australia is patchy. The [Australian Bureau of Statistics] does not publish data on the extent of employment via internet platforms, which is a relatively recent form of employment.⁵

1.7 Gig work can resemble labour hire, because the platform acts as 'an intermediary organising work'. However, previous inquiries have determined that platform work is 'distinct' from labour hire (otherwise called 'on-hire') in a number of ways. For instance, where traditional labour hire firms generally (but not exclusively) *employ* workers, platforms 'largely deploy workers through non-employment arrangements'.⁶

1.8 In Australia, on-demand platform work is 'occurring in a variety of ways across a diverse range of sectors, with differences in the nature of the work, spectrum of experiences, pay and arrangements'.⁷

1.9 This interim report is focused on on-demand platform work, typified by companies such as Uber, Uber Eats, Menulog, Deliveroo, Hireup and Mable. The terms 'gig work', 'gig economy', 'on-demand work' and 'platform work' are used throughout the report.

1.10 In summary, while there is no simple definition of on-demand platform work, in general:

- 'on-demand work' can be a broad term including labour hire, casual work, fixed-term contracts and independent contracting; it can also be used as a more specific term within the gig sector;
- 'gig work' can be seen as a subset of on-demand work;
- 'platform work' is on-demand work that is facilitated by web-based platforms or apps;
- platform work is available across a range of sectors, using different operating models;
- *most* gig or platform workers in Australia are classified as 'independent contractors', rather than 'employees' and are not covered by the *Fair Work Act 2009* (Cth);⁸ and

⁵ Australian Institute of Employment Rights Inc., *Submission 6*, p. 30.

⁶ Victorian on-demand workforce report, p. 10. Emphasis added.

⁷ Victorian on-demand workforce report, p. 11.

⁸ A notable exception is workers engaged through Hireup, which uses an employee model.

- *most* gig workers do not have leave entitlements, minimum rates of pay, or other protections of labour regulation.⁹

The need for an interim report

1.11 The Senate Select Committee on Job Security (the committee) was appointed by resolution of the Senate on 10 December 2020. The committee was established to inquire into and report on the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions, with particular reference to:

- (a) the extent and nature of insecure or precarious employment in Australia;
- (b) the risks of insecure or precarious work exposed or exacerbated by the COVID-19 crisis;
- (c) workplace and consumer trends and the associated impact on employment arrangements in sectors of the economy including the 'gig' and 'on-demand' economy;
- (d) the aspirations of Australians including income and housing security, and dignity in retirement;
- (e) the effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies;
- (f) accident compensation schemes, payroll, federal and state and territory taxes;
- (g) the interaction of government agencies and procurement policies with insecure work and the 'on-demand' economy; and
- (h) any related matters.¹⁰

1.12 The committee is due to present its final report by 30 November 2021.¹¹

1.13 The issues of insecure work are complex and multifaceted. While workers engaged in on-demand platform work may not be the *largest* cohort of Australian workers, they are one of the most disadvantaged, and the committee believes it is timely to examine the sector. As such, this first interim report focuses on gig work and gig workers.

1.14 The on-demand platform sector is growing, expanding out of rideshare and food delivery into care work, parcel delivery and, potentially, freight and trucking. As this workforce grows, governments need to take a more active role in providing a regulatory framework that is fair for both industry and workers.

1.15 This report presents the committee's findings to date. However, it is not exhaustive. The committee will continue travelling, hearing from workers and organisations around Australia, and considering a range of viewpoints. While

⁹ Victorian on-demand workforce report, p. 8.

¹⁰ *Senate Journals*, No. 81—10 December 2020, pp. 2890–2891.

¹¹ *Senate Journals*, No. 81—10 December 2020, p. 2891.

this report makes preliminary recommendations, the committee does not rule out revisiting these matters in later reports.

Issues

1.16 On-demand platform work can provide economic benefits, including: 'efficiently 'matching buyers and sellers, creating new markets and providing better or improved services'. It can also benefit workers by providing: 'skills, experience and opportunity that may lead to more traditional work opportunities, reducing unemployment'.¹²

1.17 However, there are also concerns about the 'work status' of on-demand platform workers. In Australia, most platforms do not engage workers as employees, but as 'self-employed workers' or 'independent contractors'. However, unlike many independent contractors, platform workers are often heavily-dependent on the employer, and may have little control over their work, or how much they earn.¹³

1.18 Most platform workers do not have leave entitlements or enjoy the protections of labour regulation, and may earn less than minimum wage:

With a few notable exceptions, independent contractors are not subject to workplace regulation. Their pay and work hours are determined by arrangement with another party, subject to commercial arrangements. They are effectively 'small businesses' and their remedies are those that apply to any business, such as the law around 'unfair contracts' and associated dispute resolution services.¹⁴

1.19 These issues have come to the fore over recent years for a number of reasons, including a reported increase in the number of workplace injuries and deaths of platform workers. The *Australian Financial Review's* Natasha Gillezeau reported:

A survey conducted by the Transport Workers Union found that more than one in three delivery drivers has been injured on the job, with 80 per cent receiving no subsequent support from the company they were driving for. Five delivery drivers have been killed in Australia since the end of September 2020.¹⁵

1.20 In 2017, the Senate Education and Employment References Committee made the following observations about the gig economy, capturing a polarised debate. The committee observed that according to proponents, on-demand platform work is about:

¹² Victorian on-demand workforce report, p. 10.

¹³ Caleb Goods, Alex Veen, and Tom Barratt, 'Is your gig any good?' Analysing job quality in the Australian platform-based food-delivery sector', *Journal of Industrial Relations*, vol. 61, issue 4, p. 513, <https://journals.sagepub.com/doi/full/10.1177/0022185618817069> (accessed 13 June 2021).

¹⁴ Victorian on-demand workforce report, p. 12.

¹⁵ Natasha Gillezeau, 'Tech stars want gig economy reform but no minimum wage', *Australian Financial Review*, 22 February 2021, www.afr.com/technology/tech-stars-want-gig-economy-reform-but-no-minimum-wage-20210216-p572wq (accessed 13 June 2021).

... flexibility and freedom: it is all about choice. There are no employers and employees: there are customers, platforms and entrepreneurs. The customer needs a task to be completed—their food delivered, garden landscaped, legal document reviewed or house cleaned. The entrepreneur has skills and wants to use them how and when s/he chooses, for remuneration s/he sets. For a small fee, the online platform brings them together. There is no need for minimum or maximum hours, no obligatory peak-hour commute, no rigidity and no workplace hierarchy.¹⁶

1.21 Whereas according to detractors:

There is also no security of income, no insurance for the worker in case of accident, no superannuation, no personal, annual or paid leave of any description. An entrepreneur with specialised, in-demand skills may agree to sell their expertise for a handsome fee. An entrepreneur with less specialised skills can secure a short-term job, a 'gig', by selling their labour for less than their competitors. And there is no limit to how low fees can go; no minimum amount a person can be paid to do a job, as long as they agree, because—as far as the platform and customer are concerned—the entrepreneur is not an employee. The worse or more desperate a person's financial circumstances, the less they might agree to work for.¹⁷

1.22 Evidence around the benefits and pitfalls of on-demand platform work are discussed in Chapter 4 of this report.

1.23 Workforce models common in the gig economy have become more widespread in Australia over the last decade, moving from the 'Airtasker field', through rideshare, food delivery, and into disability care, parcel delivery, and other services. As more sectors have been impacted by these workforce models, the impetus to look at regulation has become more urgent.

1.24 A number of jurisdictions around the world have taken steps to change or increase regulation in relation to on-demand platform work. These initiatives are detailed in Appendix 3.

Moves towards reform at the state and territory level

1.25 All Australian jurisdictions have been impacted by the gig economy, with Uber and other platforms having now extended their reach into regional areas and across all states and territories. However, some state governments have taken active steps to address perceived inadequacies in the standards of pay, safety and conditions applying to on-demand platform workers, and are exploring

¹⁶ Senate Education and Employment References Committee, *Corporate Avoidance of the Fair Work Act*, 6 September 2017, p. 85, www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/AvoidanceofFairWork/Report (accessed 2 March 2021).

¹⁷ Education and Employment References Committee, *Corporate avoidance of the Fair Work Act*, p. 85.

various policy and legislative solutions.¹⁸ This section looks at moves by those states.

Victoria

1.26 The Victorian Government commissioned an inquiry into gig work in 2018. The *Report of the Inquiry into the Victorian On-Demand Workforce* (Victorian inquiry) was published in June 2020, and stated that:

The emergence of digital platforms that source, sort, organise or deploy workers presents a shift in the efficiency and accessibility of on-demand work over the last decade. In particular, the speed and ease with which workers can be engaged or sourced, terms can be agreed and work then executed via platforms, has created new opportunities at an individual and economic level.¹⁹

1.27 The Victorian inquiry was chaired by the former Fair Work Ombudsman, Ms Natalie James. It found that some platform arrangements 'are blurring the distinctions' between what is an 'independent, autonomous worker operating their 'own' business and an employee working as part of another's enterprise'.²⁰ Also, that existing regulations applying to independent contractors and small businesses 'do not provide accessible, quick or always effective remedies for non-employee on-demand workers':

There is a compelling case for strengthening the remedies available to assist on-demand workers who have little negotiating or bargaining power vis a vis a business platform. Further support is needed to assist independent contractors to seek to review services contracts.²¹

1.28 The Victorian inquiry recommended a combination of measures, including a number that went towards redefining some platform workers, and some that would better protect those who remained as independent contractors. Key recommendations from the inquiry were:

- That the Commonwealth government lead reforms, in collaboration with state governments and other key stakeholders.
- That the *Fair Work Act 2009* be amended to codify work status 'on the face of relevant legislation', rather than relying on common law understandings, including by adopting an 'entrepreneurial worker' category; and governments align 'work status' across work laws and other statutes.
- That governments encourage platform businesses with significant non-employee, on-demand workforces to seek a work status determination;

¹⁸ Norton Rose Fullbright, *Doing business in the gig economy: A global guide for employers*, December 2020, www.nortonrosefulbright.com/en/knowledge/publications/87afaec5/doing-business-in-the-gig-economy-a-global-guide-for-employers (accessed 13 June 2021).

¹⁹ Victorian on-demand workforce report, p. 10.

²⁰ Victorian on-demand workforce report, p. 113.

²¹ Victorian on-demand workforce report, p. 172.

if they will not do so voluntarily, governments consider requiring platforms to initiate a determination process.

- 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.
- That a fit-for-purpose body provides a mechanism for accessible, fast resolution of work status disputes.
- That the Fair Work Commission work with relevant stakeholders to apply modern awards to applicable platform workers.
- That governments create a well-resourced Streamlined Support Agency that focusses on platform workers and provides a single source of advice and support to workers. That the Streamlined Support Agency be responsible for and sufficiently resourced to provide effective support to self-employed platform workers.
- That Commonwealth competition laws remove barriers to collective bargaining for non-employee platform workers and ensure workers may access appropriate representation.
- That governments clarify, enhance and streamline existing unfair contracts remedies so that they are accessible to low-leveraged workers.
- That provisions to counter sham contracting are strengthened, and require a court to consider each party's relative bargaining position and how much genuine choice a worker has over their presumed work status.
- More government funded research and surveys to build the evidence base.²²

Victorian Government response

1.29 On 13 May 2021, the Victorian Government released its response, stating that it supported 'in full or in principle' all 20 recommendations and 'committed to work progressively towards implementing them'.²³

1.30 The Victorian Government stated that its priorities are to:

- Clarify and codify work status: to reduce doubt about work status and the application of entitlements, protections and obligations for workers and business, and align legislative definitions across the statute books
- Streamline advice and support: for workers whose status is borderline
- Provide fast-track resolution: of work status so workers and business do not operate under prolonged doubt about entitlements and obligations
- Provide for fair conduct for platform workers who are not employees through establishing Fair Conduct and Accountability Standards that are principles-based and developed through a consultative process with relevant stakeholders

²² Victorian on-demand workforce report, pp. 189–206.

²³ Victorian Government, *Response to Victorian On-Demand Workforce Report* (VIC Government response to the on-demand workforce review), 13 May 2021, <https://engage.vic.gov.au/inquiry-on-demand-workforce> to (accessed 12 June 2021).

- Improve remedies for non-employee workers: to address deficiencies and anomalies in the existing approach
- Enhance enforcement: to ensure compliance, including where sham contracting has occurred.²⁴

1.31 The Victorian Government noted that a national approach was preferable. However, reforms at the Federal level 'may take time to develop or not eventuate at all'. As such, the Victorian Government stated its intention to 'explore opportunities to cooperatively engage with other States and the Territories to develop consistent standards'.²⁵

1.32 The Victorian government also acknowledge the importance of considering the needs of business and industry, saying it will:

... be guided by the principle of ensuring we accommodate and support genuine needs of platform businesses and not stifle innovation or entrepreneurial activity while maintaining a fair and relevant safety net of conditions and obligations for workers and businesses alike.²⁶

1.33 In August 2020, the Victorian Minister for Industrial Relations wrote to the Commonwealth Minister for Industrial Relations and all State and Territory Ministers to request that they consider Victoria's report, and its recommendation for a national response. In October 2020, the then Commonwealth Minister for Industrial Relations, the Hon Christian Porter MP responded 'indicating that the Australian Government is continuing to monitor developments in the on-demand economy, and that he was considering the implications of the recommendations in the Report'.²⁷

1.34 However, the Victorian Government noted its disappointment that the Commonwealth has since enacted the *Fair Work (Supporting Australia's Jobs and Economic Recovery) Act 2021*, and this Act makes no 'reforms to national work laws identified by the Inquiry, which could better support on-demand workers and businesses'. As such, the Victorian Government stated that it will 'continue to advocate for strengthened and improved legislative provisions'.²⁸

New South Wales

1.35 On 24 March 2020, the New South Wales Parliament established the Select Committee on the Impact of Technological and Other Changes on the Future of Work and Workers in New South Wales. The committee was tasked with looking into, among other matters, 'whether current laws and workplace

²⁴ VIC Government response to the on-demand workforce review, p. 3.

²⁵ VIC Government response to the on-demand workforce review, p. 14.

²⁶ VIC Government response to the on-demand workforce review, p. 6.

²⁷ VIC Government response to the on-demand workforce review, p. 5.

²⁸ VIC Government response to the on-demand workforce review, p. 5.

protections are fit for purpose in the 21st century'. The Select Committee's terms of reference include:

- the application of workplace laws and instruments to people working in the 'on-demand' or 'gig-economy', including but not limited to:
 - the legal or work status of persons working for, or with, businesses using online platforms,
 - the application of Commonwealth and New South Wales workplace laws and instruments to those persons, including, superannuation and health and safety laws,
 - whether contracting or other arrangements are being used to avoid the application of workplace laws and other statutory obligations,
 - the effectiveness of the enforcement of those laws and regulations,
 - regulatory systems in other Australian jurisdictions and in other countries, including how other jurisdictions regulate the on-demand workforce and are adapting to the automation of work.

1.36 Six hearings have been held and, as at the date of tabling this interim report, the inquiry is continuing.²⁹

Queensland

1.37 The Queensland Government undertook an investigation into the possibility of extending workers' compensation coverage to certain gig economy workers in 2019. Submissions were invited responding to the *Consultation Regulatory Impact Statement, Workers' compensation entitlements for workers in the gig economy and the taxi and limousine industry in Queensland*.³⁰

1.38 Twenty four written submissions were received and nine confidential and 15 public submissions, available on the Queensland Government's website.³¹ The website for the consultation states:

²⁹ Parliament of New South Wales, 'Terms of Reference', *Select Committee on the impact of technological and other change on the future of work and workers in New South Wales*, www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=265 (accessed 11 June 2021).

³⁰ Queensland Government, *Consultation Regulatory Impact Statement: Workers' compensation entitlements for workers in the gig economy and the taxi and limousine industry in Queensland*, 2019, www.worksafe.qld.gov.au/data/assets/pdf_file/0026/19277/ris-gig-taxi-limo-industries.pdf (accessed 12 June 2021).

³¹ Queensland Office of Industrial Relations, 'Possible extension of workers' compensation coverage for certain gig economy workers, and bailee taxi and limousine drivers: Proposed changes to the Workers' Compensation and Rehabilitation Act 2003', <https://www.oir.qld.gov.au/public-consultation/possible-extension-workers-compensation-coverage-certain-gig-economy> (accessed 12 June 2021).

A Decision RIS will be publicly released outlining the Government's recommended options when all submissions and stakeholder perspectives have been carefully considered.³²

- 1.39 Further, the Queensland Government submitted to the committee's inquiry, urging the Commonwealth to make reforms to the national industrial relations framework to support on-demand workers into the future:

The Queensland Government recommends that the Australian Government consider reform of the *Fair Work Act 2009* (Cwlth) (FW Act) to more adequately accommodate emerging forms of non-traditional employment, including broadening the definition of worker and providing broader access to the benefits of collective bargaining, minimum standards of pay and conditions, and access to the Fair Work Commission, in line with recommendation 17 of the Queensland Wage Theft Inquiry Report.³³

- 1.40 The Queensland Government said it is committed to the process of reforming its workers' compensation legislation, as:

Improving provisions for work related injuries for vulnerable gig workers is consistent with the Queensland Government's recommendation to the Federal Government to improve industrial relations protections for these workers in the federal industrial relations jurisdiction to provide a fair and equitable workplace relations system for vulnerable workers.³⁴

Western Australia

- 1.41 The Western Australian Government has not referred its industrial relations powers to the Commonwealth. However, a Ministerial Review that considered whether the WA Government could amend industrial relations legislation to provide better protections for gig workers concluded that only the Commonwealth could achieve this change, as it controls the *Fair Work Act 2009* and the *Independent Contractors Act 2006*.³⁵

- 1.42 The WA Government noted that comprehensive up-to-date data on the gig economy and platform work is not currently available, and reported that it intends to move in the areas that *are* within its jurisdiction, by:

- 'examining how to manage workplace health and safety issues with respect to the food delivery industry as engaged in by gig economy workers'; and
- 'modernising the workers' compensation legislation in Western Australia'.³⁶

³² Queensland Government Office of Industrial Relations, *Proposed changes to the Workers' Compensation and Rehabilitation Act 2003*, <https://www.oir.qld.gov.au/public-consultation/possible-extension-workers-compensation-coverage-certain-gig-economy> (accessed 11 June 2021).

³³ Queensland Government, *Submission 104*, p. 2.

³⁴ Queensland Government, *Submission 104*, pp. 30–31.

³⁵ Western Australian Government, *Submission 100*, p. 10.

³⁶ Western Australian Government, *Submission 100*, pp. 11–14.

Conduct of the inquiry to date

1.43 Details of the inquiry were placed on the committee's website.

Submissions

1.44 The committee invited submissions from individuals and organisations by 31 March 2021. The committee provided extensions to lodge submissions until 10 June 2021.

1.45 The committee has received 122 submissions (to 21 June 2021). The submissions received by the committee can be found on the committee's website and a list of submissions is at Appendix 1.

Hearings

1.46 The committee has so far conducted seven public hearings—in Sydney, Wollongong, Melbourne and Canberra—and intends to conduct several more across Australia, visiting Queensland and Western Australia in coming months. A list of witnesses who gave evidence at the hearings is at Appendix 2.

Structure of the interim report

1.47 This first chapter provides definitions for on-demand platform work, introduces the issues, reports on moves for reform by some Australian states, and outlines the administrative details of the committee's work. The remainder of the report is structured as follows:

- Chapter 2 provides an introduction to the on-demand platform sector and its workers, looking at prevalence and data issues;
- Chapter 3 introduces the key sectors and major platform companies, and outlines their business models, looking at contested evidence around worker earnings;
- Chapter 4 looks at the pros and cons of the gig economy, examining the impacts of on-demand platform work on individuals, families, communities, society, and the economy;
- Chapter 5 looks at how current industrial relations, contractor, and small business regulation applies to on-demand platform workers, including the application of work health and safety laws and workers' compensation; and
- Chapter 6 considers proposals for reforming Australia's industrial relations framework to provide minimum standards and protections—along with secure and safe jobs—for platform workers today and into the future.

Acknowledgements

1.48 The committee would like to acknowledge all submitters and witnesses who gave evidence at public hearing; especially workers who shared their personal stories with the committee.

Chapter 2

On-demand platform work in Australia

Introduction

- 2.1 Advances in technology have made accessing products and services faster, cheaper, and more convenient. The emergence of online platforms have facilitated the sourcing of 'on-demand' workers on a large scale, and have facilitated the efficient matching of those requiring services with those able to deliver them.
- 2.2 This chapter provides an introduction to the on-demand and platform work economy in Australia. Specifically, the chapter considers:
- the different types of models used by the various platforms operating in Australia;
 - the size and future growth of the on-demand platform-based economy;
 - the industries and occupations affected by on-demand platform work;
 - the demographics of the on-demand platform workforce; and
 - the earnings and wages received by on-demand platform workers.
- 2.3 The chapter also considers the recent impacts of COVID-19 on the demand for on-demand platform work, and the inadequacy of data collection and statistics regarding the prevalence of on-demand platform work in Australia.

Model categorisation

- 2.4 Although noting that there are many variations in platform models, the inquiry into the Victorian On-Demand Workforce (the Victorian inquiry) identified two discrete categories: crowd-work systems and work on-demand systems. The distinction related to the nature of the work being organised and whether the end user, or the platform, determined which worker carried out the task.¹
- 2.5 Under a crowd-work system workers apply, or bid competitively, to undertake a range of tasks, from skilled to less-skilled work. Workers commonly have online profiles which include information about their experiences, qualifications, ratings, and feedback.²
- 2.6 Under a work on-demand system, a particular platform allocates a task directly to a registered, currently available worker. Distinct skills are less relevant as

¹ Victorian Government Department of Premier and Cabinet, *Report of the Inquiry into the Victorian On-Demand Workforce*, June 2020 (Victorian on-demand workforce report), p. 11, <https://engage.vic.gov.au/inquiry-on-demand-workforce> (accessed 13 June 2021).

² Victorian on-demand workforce report, p. 15.

these tasks are commonly homogenous, and services are usually expected to meet pre-determined and platform-set minimum standard.³

2.7 Examples of crowd-work systems include Airtasker; Upwork; and Mable, and examples of work on-demand systems include Uber; Ola; Deliveroo; and Menulog.⁴

2.8 A crowd-work platform operating in the care sector, Mable, stated that online models are commonly classified as either 'horizontal' or 'vertical', depending on the particular approach taken by the platform provider:

[I]t is critical that the significant variations in the various online models are understood. Typically, online models are classified as either 'horizontal' - where they facilitate interactions between freelance providers and consumers or 'vertical' - where the platform creates a hierarchy between themselves and the Service Provider.⁵

2.9 Hireup, a competing platform focussed on providing disability care, made the distinction between a platform *provider* and a platform *marketplace*, and stated that the overarching purpose of platforms is to facilitate a three-way relationship between the platform; the client; and the worker. It placed each platform on a spectrum based upon whether the platform supported an ongoing relationship between service provider and the customer or whether the service was considered a one-off task or 'gig':

At one end of the spectrum, platforms that enable customers to book one-off tasks or 'gigs' appear to genuinely facilitate a service-user to engage a contractor to perform a specific, one-off task, or 'odd job' (often reliant on certain skills, such as a carpenter or painter). This is akin to 'classified' ads in newspapers.⁶

Towards the middle of this spectrum are platforms offering ridesharing and food delivery ... The workers are entirely dependent on the platforms for their work, albeit that workers can choose when and where to work. However, again the work of each booking is clearly designed to be engaged on a single basis for one trip or one delivery, with no ongoing relationship between the customer and the worker.⁷

At the other end of the spectrum are platforms offering services related to person-to-person care and support, whether that be aged care or disability support. We submit that these forms of personal support work are not the same as food delivery, or landscaping, for example. Support work is not

³ Victorian on-demand workforce report p. 15.

⁴ Victorian on-demand workforce report, p. 15.

⁵ Mable, *Submission 24*, p. 2.

⁶ Hireup, *Submission 23*, p. 9.

⁷ Hireup, *Submission 23*, p. 9.

generally task-based and it is not intended to be a one-off interaction between the client and the worker.⁸

Prevalence in Australia and the impact of the COVID-19 pandemic

Size

2.10 In a December 2020 green paper entitled, *The Rise of the Gig Economy and its Impact on the Australian Workforce*, the Actuaries Institute wrote:

The gig economy, as mediated by digital platforms in Australia, has increased rapidly in size over the past decade, increasing over nine times in market size from 2015 to capture more than \$6bn in consumer spend in 2019 ... Rapid growth has been fuelled by new customers, and increased frequency of usage by existing customers.⁹

2.11 The Actuaries Institute used 'transaction data' to estimate the size and scope of the gig economy in Australia, and sourced these data from de-identified 'electronic bank transactions for more than three million individuals in Australia over five years'.¹⁰

2.12 The Actuaries Institute defined the gig economy as economic activity in which 'the worker provides on-demand services, the worker is classified as an independent contractor and a digital platform mediates the transaction'.¹¹

⁸ Hireup, *Submission 23*, p. 9.

⁹ Actuaries Institute, *The Rise of the Gig Economy and its Impact on the Australian Workforce* (The Rise of the Gig Economy), December 2020, pp. 4–5, <https://actuaries.asn.au/Library/Miscellaneous/2020/GPGIGECONOMYWEB.pdf> (accessed 13 June 2021).

¹⁰ Actuaries Institute, *The Rise of the Gig Economy*, p. 34.

¹¹ Actuaries Institute, *The Rise of the Gig Economy*, p. 5.

Box 2.1 Estimates of the prevalence of gig work in Australia

From the 2019 *Digital Platform Work in Australia: Prevalence, Nature and Impact* survey report:

- 7.1 per cent of respondents had undertaken work through a digital platform in the last 12 months
- 13.1 per cent had undertaken digital platform work at some point
- people aged 18–34 were more likely to be platform workers
- men were **twice** as likely as women to be platform workers
- gig workers were more likely to live with a disability
- gig workers were **1.5 times** more likely to speak a language other than English at home
- temporary residents were **three times** more likely to be platform workers
- permanent residents were **1.7 times** more likely to be platform workers¹²

2.13 In late 2018, the Victorian Government commissioned a national survey of over 14 000 people to inform the inquiry into the Victorian On-Demand Workforce.¹³ The survey was 'undertaken in partnership' with the University of Adelaide, Queensland University of Technology, and University of Technology Sydney, and was 'targeted at identifying and putting questions to people about the work they were doing via digital platforms'.¹⁴

2.14 Finalised in November 2019, the resulting report, *Digital Platform Work in Australia: Prevalence, Nature and Impact*, found that:

- 7.1 per cent of survey respondents are currently working (or offering to work) through a digital platform or have done so within the last 12 months.
- 13.1 per cent of survey respondents have, at some time, undertaken digital platform work. This rate of participation is similar to recent survey findings in Europe, and higher than some previous estimates for Australia.
- Of the 13.1 per cent (1827 survey respondents) that have undertaken digital platform work, 38.7 per cent have only done work in-person at a specified location. In contrast 28.2 per cent have done computer or

¹² Professor Paula McDonald, Dr Penny Williams, Professor Andrew Stewart, Associated Professor Robyn Mayes and Dr Damian Oliver, *Digital Platform Work in Australia: Prevalence, Nature and Impact* (Digital platform work in Australia), commissioned by the Victorian Department of Premier and Cabinet, June 2019, p. 5, <https://apo.org.au/node/242706> (accessed 13 June 2021).

¹³ For further information see: <https://engage.vic.gov.au/inquiry-on-demand-workforce>

¹⁴ Victorian on-demand workforce report, p. 13.

internet-based work only, while almost exactly one-third have undertaken both types of work at some time.¹⁵

- 2.15 The Victorian inquiry's report also presented evidence of significant growth in Australian Business Number (ABN) applications by individuals. The Chair of the Black Economy Taskforce Advisory Board submitted that 'between the 2011–12 and 2017–18 financial years there was a 40 per cent increase in ABN applications by individuals'. This was correlated with a Commonwealth Treasury paper which suggested 'growth of the gig or sharing economy, may have played some part in the increase'.¹⁶
- 2.16 A breakdown of industry categorisation of ABN applications, provided to the Victorian inquiry by the Australian Taxation Office, revealed:
- a 249 per cent increase in the transport, postal and warehousing industry;
 - a 103 per cent increase in administrative and support services, which includes building, cleaning and gardening services; and
 - a 67 per cent increase in professional, scientific and technical services.¹⁷
- 2.17 The Actuaries Institute wrote that the gig economy workforce 'may be as large as 250 000 workers'.¹⁸ If that estimate were correct, that would make it a sizable sector—larger than the industry categories of arts and recreation services, which employs 186 300 people; information, media and telecommunications, which employs 180 700 people; and double the size of the electricity, gas and water services industry, which employs 122 600 people.¹⁹
- 2.18 A joint submission to the inquiry by the Attorney-General's Department; the Department of Education, Skills, and Employment; and the Department of Industry, Science, Energy, and Resources (the joint Federal Government submission) highlighted that, in March 2018, the Association of Superannuation Funds of Australia had estimated that approximately 1.2 per cent, or 150 000 people, utilised digital platforms to obtain work on a regular basis. The joint submission also noted an earlier Grattan Institute study, published in April 2016

¹⁵ McDonald et. al., Digital platform work in Australia, p. 5.

¹⁶ Victorian on-demand workforce report, p. 28.

¹⁷ Victorian on-demand workforce report, p. 29.

¹⁸ The Actuaries Institute's analysis of the gig workforce was based on 'transaction data' from a sample of 8008 gig economy workers, from 'the point in time they join[ed] the gig economy'. The institute looked at the workers' expenditure patterns to measure their relative affluence, as well as expenditure on life insurance, health insurance, and contributions to superannuation.

¹⁹ Australian Bureau of Statistics (ABS), Labour Account Australia: September 2020, (Labour account: September 2020), www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-account-australia/latest-release (accessed 13 June 2021).

using 2015 data, which estimated that less than 0.5 per cent of adult Australians utilised gig-economy platforms more than once a month.²⁰

Availability of data and statistics

2.19 Inquiry participants raised their concerns that currently-available labour statistics do not facilitate the identification of gig workers as a specific subset of workers.²¹ The Actuaries Institute wrote:

Traditional labour data sets are limited in their ability to identify gig economy workers. As a result, it is not possible to identify a granular characterisation of population segments in the gig economy and understand their needs or specific financial risks.²²

2.20 The joint Federal Government submission also highlighted this lack of information. It stated the following:

To date, there has been no comprehensive measurement or study of the on-demand economy undertaken in Australia. There is also no definitive [Australian Bureau of Statistics] measure of on-demand economy workers specifically. Generally, digital platforms engage workers as independent contractors, and this would be captured in existing ABS data on independent contractors.²³

2.21 Previous analyses of traditional labour statistics, such as that by Michael Leith Cowling and Mark Wooden in 2018, have 'led to reports that the rise of the gig economy workforce may be exaggerated'. This is because a rise in gig workers has been expected to 'show up' in the employment data as an increase in self-employed workers, which has not been observed.²⁴ However, according to the Actuaries Institute, what traditional labour force data may fail to capture is that:

... workers have substituted one type of self-employment for gig work (e.g. Taxi drivers), or gig work has been taken up as a secondary source of

²⁰ Attorney-General's Department, Department of Education, Skills and Employment and Department of Industry, Science, Energy and Resources (Joint Federal Government submission), *Submission 75*, p. 18.

²¹ See for instance: Actuaries Institute, *The Rise of the Gig Economy*, p. 7; and Michael Leith Cowling and Mark Wooden, 'Chapter 6: Self-employment and independent workers', in: Roger Wilkins and Inga Lass, *The household, income and labour dynamics in Australia survey: selected findings from waves 1 to 16* (Self-employment and independent workers), The Melbourne Institute, 2018, p. 95, https://melbourneinstitute.unimelb.edu.au/_data/assets/pdf_file/0005/2839919/2018-HILDA-SR-for-web.pdf (accessed 13 June 2021).

²² Actuaries Institute, *The Rise of the Gig Economy*, p. 7.

²³ Joint Federal Government submission, *Submission 75*, p. 18.

²⁴ See: Cowling and Wooden, *Self-employment and independent workers*, p. 95.

income. In these cases, increases in the gig economy workforce will not be observable in the headline number of self-employed workers in Australia.²⁵

2.22 The Victorian inquiry also argued that, because 'headline labour market data' asks people about their 'main job', it may not always pick up platform work, which may be a 'side hustle'.²⁶ In addition, the Australian Bureau of Statistics' (ABS) secondary jobs data may not capture growth in platform work for a number of reasons, including:

Some digital platform workers may have already been in the secondary jobs data—for example, those working in sectors which have traditionally used freelance/independent contracting arrangements. ... Ai Group noted that professional service platforms tend to match consumers in industries with traditionally high levels of freelancing and independent contracting; like IT and theatre production. In such cases, platform mediated work may not be additional work but just a replacement of traditional methods of direct engagement. This platform work would not be reflected in changes to the percentage of independent contractors or secondary employment.²⁷

2.23 The Actuaries Institute noted that the gig economy in Australia 'is evolving rapidly, especially under the influence of the COVID-19 pandemic'. As such, it has issued a call for 'more data and research on the gig economy in Australia', in particular to better understand issues such as:

- the impact of the gig economy on sectors of the Australian economy; and
- the Australian workers participating in the gig economy, the needs of these workers and their associated financial risks.²⁸

2.24 Specific questions the Actuaries Institute believes need to be answered include:

- What are the important workforce segments within the gig economy based on level of participation? These include:
 - Workers for whom gig economy work is their primary income source vs. supplementary income source.
 - Workers participating in the gig economy for shorter term versus longer-term periods.
 - The gig economy sector the worker participates in (for example, private transport, meal delivery and task-based services).
- What are the demographic characteristics, financial risks and future employment pathways specific to the granular set of gig economy worker segments?

²⁵ Actuaries Institute, *The Rise of the Gig Economy*, p. 12.

²⁶ Victorian on-demand workforce report, p. 26.

²⁷ Victorian on-demand workforce report, p. 27.

²⁸ Actuaries Institute, *The Rise of the Gig Economy*, p. 6.

- How is the size of the gig economy workforce, and the population segments within the workforce, changing over time?²⁹

2.25 The authors of the national survey also noted the need for more research, and better data collection on gig work:

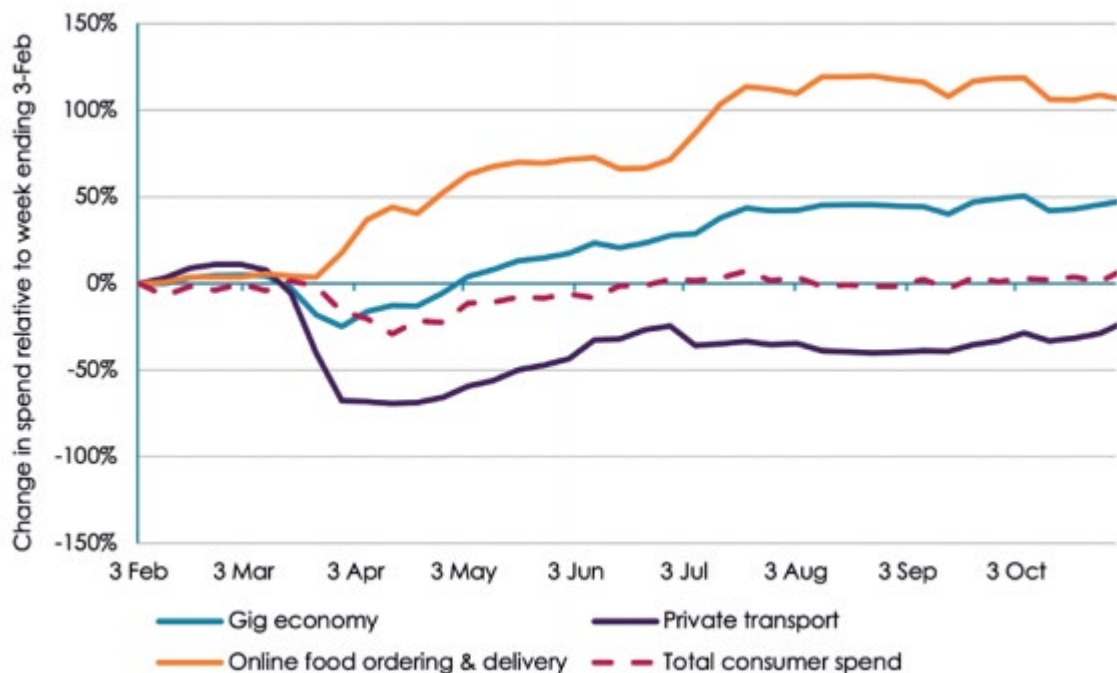
The substantial level of participation in platform work uncovered by the survey points to the need for more attention to the design and administration of routine labour market data collection to capture this reality. ... Future research should address the gendered nature of participation in digital platform work and the overall reproduction of labour market inequalities that emerge through the survey findings.³⁰

2.26 The Victorian inquiry argued for 'targeted, ongoing research about platform work ... to ensure that policy makers and affected parties can take an evidence based approach in framing settings'.³¹

Impact of COVID-19

2.27 The COVID-19 pandemic, and subsequent government responses, has significantly altered the way that businesses and consumers interact. This has resulted in broad disruption throughout the general economy, and brought about shifts in the on-demand economy. This is shown in Figure 2.1 below.

Figure 2.1 Consumer spend growth during COVID-19 to October 2020



Actuaries Institute, The Rise of the Gig Economy, p. 32.

²⁹ Actuaries Institute, *The Rise of the Gig Economy*, p. 7.

³⁰ McDonald, et. al., *Digital Platform Work in Australia*, June 2019, p. 10.

³¹ Victorian on-demand workforce report, p. 8.

2.28 Although overall consumer demand in the gig economy reduced during this period, online platform providers, such as Uber Eats and Deliveroo, allowed many businesses to 'pivot' and begin offering their products and services via home delivery. This allowed many of these businesses to continue trading and softened the negative impacts of the lockdowns and restrictions on their revenues and workers.³²

2.29 The Actuaries Institute mapped an initial decline of around 70 per cent in the overall gig economy during the early COVID-19 lockdown period, due to 'a sharp decline in private transport'; followed by 'a surge in economic activity in the Meal Delivery sector of the gig economy', during the broader 'COVID-19 period', from March 2020 to October 2020, leading to a recovery in the sector:

The gig economy has recovered since the beginning of May 2020, capturing over 40% more consumer spend in October 2020 compared to the pre-lockdown period in February 2020.³³

2.30 However, the Actuaries Institute noted consumer spending on private transport, such as ridesharing, 'remains lower', while meal delivery continues to grow:

Weekly consumer spend on meal delivery was 70% higher than pre COVID-19 lockdown levels in June 2020. The second round of lockdown in Victoria has caused spend in the gig economy to surge to even higher levels, with meal delivery spend over 100% higher in October 2020 than the pre COVID-19 lockdown period.³⁴

2.31 This growth was confirmed by a number of industry research companies. *Hospitality Magazine* reported on IBISWorld data which indicated:

Delivery has experienced a boom across the country. More than 4 million Australians use delivery services to order food ... Uber Eats, Deliveroo and Menu Log continue to lead the market, with new player DoorDash launching earlier in the year.³⁵

2.32 IBISWorld's September 2020 industry report for the 'Online Food Ordering and Delivery Platforms' sector reported annual revenue for the sector of \$847.9 million, with annual growth in revenues of 43.8 per cent between 2016 to 2021. The report stated:

The Online Food Delivery Platforms industry is expected to post revenue growth of 12.1% in 2020–21, constrained by declines in discretionary income.³⁶

³² Actuaries Institute, *The Rise of the Gig Economy*, p. 31.

³³ Actuaries Institute, *The Rise of the Gig economy*, p. 6.

³⁴ Actuaries Institute, *The Rise of the Gig economy*, p. 6.

³⁵ Annabelle Cloros, '2021 food + beverage trends', *Hospitality Magazine*, 10 December 2020, www.hospitalitymagazine.com.au/2021-trends/ (accessed 13 June 2021).

³⁶ IBISWorld, *Online Food Ordering and Delivery Platforms in Australia Industry Report*, p. 4.

2.33 In relation to ridesharing, IBISWorld's September 2020 industry report for 'Ridesharing Services in Australia' reported growth in industry revenues, annualised over the five years through 2020–21, of 20.4 per cent, reaching \$693.8 million. The report predicted industry revenue is set to rise 13.6 per cent (annualised) 'over the five years through 2025–26, to \$1.3 billion'. However, IBISWorld also reported a fall this year, of 6.6 per cent, 'due to the deterioration in demand conditions caused by the COVID-19 outbreak'.³⁷

Specific platform and driver impacts

2.34 In its submission to the inquiry Uber noted that, although Australia's public health and economic response to the pandemic had saved lives, it had also impacted Uber's various businesses and its drivers, delivery workers, and restaurant partners.³⁸

2.35 Uber submitted that these impacts were felt most acutely in early 2020, but also during the various lockdown periods later that year and in 2021. Uber highlighted that people increasingly relied on its services to connect with businesses and obtain food and other essentials while they remained at home. As a result, it reported that food delivery spend increased significantly over calendar 2020.³⁹

2.36 Deliveroo stated that the pandemic lockdowns highlighted the importance of the on-demand sector to drivers and those working in restaurants. It submitted that digital platforms drove revenue in the restaurant sector and made a significant contribution to Australia's economic recovery during these periods.⁴⁰

2.37 The Chief Executive Officer of Deliveroo Australia, Mr Ed McManus, stated the following to the committee:

... in many states for a long period food delivery, along with drive through and takeaway, were the only form of revenue available to restaurants.⁴¹

We've tragically seen some restaurants close that are unlikely to reopen, but many, many more would have closed permanently were it not for food delivery facilitated by Deliveroo and other platforms as well JobKeeper.⁴²

2.38 To quantify their contribution, Deliveroo commissioned research which found that delivery services supported \$1 billion in turnover for Deliveroo partner

³⁷ IBISWorld, *Ridesharing Services Australia Industry Report*, p. 9.

³⁸ Uber, *Submission 19*, p. 20.

³⁹ Uber, *Submission 19*, pp. 18–20.

⁴⁰ Deliveroo, *Submission 20*, [p. 4].

⁴¹ Mr Ed McManus, Chief Executive Officer, Deliveroo, *Proof Committee Hansard*, 12 April 2021, p. 33.

⁴² Mr McManus, Deliveroo, *Proof Committee Hansard*, 12 April 2021, p. 33.

restaurants and protected 38 000 jobs during the national lockdown period from April to June 2020.⁴³

- 2.39 Although the platform providers highlighted the importance of their services in sustaining businesses during the COVID-19 pandemic, a food delivery worker noted that there was an imbalance in the safety obligations placed on workers when compared to customers. In his evidence to the committee Mr Ashley Moreland said:

... we were told that it was absolutely mandatory upon delivery that we'd be wearing face masks—in fact, throughout the whole process—but at no point was there a directive to customers that they must wear face masks. So it was a double standard.⁴⁴

Future growth

- 2.40 There are suggestions from a number of consultancy firms, companies and commentators that gig work may be increasing due to the impacts of COVID-19.

- 2.41 Consultancy firm Gartner surveyed over 800 human resources managers in mid-2020, and found that 32 per cent of organisations were 'replacing full-time employees with contingent workers as a cost-saving measure'. Gartner reported that its analysis indicates:

... organizations will continue to expand their use of contingent workers to maintain more flexibility in workforce management post-COVID-19, and will consider introducing other job models they have seen during the pandemic, such as talent sharing and 80% pay for 80% work ... While gig workers offer employers greater workforce management flexibility, HR leaders will need to evaluate how performance management systems apply to these workers and determine whether they will be eligible for the same benefits as their full-time peers.⁴⁵

- 2.42 IBISWorld reported in June 2020 that the global freelancing site, Upwork had seen 50 per cent more 'freelancers entering the marketplace since the coronavirus begun'. It also pointed to American online grocery delivery service, Instacart, which had hired more 'temporary workers and freelancers' to manage increasing demand during COVID. IBISWorld's estimate in June 2020 was that 'the number of temporary employees' would increase by 1.8 per cent over the year.⁴⁶

⁴³ Mr McManus, Deliveroo, *Proof Committee Hansard*, 12 April 2021, p. 28.

⁴⁴ Mr Ashley Moreland, *Proof Committee Hansard*, 12 April 2021, p. 61.

⁴⁵ Gartner, *9 Future of Work Trends Post-COVID-19*, June 2020, www.gartner.com/smarterwithgartner/9-future-of-work-trends-post-covid-19/ (accessed 13 June 2021).

⁴⁶ Cecilia Fernandez, Lead Industry Research Analyst IBISWorld, 'Coronavirus's Effects on the Gig Economy', *United States Coronavirus Insights*, 26 June 2020, www.ibisworld.com/blog/coronavirus-s-effects-on-the-gig-economy/1/1128/ (accessed 13 June 2021).

2.43 Professional services firm, KPMG has predicted that 'gig arrangements' are set to grow as a feature of the workforce in the future, as businesses are less able to afford full-time workers, and there are 'less permanent positions available due to automation'. KPMG argued this will help the economy recover from the impacts of COVID:

Supply will come from organisations needing to add new skillsets and capacity while retaining flexibility to combat volatile conditions. Demand will come from individuals who increasingly need new sources of income. This matching of supply and demand via gig arrangements will help the economy recover faster than expected.⁴⁷

Industries and occupations most affected

2.44 According to the 2019 national survey, gig workers are most likely to be working in:

- transport and food delivery (18.6 per cent of platform workers);
- professional services work (16.9 per cent);
- odd jobs or maintenance work (11.5 per cent);
- writing or translation work (9 per cent);
- clerical and data entry (7.8 per cent);
- creative and multimedia work (7.7 per cent);
- software development and technology (7.2 per cent); and
- care services (7.0 per cent).⁴⁸

2.45 The six most common platforms used by gig workers in Australia were:

- Airtasker, used by 34.8 per cent of platform workers;
- Uber, used by 22.7 per cent;
- Freelancer, used by 11.8 per cent;
- Uber Eats, used by 10.8 per cent;
- Deliveroo, used by 8.2 per cent; and
- Ola Cabs (7.2 per cent).⁴⁹

2.46 Most workers (64.8 per cent) used just one platform; however, just over one third (35.2 per cent) used more than one, and 11.4 per cent were registered on four or more platforms.⁵⁰

⁴⁷ KPMG, *Rise of the gig worker in the robot century*, May 2020, <https://home.kpmg/au/en/home/insights/2020/05/predictions-after-covid-19/rise-of-gig-worker-in-robot-century.html> (accessed 13 June 2021).

⁴⁸ McDonald et. al., *Digital Platform Work in Australia*, p. 6.

⁴⁹ McDonald et. al., *Digital Platform Work in Australia*, pp. 37–38.

⁵⁰ McDonald et. al., *Digital Platform Work in Australia*, p. 6.

2.47 The Actuaries Institute noted that the two most heavily impacted sectors are 'private transport' and 'meal delivery', and 'a large proportion of the gig economy workforce [are] concentrated in these sectors'. It also added:

The overall private transport sector has grown by 39% between 2015 and 2019. This growth is driven by increased customer usage of gig economy private transport providers (e.g. Uber, Didi, Ola). There is evidence of cannibalisation of traditional private transport providers (e.g. Taxi drivers), with consumer spend on traditional providers declining by 6% between 2015 and 2019. However, the larger impact of gig economy provider entry remains stimulation of new demand. Meal delivery is a high growth sector, growing over six-fold since 2015 to capture \$3.8bn of consumer spend in 2019. This growth has been largely driven by rapid growth of gig economy entrants.⁵¹

2.48 The Centre for Future Work at the Australia Institute analysed statements made by Uber Eats about its contribution to 'supporting work opportunities in Australia'. It commented that, while Uber and other platforms 'use vague and strange language to describe their staff' (calling them 'partners' or 'drivers', rather 'workers' or 'employees', 'Uber Eats says it created 59 000 such 'opportunities' in 2020, up eight-fold since 2016'.⁵²

2.49 The Centre for Future Work noted that, if these 59 000 people 'were genuinely working for Uber Eats, Uber Eats 'would qualify as one of Australia's largest employers', making it 'twice as large (by number of workers) as iconic Australian companies like BHP (with around 20 000 Australian employees), Westpac Bank (30 000), Qantas (25 000), or Telstra (26 000)'. This is clearly not the true picture, the Centre submitted, as only a sub-set of these individuals are 'truly performing this job in any economically meaningful sense'.⁵³

2.50 The Centre for Future Work further noted that the food and beverage industry accounts for around 5 per of total employment in Australia. If there are approximately 100 000 people signed on to platforms to deliver food,⁵⁴ that would represent 'close to 1% of total employment in Australia', and would be mean the market is flooded with more people than it needs to deliver food:

That 100,000 people have signed on to do this work (then spending much or most of their work time doing nothing) is a sign of their desperation and their lack of alternative opportunities; in a purely economic sense it represents a massive misallocation of productive potential.⁵⁵

⁵¹ Actuaries Institute, *The Rise of the Gig Economy*, p. 5.

⁵² Australia Institute, Centre for Future Work (Centre for Future Work), *Submission 41.1*, p. 7.

⁵³ Centre for Future Work, *Submission 41.1*, pp. 7–8.

⁵⁴ 'Based on Uber Eats' estimated 60% market share of the overall food delivery business', its claim implies total employment of around 100,000 delivery workers in the platform based food delivery business'. Centre for Future Work, *Submission 41.1*, p. 8.

⁵⁵ Centre for Future Work, *Submission 41.1*, p. 8.

Demographics

2.51 In relation to the demographics of gig workers, the national survey found:

- young people, aged 18–34, were more likely to work through digital platforms;
- men were twice as likely as women;
- gig workers were more likely to identify as 'living with a disability';
- gig workers were 1.5 times more likely to indicate that they 'spoke a language other than English at home';
- compared with Australian citizens, temporary residents were three times more likely 'to be a current platform worker', and twice as likely 'to have been a former platform worker' at some stage; and
- permanent residents were 1.7 times more likely than Australian citizens 'to be current or former platform workers'.⁵⁶

2.52 Gig workers who worked more often, and were more dependent on gig work, were those who identified as disabled, unemployed, or as temporary residents. They mostly provided services to Australian clients only (65 per cent of respondents), and most Australian clients were based in New South Wales (34.4 per), Victoria (24.5 per cent), and Queensland (16.6 per cent).⁵⁷

2.53 Gig workers were concentrated in New South Wales (14.3 per cent of those who had ever done gig work, and 7.9 per cent of current gig workers); and Victoria (13.8 per cent of those who had ever done gig work, and 7.4 per cent of current gig workers). Respondents to the national survey who had done gig work were more likely to live in a major city than a regional or remote area.⁵⁸

Earnings

2.54 In the national survey, 15.4 per cent of current platform workers considered the income earned from platform work 'essential for meeting their basic needs', while 52.3 per cent said it was 'nice to have' but they could 'live without it'. Only 2.7 per cent of current platform workers indicated that digital platform work made up 100 per cent of their income, while 80.7 per cent said it was less than half their income. People most likely to indicate a reliance on digital platform work 'for meeting basic needs' were people with disabilities, unemployed respondents, and those doing care or transport and delivery work.⁵⁹

2.55 Forty per cent of platform workers surveyed 'did not know how much they earned per hour'. Among the other 60 per cent, the average rate was \$32.16 per hour, with professional service workers reporting 'higher hourly

⁵⁶ McDonald et. al., Digital platform work in Australia, p. 5.

⁵⁷ McDonald et. al., Digital platform work in Australia, p. 8.

⁵⁸ McDonald et. al., Digital platform work in Australia, p. 5.

⁵⁹ McDonald et. al., Digital Platform Work in Australia, p. 7.

rates (above \$50 per hour)', while clerical and data entry workers, and writing and translation workers, reported much lower hourly rates (between \$1–\$9.99 per hour).⁶⁰

- 2.56 The national survey found that the median income 'estimated by transport and food delivery workers was \$20 per hour';⁶¹ and 'care platform workers estimated earning, on average, \$21.60 per hour'.⁶² However, estimates by Melbourne rideshare drivers averaged only \$12.88 per hour, and the national average was \$14.62.⁶³
- 2.57 Platform workers were positive about the flexibility of the hours, 'working for themselves', and 'choosing their own tasks or projects', but were less satisfied with 'earning a fair income', and 'the fairness of fees and costs associated with working through the platform'. In addition, 15.3 per cent of respondents who had ceased platform work had done so 'because they found full-time (or more suitable) employment', and a further one in six report that 'income earned through the platform was insufficient, either in absolute terms or relative to the time investment required'.⁶⁴
- 2.58 The authors of the national survey concluded that:
- The findings suggest a troubling level of obfuscation associated with digital platform work in relation to both the terms on which workers engage and the true level of remuneration involved.⁶⁵
- 2.59 Earnings and wages across a number of platforms operating in the rideshare, food delivery, parcel delivery, and care sectors are discussed in further detail in Chapter 3.

Committee view

- 2.60 The committee acknowledges that the COVID-19 pandemic and associated government responses have significantly altered the way businesses and consumers interact. The committee recognises the important role that on-demand platforms played for both businesses and workers during this period of economic and social disruption, and notes that many businesses relied on these platforms' services to continue operating throughout government-initiated trading restrictions and lockdowns. Notwithstanding this, the committee is very concerned about the rapid increase of the 'on-demand'

⁶⁰ McDonald et. al., *Digital Platform Work in Australia*, p. 7.

⁶¹ Victorian on-demand workforce report, p. 81.

⁶² Victorian on-demand workforce report, p. 89.

⁶³ Victorian on-demand workforce report, p. 95.

⁶⁴ McDonald et. al., *Digital Platform Work in Australia*, p. 9.

⁶⁵ McDonald et. al., *Digital Platform Work in Australia*, p. 10.

and 'gig' economy, and the impacts of the insecure and precarious nature of many of the roles it supports.

- 2.61 The committee also notes evidence suggesting the potentially unproductive nature of many of these roles, and the fact that some platforms may be 'flooding the market' with far more workers than are needed to fulfil demand; thus creating the promise of an income where there is no realistic hope of earning a living.
- 2.62 Industry groups tended to argue that workers engaged by on-demand platforms represent an insignificant component of the workforce, and that they do not rely on these earnings; however, the data cited are often out-of-date, such as the 2016 research from the Grattan Institute, using 2015 data. Not only are these data six years old, they pre-date the COVID-19 lockdowns, which saw a massive growth in the use of food delivery services, and a corresponding increase in their contract workforces.
- 2.63 The committee notes that there were varying estimates of worker remuneration, and that survey data indicated that a significant number of platform workers did not know how much they earned per hour. The committee is concerned about this lack of clarity for on-demand workers, and discusses these issues in more detail in subsequent chapters of this report.
- 2.64 Inquiry participants highlighted the lack of relevant labour statistics and data as a key issue in understanding the needs of these workers and the physical, financial and other risks they face. The committee notes that there is also inadequate data regarding work-related injuries and fatalities within the on-demand platform sector. These issues are further discussed in Chapter 5 of this report.
- 2.65 This lack of robust, reliable data has restricted the committee's ability to identify the true size and nature of the on demand workforce. The committee believes it is critical that this gap in our national knowledge-base be filled through the regular collection and publication of robust data by the Australian Bureau of Statistics and Safe Work Australia.

Recommendation 1

- 2.66 The committee recommends that the Australian Bureau of Statistics expands its Labour Force Survey to capture quarterly estimates in relation to the number of workers engaged in the on-demand platform sector. These estimates could include the industries and occupations in which they work, the hours they work, their visa status, the nature of their working arrangements relative to other workers, earnings and other demographic characteristics.**

Recommendation 2

2.67 The committee recommends that the Australian Bureau of Statistics enhances its Work-Related Injuries Survey to capture specific information on the number, and types, of injuries and fatalities for workers engaged in the on-demand platform sector.

Recommendation 3

2.68 The committee recommends that Safe Work Australia enhances its national data collection process to capture specific information on the number, and types, of injuries and fatalities for workers engaged in the on-demand platform sector. The committee further recommends that all road crashes involving on-demand workers be officially recognised as workplace incidents and are recorded and investigated as such.

Chapter 3

Major platforms, workforce models and earnings

- 3.1 This chapter focuses on platform-based rideshare, food delivery, parcel delivery, and care services. It provides an overview of each of these service areas and details the evidence provided to the committee by a number of key players who engaged with the inquiry. The discussion also provides background information on each platform, their current and future workforce models, and information presented regarding worker protections and remuneration.
- 3.2 In addition to the evidence provided by inquiry participants through their submissions and attendance at public hearings, this chapter utilises information from the comprehensive inquiry commissioned by the Victorian government into the Victorian on-demand workforce (the Victorian inquiry).¹

Overview of platform-based rideshare services

- 3.3 Notwithstanding the ongoing COVID-19 pandemic, the demand for passenger services has grown in recent times, and the traditional taxi industry has been materially disrupted by the introduction of rideshare platforms, such as Uber, in the domestic market.²
- 3.4 Rideshare platforms allow passengers requiring transport to request trips via applications downloaded onto their phones. Passengers are then provided with a proposed fee and asked to confirm before the trip information is posted to a driver close to their collection point. If a driver rejects a job, it is then provided to another driver within the vicinity. Once a trip is completed, both parties may 'rate' each other, and payment is made via the passenger's credit card.³
- 3.5 Uber submitted that rideshare platforms complement public transport services and can extend their reach.⁴ For example, the majority of a journey could be undertaken via public transport, such as a government-run train service, with rideshare providing transport at both ends; that is from the passenger's original location, such as his or her home, to the train station, and then from the train station to the passenger's ultimate destination. Uber submitted this 'first and last mile' gap is a common barrier to the increased utilisation of public transport.⁵

¹ For further information see: <https://engage.vic.gov.au/inquiry-on-demand-workforce>

² Victorian Government Department of Premier and Cabinet, *Report of the Inquiry into the Victorian On-Demand Workforce*, June 2020 (Victorian on-demand workforce report), p. 93, <https://engage.vic.gov.au/inquiry-on-demand-workforce> (accessed 13 June 2021).

³ Victorian on-demand workforce report, p. 94.

⁴ Uber, *Submission 19*, p. 13.

⁵ Uber, *Submission 19*, p. 14.

- 3.6 Rideshare platforms do not currently employ their workforces. Workers are allowed to determine if, and when, they work, and are not restricted from undertaking work across a number of platforms. The platforms set fare prices and generally take a commission or fee.⁶

Worker income

- 3.7 In its final report, the Victorian inquiry provided a number of estimates of driver income. Specifically, it referenced a 2019 national survey which showed that transport sector workers reported a median income of \$20 per hour; an estimate by AlphaBeta that income for drivers in Sydney was \$21 per hour, after expenses and fees; and evidence from a particular rideshare driver who estimated that take-home pay was \$22.80 per hour.⁷
- 3.8 Other estimates provided to that inquiry were lower, and ranged from \$12.88 per hour for Melbourne drivers to \$17.50 per hour for experienced Brisbane drivers. A national average figure of \$14.62 was provided, as well as an average of \$16 per hour across platforms.⁸
- 3.9 The Victorian inquiry also noted that drivers commonly 'undertake significant unpaid work administering their business and cleaning vehicles', and estimated driver costs, including platform fees, ranged from half to two thirds of their revenue.⁹
- 3.10 The committee received a number of estimates of income from platform providers and drivers who engaged with the current inquiry, either through their submissions or by attending public hearings. These particular estimates are discussed for each platform later in this chapter.

Workforce demographics

- 3.11 Research undertaken by three academics in 2017 across food delivery workers operating in Perth and Melbourne found that they were 'predominantly young, non-Australian residents (47 of the 58 interviewees indicated that they held temporary work or student visas) and had low English language skills'.¹⁰
- 3.12 The 2019 national survey also supported this earlier research, finding that transport workers are likely to be younger, have temporary residency status, and speak a language other than English at home.¹¹

⁶ Victorian on-demand workforce report, p. 94.

⁷ Victorian on-demand workforce report, p. 95.

⁸ Victorian on-demand workforce report, p. 95.

⁹ Victorian on-demand workforce report, p. 95.

¹⁰ Victorian on-demand workforce report, p. 79.

¹¹ Victorian on-demand workforce report, p. 79.

A survey of rideshare platforms

Uber rideshare

- 3.13 Uber was the first platform to deliver a 'rideshare' service, and was conceived in 2008 by Mr Travis Kalanick and Mr Garrett Camp when they could not find a ride while in Paris.¹² On 5 July 2010, the first Uber ride was provided to a passenger in San Francisco.¹³
- 3.14 Uber is now a global organisation that is available in approximately 71 countries around the world, including the United States and Canada, Latin America, Europe, the Middle East, Africa, and Asia.¹⁴ In 2012, Uber launched in Sydney with its Uber Black offering.¹⁵
- 3.15 Since launching domestically, Uber has expanded from an inner city product to one which is available in 43 cities across Australia.¹⁶ In its submission, Uber highlighted that the percentage of Australians utilising point-to-point transport services has grown from just over 30 per cent in June 2016 to almost 45 per cent in June 2019.¹⁷
- 3.16 Evidence provided by Uber to the Victorian inquiry indicated that the majority of its drivers were Australian citizens and male. Notwithstanding this, Uber noted that the demographics were changing slowly, and that there were a higher proportion of female drivers on its food delivery platform.¹⁸

Workforce model and worker earnings

- 3.17 The General Manager of Uber Eats, Mr Matthew Denman, described the relationship between Uber and Uber Eats and its drivers and delivery partners as 'very much that of the independent contractor'.¹⁹ In support of this assertion Mr Denman said:

There are no set shifts when you partner with Uber. Delivery partners go online where they want, when they want and for as long as they want. They have the right to accept or not accept trips. They wear no uniforms. What the Fair Work Ombudsman and commission found is that the level of

¹² Uber, *About us*, <https://www.uber.com/en-AU/newsroom/history/> (accessed 7 June 2021).

¹³ Uber, *About us*, <https://www.uber.com/en-AU/newsroom/history/> (accessed 7 June 2021).

¹⁴ Uber, *2020 Annual Report*, p. 4.

¹⁵ Uber, *Submission 19*, p. 10.

¹⁶ Uber, *Submission 19*, p. 10.

¹⁷ Uber, *Submission 19*, p. 12.

¹⁸ Victorian on-demand workforce report, p. 93.

¹⁹ Mr Matthew Denman, General Manager, Uber Eats, *Proof Committee Hansard*, 12 April 2021, p. 16.

control that delivery partners and drivers have on the Uber and Uber Eats platform is very much consistent with that of independent work.²⁰

- 3.18 In its submission to the inquiry, Uber provided further details on the findings of the Fair Work Commission. Specifically, it stated that the Fair Work Commission had concluded in 2017, 2018, and 2019 that its driver partners were not in an employment relationship with Uber.²¹

Uber ridesharing earnings

- 3.19 For rideshare drivers on its platform, fare trips are collected by Uber and then transferred to the driver, minus Uber's service fee. The fare is based on time and distance estimations, using rates published by Uber, as well as the pickup location and destination entered by the customer.²² In his evidence to the committee, the General Manager of Uber Australia, Mr Dominic Taylor, stated that Uber's commission ranges from 20 per cent to 25 per cent, excluding GST, of the fare paid by customers.²³
- 3.20 Uber noted that a minimum fare applies to all trips and that the fare may also include tolls; taxes; and other fees, such as airport charges and dynamic pricing—also known as surge pricing.²⁴ The purpose of dynamic pricing is to allow a fare to better reflect the underlying market forces of supply and demand at a particular time within a particular location. For example, if the number of customers requesting trips exceeds the number of drivers available at a specific time within a particular region, the fare is increased to reflect this imbalance and to incentivise others to provide their services.
- 3.21 Uber stated that drivers designate the bank account into which they would like their earnings delivered. The firm noted that these payments are either made weekly or instantly, at the election of the driver, and that drivers can also access information, via their Uber application, on the amount they have earned.²⁵
- 3.22 Uber commissioned AlphaBeta to prepare a report analysing its Australian driver network of around 60 000 drivers. The report found that, in Sydney, the average Uber driver was receiving \$29.46 per hour after paying Uber's fee. This

²⁰ Mr Denman, Uber Eats, *Proof Committee Hansard*, 12 April 2021, p. 16.

²¹ Uber, *Submission 19*, p. 31.

²² Uber, *Submission 19*, p. 32.

²³ Mr Dominic Taylor, General Manager, Uber Australia, *Proof Committee Hansard*, 12 April 2021, p. 22.

²⁴ Uber, *Submission 19*, p. 32.

²⁵ Uber, *Submission 19*, p. 32.

did not include their costs, which Uber estimated to be around \$8.46 an hour, leaving the average Sydney driver with around \$21 an hour.²⁶

- 3.23 The Transport Workers' Union (TWU) submitted that, based on survey data, rideshare workers reported average gross earnings of \$23 per hour before taxes and other deductions. It stated that this was 'well below' the Australian national minimum wage of \$24.80 for casual workers.²⁷
- 3.24 The TWU also highlighted that, after taking into account expenses such as vehicle costs; phone costs; and protective equipment costs, the effective hourly rate was substantially lower. It concluded that rideshare drivers are amongst the lowest paid workers in the country, effectively earning, on average, only \$12.85 per hour.²⁸
- 3.25 Notwithstanding the TWU's research, Uber claimed that its own data indicated that, over a fortnight, more than 98 per cent of drivers and delivery people are earning at least the minimum wage, after costs, for the time they spend driving or delivering.²⁹

Ola rideshare

- 3.26 Ola is an Indian-based ridesharing company which launched in Australia in February 2018, and now operates nationally across Australia. The Head of Business Excellence and Legal within Australia and New Zealand, Ms Ann Tan, noted that the firm currently has approximately 75 000 drivers³⁰ registered on its digital platform.³¹

Workforce model and worker earnings

- 3.27 Similar to other platforms in the sector, Ola engages its drivers as independent contractors. It stated that internal research showed that approximately 75 per cent of these drivers operate part time, and that 'the whole reason for them driving for rideshare is because they are looking for permanent jobs, they are between jobs, they are students or they are looking for part-time work'.³²

²⁶ Patrick Durkin, 'Uber drivers paid above minimum wage', *Australian Financial Review*, 29 March 2019, www.afr.com/work-and-careers/workplace/uber-drivers-paid-above-minimum-wage-20190326-p517r5 (accessed 10 March 2021).

²⁷ Transport Workers' Union (TWU), *Submission 39*, p. 22.

²⁸ TWU, *Submission 39*, p. 22.

²⁹ Uber, *Submission 19*, p. 27.

³⁰ On notice, Ola clarified that its platform has 38 000 *active* drivers. Ola, Answers to questions on notice taken at the public hearing, Sydney 12 April 2021, p. 1.

³¹ Ms Ann Tan, Head of Business Excellence and Legal, Ola Australia, *Proof Committee Hansard*, 12 April 2021, p. 9.

³² Ms Tan, Ola Australia, *Proof Committee Hansard*, 12 April 2021, p. 10.

- 3.28 Ola submitted to the inquiry that it places no requirements on its drivers to maintain shifts, log in at specific times, or work any specific hours; it only expects its drivers to pick up their passengers and drop them off, and there are no negative consequences for a driver rejecting a trip on the platform.³³
- 3.29 In her evidence to the committee, Ms Tan stated that Ola currently takes a 15 per cent commission on fares undertaken, and that its drivers currently earn approximately \$21 per hour, after costs, from its platform.³⁴ Ms Tan noted that the 15 per cent commission was 'significantly lower' than the incumbent, Uber, and that it reflected the firm's 'focus on drivers'.³⁵
- 3.30 Ms Tan noted that Ola previously provided its workers with accident insurance; however, due to the financial impact of the COVID-19 pandemic, it stopped providing this cover in 2020. Ms Tan stated that the organisation is currently reviewing its insurance requirements for the 2021–22 financial year.³⁶

Overview of platform-based food delivery services

- 3.31 Food delivery services are now widely utilised in Australia and are offered by numerous online platforms such as Deliveroo, Uber Eats, and Menulog. Prior to their emergence, home delivery was not as commonplace as it is today, and those food vendors who chose to deliver usually relied on their own delivery infrastructure and workforces.³⁷
- 3.32 The introduction of these digital platforms materially increased the number of food outlets offering home delivery, including those who had previously focused on providing dine-in services only, and dramatically expanded the food options available to consumers within their own homes. For their service, platforms commonly charge their food vendor partners 'on-boarding' or 'activation' fees, combined with a per delivery or percentage fee.³⁸
- 3.33 Although one platform, Menulog, recently announced its intention to explore transitioning to an employment model in Australia, based on its experience operating a similar model in Europe,³⁹ food delivery platforms have historically not employed their delivery workers in Australia.⁴⁰

³³ Ms Tan, Ola Australia, *Proof Committee Hansard*, 12 April 2021, p. 13.

³⁴ Ms Tan, Ola Australia, *Proof Committee Hansard*, 12 April 2021, pp. 10–11.

³⁵ Ms Tan, Ola Australia, *Proof Committee Hansard*, 12 April 2021, p. 14.

³⁶ Ms Tan, Ola Australia, *Proof Committee Hansard*, 12 April 2021, p. 9.

³⁷ Victorian on-demand workforce report, p. 80.

³⁸ Victorian on-demand workforce report, p. 81.

³⁹ Mr Morten Belling, Managing Director, Menulog, *Proof Committee Hansard*, 12 April 2021, p. 53.

⁴⁰ Victorian on-demand workforce report, p. 81.

- 3.34 Similar to rideshare workers, delivery workers may choose when, and if, to log in to a particular platform. Once a worker accepts a job, they travel to the particular food vendor, collect the customer's order, and deliver it to the requested address.⁴¹
- 3.35 Although the platforms claim that they do not restrict their workers from utilising multiple platforms simultaneously, evidence provided by a driver, Mr Assad Manzoor, suggested this may not be the case. He said:
- I was doing multiple jobs once. I went to a restaurant and I got orders for the restaurant on two different apps, for the same place. They ended up calling my phone and their words were, 'You're not allowed to work on any other platform while you're working on our platform.'⁴²
- 3.36 During the Victorian inquiry, Domino's Pizza estimated that the costs associated with non-employee platform workers were about half that of its award paid employee, excluding penalties. Similarly, Marketing4Restaurants estimated that platforms were about one third cheaper than in-house delivery because they did not provide hourly rates, leave and other entitlements, and there was no minimum engagement that workers need to be paid.⁴³
- 3.37 In relation to earnings and income, food delivery platforms, including Uber Eats, maintain that the majority of their 'delivery partners' do not rely on the income and that it is 'supplementary'.⁴⁴
- 3.38 However, the Centre for Future Work at the Australia Institute analysed Uber's workforce report, undertaken by Accenture, and found the survey commissioned for the report 'did not ask that question', only asking about motives for earning money. Accenture then classified as 'supplementary motives' motives including 'saving for a holiday' and 'getting "extra cash to help make ends meet"'. It also classified anyone delivering for 'relatively few weekly hours' as someone doing it for 'supplementary reasons'.⁴⁵
- 3.39 The Centre for Future Work contended that 'few' people would consider money used to 'make ends meet' to be "'supplementary" in any sense of the word'. Later in the report, the Centre for Future Work noted, Accenture states that 57 per cent of Uber Eats workers reported their earnings from the platform were 'essential'.⁴⁶

⁴¹ Victorian on-demand workforce report, p. 80.

⁴² Mr Assad Manzoor, Private capacity, *Proof Committee Hansard*, 12 April 2021, p. 65.

⁴³ Victorian on-demand workforce report, p. 84.

⁴⁴ See for instance: Mr Taylor, Uber Australia, *Proof Committee Hansard*, 12 April 2021, p. 17.

⁴⁵ Australia Institute, Centre for Future Work (Centre for Future Work), *Submission 41.1*, p. 10.

⁴⁶ Centre for Future Work, *Submission 41.1*, p. 10.

3.40 The Centre for Future Work concluded that it is highly likely that most Uber Eats workers have other jobs, otherwise 'it would not be possible for them to survive' on the low rates provided. However:

Whether the funds are used to buy food and pay rent, or save for a holiday or some other 'luxury', has no bearing on the value of the work performed, and should not affect the level of compensation. The arguments of Uber Eats and other platforms that their workers perform these jobs for 'extras' is a self-evident attempt to evade responsibility for the poverty experienced by many of its workers. It has no justification in economic theory, nor in morality.⁴⁷

3.41 Mr Bernie Smith, from the Shop, Distributive and Allied Employees Association, commented:

It's not that people aren't reliant on [income from gig work]; it's that people are reliant on stitching together two, three and sometimes even four jobs or workplaces to get a living wage of any sort. To really address insecure work you also have to address the capacity to have one job if that's what you want, rather than having to stitch together three or four in an insecure work environment.⁴⁸

Workforce demographics

3.42 A survey of on-demand food delivery riders undertaken in 2019 by the Victorian Trades Hall Council showed that:

- participants were predominantly young men from culturally and linguistically diverse backgrounds;
- participants were, on average, 26 years old, and that two thirds were under the age of 30;
- food delivery is male-dominated, with 90 per cent of participants identifying as male;
- forty per cent of participants listed a preferred language other than English; and
- only one in ten workers were Australian citizens, with the vast majority (80 per cent) being temporary visa holders, and two thirds international students.⁴⁹

3.43 The Centre for Future Work submitted that Uber's own report on the demographics of its workforce 'raises major concerns about its ethical and legal practices'. The survey found that 29 per cent of respondents 'cited visa restrictions as the reason they could not find alternative work'. The Centre for Future Work said this may mean those workers 'do not have permission to work

⁴⁷ Centre for Future Work, *Submission 41.1*, p. 11.

⁴⁸ Mr Bernard (Bernie) Smith, Branch Secretary-Treasurer, Shop, Distributive and Allied Employees Association, NSW Branch (SDA NSW), *Proof Committee Hansard*, 10 June 2021, p. 38.

⁴⁹ Victorian on-demand workforce report, p. 79.

in Australia', or that they are 'international students who wish to work more than the 40 hours per fortnight they have traditionally been limited under normal student visas'.⁵⁰

- 3.44 In another part of the Accenture report, it states that 77 per cent of Uber Eats workers 'could not qualify for government income support during the COVID-19 pandemic', with 65 per cent of those citing 'visa status as the reason'. The Centre for Future Work submitted this suggests that 'a much higher proportion (perhaps half) of Uber Eats' workforce may actually be ineligible to work (or work that many hours) in Australia'.⁵¹

A survey of food delivery platforms

Uber Eats

- 3.45 Uber Eats launched in 2016 and now operates across 36 cities.⁵² It partners with thousands of restaurants around Australia, from local small businesses to large international chains. In 2019, delivery platforms were estimated to have added 80 million deliveries to the restaurant economy, while also improving awareness of independent food providers.⁵³
- 3.46 Prior to the COVID-19 pandemic, food delivery coordinated via online platforms, such as Uber Eats, accounted for approximately 5.6 per cent, or \$2.6 billion, of restaurant trade. Uber submitted that, in the absence of online platforms, 70 per cent of this spend would not have otherwise been spent in restaurants.⁵⁴
- 3.47 Uber Eats offers its restaurant partners three service delivery options:
- click and collect in-store;
 - the utilisation of the partner's existing delivery staff; and
 - the utilisation of Uber Eats delivery workers.⁵⁵

Workforce model and worker earnings

- 3.48 For food delivery workers operating on the Uber Eats platform, fare amounts include a base amount, a surge or promotion amount, if applicable, and, in some circumstances, a trip supplement.⁵⁶ The base amount reflects estimated delivery time, distance, and whether the trip has multiple pick-up and drop-off points.

⁵⁰ Centre for Future Work, *Submission 41.1*, pp. 11–12.

⁵¹ Centre for Future Work, *Submission 41.1*, p. 12.

⁵² Uber, *Submission 19*, p. 10.

⁵³ Uber, *Submission 19*, p. 17.

⁵⁴ Uber, *Submission 19*, p. 18.

⁵⁵ Uber, *Submission 19*, p. 18.

⁵⁶ Uber, *Submission 19*, p. 32.

The supplement amount may apply when there are higher than usual estimated traffic conditions and wait times at the pick-up location, as well as areas with limited availability of delivery workers or unusual delivery demand.⁵⁷

- 3.49 Uber indicated that research undertaken by Accenture, based on data from 6.9 million deliveries in Sydney, found delivery people earned an average of \$21.55 per hour after costs over peak meal times from Uber earnings.⁵⁸
- 3.50 The TWU submitted that, based on survey data, food delivery workers reported average gross earnings of \$17.11 per hour before taxes and other deductions—less than the national minimum wage for casual workers of \$24.80. Similar to its evidence for rideshare workers, the TWU highlighted that after taking expenses into account the effective hourly rate was substantially lower. It concluded that food delivery drivers are amongst the lowest paid workers in the country, effectively earning, on average, only \$10.42 per hour.⁵⁹
- 3.51 Analysis by the Centre for Future Work of data provided in Accenture's report on Uber Eats suggests:

... that Uber Eats workers, in general, are terribly underutilised when they are on the job. The report does not reveal how many delivery jobs are assigned to a typical worker, but this can be imputed from various other statistics in the study. Sharing 6.9 million deliveries among 9,389 drivers over a 22-week period implies an average rate of assigned delivery of under 34 deliveries per worker per week. Based on the distribution of hours of work data also contained in the report (p. 11), this implies an average of just 1.7 deliveries per hour per worker. Uber Eats does not divulge its schedule of payments to delivery workers: they are paid a set fee per delivery, topped up by additional revenue tied to distance travelled and other factors. It is common for fees to equal \$6-8 per delivery.⁶⁰

- 3.52 The Centre for Future Work submitted that 'the incidence of people working full-time hours [on the Uber Eats platform] is in fact much higher' than Uber has suggested:

Only 21% of its workers in Sydney during the period covered by the data worked 31 or more hours per week (the company's definition of full-time). But those workers accounted for about half of all Uber Eats deliveries in that period.⁶¹

- 3.53 The Centre for Future Work also provided detailed analysis of Uber's calculations around delivery partner expenses and concluded that:

⁵⁷ Uber, *Submission 19*, p. 32.

⁵⁸ Uber, *Submission 19*, p. 26.

⁵⁹ TWU, *Submission 39*, p. 22.

⁶⁰ Centre for Future Work, *Submission 41.1*, p. 14.

⁶¹ Centre for Future Work, *Submission 41.1*, p. 10.

Uber Eats' description of the revenue and expenses associated with its food delivery work is inconsistent with accepted accounting and tax practices, and should be discounted. Correcting for more accurate measures of expenses, and considering the full range of hours worked (not just those in the busiest city at the busiest times), there is no doubt that Uber Eats' workers earn far less than [statutory minimum wages].⁶²

Deliveroo

3.54 Deliveroo was founded in the United Kingdom in 2013 and launched in the Australian market in November 2015. It currently has over 8000 workers across Australia and partners with more than 13 000 food vendors across 15 cities, including capital cities such as Melbourne; Sydney; and Brisbane, as well as regional cities such as Newcastle; Ballarat; and Cairns. Deliveroo noted that its restaurant partners range from small restaurants and cafes, to catering businesses, franchises, and chains.⁶³

3.55 Deliveroo claimed that, in 2018, it underpinned the creation of \$313 million in additional revenue for the Australian restaurant market and supported the generation of \$452 million in revenue for the Australian economy.⁶⁴

3.56 In his evidence to the committee, the Chief Executive Officer of Deliveroo in Australia, Mr Ed McManus, stated that the chosen modes of delivery by its workers results in an approximate 50/50 split between motorcycles and cars, with only a small percentage using bicycles.⁶⁵

Workforce model and worker earnings

3.57 Deliveroo highlighted for the committee a number of key features which it believes it provides its workers:

- There are no obligations to work at certain times, or for a set number of hours, or at all.
- There is no obligation for workers to undertake the work personally, and they can appoint delegates at their discretion.
- There is no restriction on working for multiple companies across multiple platforms, even on a concurrent basis.
- There are no fixed work arrangements; that is, workers pick their own times to go online and be available for delivery.
- Workers are free to accept or reject orders offered to them, and can also revoke a prior acceptance of an order at any time.

⁶² Centre for Future Work, *Submission 41.1*, p. 23.

⁶³ Deliveroo, *Submission 20*, [p. 1].

⁶⁴ Victorian on-demand workforce report, p. 80.

⁶⁵ Mr Ed McManus, Chief Executive Officer, Deliveroo, *Proof Committee Hansard*, 12 April 2021, p. 28.

- Workers choose where they work, what vehicle they use to perform their work, the routes they take to complete their deliveries, and what clothes and safety equipment they wear.⁶⁶
- 3.58 Deliveroo stated that it currently provides its workers with accident insurance, and that this protection provides similar coverage to the various state-based WorkCover schemes.⁶⁷
- 3.59 Although Deliveroo does not have visibility of the payments received by its workers when they utilise other platforms, Mr McManus stated to the committee that, during March 2021, the average earnings of its workers across all times, that is not only peak times, was \$23.40 per hour pre-costs. During peak times, Mr McManus submitted that the figure was 'well over \$30'.⁶⁸

Menulog

- 3.60 Menulog was founded in Sydney in 2006 to provide ordering solutions to restaurants with their own drivers. In 2018 the business launched its own delivery service, and currently connects more than 2.7 million active customers with almost 20 000 local restaurants via its application and website.^{69 70}

Workforce model and worker earnings

- 3.61 Menulog's workers are currently engaged as independent contractors; however, Menulog has expressed its desire to move to an employment model in Australia and has announced its intention to launch a trial in Sydney this calendar year. This is further discussion in Chapter 6.
- 3.62 Like other delivery platforms, Menulog currently pays its Australian workers by the order and not by the hour. In reaching an estimation of the hourly rate of remuneration, Menulog stated that, based on its European operations where employees are exclusively employed, workers fulfil approximately two orders per hour. Combined with an average pay per order of \$11 to \$12 in Australia, Menulog estimated that the average pay ranges from \$22 to \$24 per hour.⁷¹

Overview of platform-based parcel delivery services

- 3.63 On-demand work in the transport sector has, until recently, mainly been limited to food delivery and passenger transport; however, this changed in

⁶⁶ Deliveroo, *Submission 20*, [p. 2].

⁶⁷ Ms Julia Duck, Head of Operations, Strategy and Performance, Deliveroo, *Proof Committee Hansard*, 12 April 2021, p. 28.

⁶⁸ Mr McManus, Deliveroo, *Proof Committee Hansard*, 12 April 2021, p. 28.

⁶⁹ Mr Belling, Menulog, *Proof Committee Hansard*, 12 April 2021, p. 54.

⁷⁰ Menulog, *About Us*, <https://www.menulog.com.au/info/about-us> (accessed 5 June 2021).

⁷¹ Mr Belling, Menulog, *Proof Committee Hansard*, 12 April 2021, p. 57.

February 2020 when Amazon introduced its 'last-mile' parcel delivery service in Australia: Amazon Flex.⁷²

- 3.64 Prior to the introduction of Amazon Flex in Australia, Amazon commonly outsourced its last-mile delivery work to established transport operators, such as Australia Post; CEVA; Toll; and Fastway.⁷³
- 3.65 The TWU noted that, although Amazon Flex is relatively new in Australia, it has been operating in the United States since 2015. It submitted that these United States operations have been 'the centre of much scrutiny over poor working conditions for drivers and [their] broader effects on the transport sector'.⁷⁴

Overview of Amazon Flex

- 3.66 Amazon Flex forms part of Amazon's delivery network, and allows individual drivers to deliver Amazon packages. Amazon described its Amazon Flex offering as follows:

Amazon Flex is designed to provide individuals with supplementary earning opportunities and the flexibility to determine their own schedule by choosing blocks based on their availability ... the majority of our delivery partners tell us that their motivation for joining Amazon Flex is the flexibility to choose their own schedule, as well as a desire to supplement their primary income.⁷⁵

- 3.67 While difficult to determine the precise number of people working through Amazon Flex, Amazon stated that, 'over the last three months [March to May 2021] the weekly average number of delivery partners who completed a block was 1 600'. Many more signed up to Amazon Flex but were not 'active users' of the platform.⁷⁶
- 3.68 Amazon submitted that drivers can select the date; time; and location of a 'delivery block', and then collect the associated Amazon packages from a delivery station. Amazon stated that workers are paid per delivery block, rather than per hour or per delivery.⁷⁷
- 3.69 Amazon noted that, although it estimates the time a delivery block will take to complete, it leaves it up to the individual driver to determine the route they will use. It also submitted that delivery workers are free to accept delivery blocks at

⁷² TWU, *Submission 39*, p. 27.

⁷³ TWU, *Submission 39*, p. 29.

⁷⁴ TWU, *Submission 39*, p. 28.

⁷⁵ Amazon, *Submission 114*, [p. 2].

⁷⁶ Mr Michael Cooley, Director, Public Policy Australia and New Zealand, Amazon Commercial Services Pty Ltd (Amazon Australia), *Proof Committee Hansard*, 10 June 2021, p. 19.

⁷⁷ Amazon, *Submission 114*, [p. 3].

times that suit them, and that workers know the minimum amount they will be paid, and the length of the delivery block, prior to accepting the work.⁷⁸

3.70 Amazon stated that it has 'stringent safety policies in place to ensure the safety of Amazon Flex delivery partners, customers and the community'. In support of this, it submitted that it sets limits on weight and package dimensions, and that workers are able to decline a package when they feel that it would compromise their safety. Amazon highlighted in its submission that it also implemented additional health and safety procedures during COVID-19, such as social distancing at delivery stations; contactless deliveries for customers; and the provision of masks and hand sanitizer.⁷⁹

3.71 In contrast to the above, the TWU claimed in its submission that Amazon Flex has dangerously undermined safety standards, and indicated that numerous drivers have reported:

- regularly overloading vehicles (commonly personal cars) to a point where driving vision is dangerously obstructed;
- delivering packages which require two or more people to carry and transport;
- feeling pressured to engage in dangerous road practices in order to complete an unrealistic number of deliveries in short windows; and
- failing to provide sufficient training to workers, with all training limited to a short two minute training video covering safety, manual handling, and use of the Amazon Flex application prior to the commencement of work.⁸⁰

Workforce model and worker earnings

3.72 The TWU noted that Amazon Flex engages its drivers as independent contractors and, hence, they are not afforded the legal protections provided to other couriers in the transport sector. The TWU also submitted that, under this arrangement, these workers do not have access to penalty rates, sick leave, minimum rates of pay, superannuation, and various other working rights and protections.⁸¹

3.73 The TWU claimed that since the introduction of Amazon Flex in Australia, Amazon has engaged in the underpayment of workers below national minimum standards. It stated that drivers have reported earning between \$10 and \$15 per hour, on average, after costs—below the minimum wage. It highlighted that this was similar to Amazon's United States operations where analyst figures indicated that, in 2018, the average Amazon Flex driver earned

⁷⁸ Amazon, *Submission 114*, [p. 3].

⁷⁹ Amazon, *Submission 114*, [p. 3].

⁸⁰ TWU, *Submission 39*, p. 28.

⁸¹ TWU, *Submission 39*, p. 27.

\$5 to \$11 USD per hour, after on the job expenses were deducted—also below the minimum wage.⁸²

3.74 At a public hearing, Amazon confirmed that drivers provide their own vehicles and must hold their own insurance policies, including third-party insurance and public liability insurance, 'in order to deliver on behalf of Amazon Flex'. However, Mr Michael Cooley, Director of Public Policy Australia and New Zealand, said Amazon also has insurance policies 'which match the cover that they have': 'So, to the extent that there is an accident or they are driving on behalf of Amazon Flex, they claim under our policies'.⁸³

3.75 Asked what workers' compensation coverage a driver would have if injured delivering parcels for Amazon Flex, Mr Cooley said:

They're not workers; they're independent contractors. As I mentioned, they have their insurance policy. So if they have a comprehensive insurance policy then we will also have the same matching policy, and they would claim under our policy to cover injury.⁸⁴

3.76 In relation to earnings for drivers delivering for Amazon Flex, Mr Cooley said the rates paid by Amazon in NSW and Victoria per 'delivery block' were set according to the 'owner-driver regulations'. Mr Cooley said, 'we comply with those regulations':

There's a minimum pay of \$108 per delivery block; we pay in blocks. The average block duration is four hours so it's \$108 for a four-hour block, which is slightly above the rates in the owner-driver regulations.⁸⁵

3.77 Amazon *does not pay* delivery partners for their travel time to and from the delivery centre, though it does pay for the time to return any undelivered parcels.⁸⁶

3.78 Mr Cooley also said that Amazon provides a mechanism for drivers to 'identify' issues that have occurred that have prevented them delivering parcels within the allocated time, and Amazon will review the claim and may compensate the driver:

Occasionally, however, they may struggle to find a particular address or a business may be closed, and that can take up some extra time, or there's been road congestion or an accident et cetera. So from time to time people do go over the block, even though they were trying to complete the delivery of the parcels in as short a period of time as possible. .. Where it's pretty clear that there was traffic or an accident or unforeseen circumstances then we will in

⁸² TWU, *Submission 39*, p. 28.

⁸³ Mr Cooley, Amazon Australia, *Proof Committee Hansard*, 10 June 2021, p. 16.

⁸⁴ Mr Cooley, Amazon Australia, *Proof Committee Hansard*, 10 June 2021, p. 16.

⁸⁵ Mr Cooley, Amazon Australia, *Proof Committee Hansard*, 10 June 2021, p. 16.

⁸⁶ Mr Cooley, Amazon Australia, *Proof Committee Hansard*, 10 June 2021, p. 24.

fact compensate the driver for the additional time they took to deliver that route.⁸⁷

- 3.79 Mr Cooley was asked how much the drivers earn per hour and said Amazon does not pay by the hour, as it is 'entirely a matter for the driver as to how they actually undertake the deliveries on behalf of Amazon Flex':

For instance, if the driver were to go out in the morning to a delivery station, which is where they go to pick up parcels, they load the vehicle and, say they turned up at the delivery station at 9 am, they have until 10 pm that night to complete the deliveries. ... What we find in practice is that 90 per cent of drivers will complete the delivery in under the delivery block times.⁸⁸

- 3.80 In practice, Mr Cooley said, because of 'surge pricing' Amazon actually pays 'on average \$120 for a four-hour block', which Mr Cooley said would equate to an hourly rate of \$29.84, if you divide it by four.⁸⁹

- 3.81 It was put to Mr Cooley that this rate does not include any superannuation, sick leave or other leave, and that drivers must pay for their own insurances and the upkeep of their vehicles with these earnings, and that when you factor those things in, the rate is under the minimum wage. Mr Cooley responded:

As I mentioned, we do provide insurance and drivers can claim under our insurance policies if there is a problem. We do also factor into our calculations things like the insurance that they pay, vehicle cost, vehicle depreciation, repairs and servicing, the cost of a driver's licence, rego, mobile phones and data costs. We factor those costs in as part of the calculation of our rates which, I'm assuming, the owner-driver regulations—which we comply with—also do. On that basis we are paying well above the rates which you have referred to, and we are paying well above the minimum wage per hour.⁹⁰

- 3.82 National Secretary of the TWU, Mr Michael Kaine said:

The minimum casual wage in this country is something a bit beyond \$24 an hour. That means that these workers are being paid something less than \$3 an hour to maintain their vehicles, get their insurances, pay their superannuation and take care of their annual leave. That demonstrates that this is an unfair contract. An unfair contract is against the law in Australia.⁹¹

Worker representation

⁸⁷ Mr Cooley, Amazon Australia, *Proof Committee Hansard*, 10 June 2021, p. 22.

⁸⁸ Mr Cooley, Amazon Australia, *Proof Committee Hansard*, 10 June 2021, p. 16.

⁸⁹ Mr Cooley, Amazon Australia, *Proof Committee Hansard*, 10 June 2021, p. 17.

⁹⁰ Mr Cooley, Amazon Australia, *Proof Committee Hansard*, 10 June 2021, p. 17.

⁹¹ Mr Michael Kaine, National Secretary, Transport Workers Union (TWU), *Proof Committee Hansard*, 10 June 2021, p. 30.

3.83 Amazon was asked to comment on reports that officials from the Transport Workers Union had been met by police, called by Amazon staff, when visiting an Amazon Flex distribution centre in Minchinbury, in Sydney, in May 2020, despite providing 'prior notice and bringing right-of-entry cards to gain access to the site'.⁹²

3.84 Mr Cooley said he was 'not aware' of the incident, and that Amazon respects the right of its employees 'to join or not to join unions without fear of retaliation, intimidation or harassment':

We also have an open-door policy that encourages our staff to bring their comments, questions and concerns directly to their management team. Unions are welcome to enter our sites in accordance with their legal entitlements in Australia, which they exercise on a regular basis. In the last 12 months, we have had dozens of unions lawfully visit our sites, and they are welcome to do so when they do so in accordance with their legal entitlements.⁹³

3.85 The TWU told the committee it had asked a number of Amazon Flex delivery drivers to come and speak give evidence before the committee, but they were not prepared to do so, because 'they fear that their livelihoods will be cut and stripped away with no recourse'.⁹⁴

3.86 Mr Kaine said that, after the TWU's visit to Amazon Flex's 'new distribution centre in Minchinbury' in 2020 'to inspect conditions', Amazon 'indiscriminately' terminated 'dozens of the Flex workers at its distribution centre':

People received a notification in the morning saying they didn't have a job anymore. It wasn't lost on those drivers that those sackings took place only days after many had spoken with the TWU.⁹⁵

Overview of platform-based disability care and aged care services

3.87 There are currently almost one million ageing Australians who require domestic care and support to allow them to continue living independently in their own home, and this number is expected to continue to grow in the future. Further, it is expected that the National Disability Insurance Scheme (NDIS), once fully rolled out, will support 530 000 people living with disability through individualised funding packages.⁹⁶

3.88 With the aim of improving outcomes, the Australian Government has implemented a number of reforms across both the disability care and aged care

⁹² Senator Tony Sheldon, Committee Chair, *Proof Committee Hansard*, 10 June 2021, p. 26.

⁹³ Mr Cooley, Amazon Australia, *Proof Committee Hansard*, 10 June 2021, p. 26.

⁹⁴ Mr Kaine, TWU, *Proof Committee Hansard*, 10 June 2021, p. 30.

⁹⁵ Mr Kaine, TWU, *Proof Committee Hansard*, 10 June 2021, p. 30.

⁹⁶ Mable, *Submission 24*, p. 6.

sectors in the last seven years which have shifted funding, choice, and control from large care providers to consumers.⁹⁷

- 3.89 These reforms, in conjunction with advances in technology, are disrupting the industry and creating challenges for incumbent organisations which are being forced to shift their approach from competing for grant funding provided by the government, to compete for each consumer on the basis of choice, flexibility, quality, and value.⁹⁸
- 3.90 Demand across the care sector is driven by individuals who receive funding through the NDIS and via home care packages,⁹⁹ and workers providing services within the sector include aged and disability support workers, nurses, personal care workers, and allied health practitioners.¹⁰⁰
- 3.91 The need for personal care services is expected to grow as the population ages and more people choose to live independently and receive care in their own homes. Given this, the aged and disability support sector is expected to grow to 245 000 workers by 2023, an increase of almost 40 per cent, or 69 200 workers, since 2018.¹⁰¹

Disability care and the National Disability Insurance Scheme

- 3.92 The NDIS commenced in 2013 following an inquiry undertaken by the Productivity Commission which found that families and individuals are unable to adequately prepare for the risks and financial impacts of significant disability. It also examined the existing system and found that it was unfair, underfunded, fragmented, and inefficient, and gave people little choice and no certainty of support.¹⁰²
- 3.93 Under the NDIS, the Australian Government provides financial support via funded support packages provided to individual participants in the scheme based on their needs. This approach allows these individuals to directly engage and manage their own disability support services. Alternatively, they can engage an intermediary to manage their budget and find service providers on their behalf, or have the National Disability Insurance Agency pay the provider directly in accordance with the participant's plan.¹⁰³

Aged care and home care packages

⁹⁷ Mable, *Submission 24*, p. 6.

⁹⁸ Mable, *Submission 24*, p. 6.

⁹⁹ Victorian on-demand workforce report, p. 87.

¹⁰⁰ Victorian on-demand workforce report, p. 87.

¹⁰¹ Victorian on-demand workforce report, p. 87.

¹⁰² Victorian on-demand workforce report, p. 87.

¹⁰³ Victorian on-demand workforce report, p. 88.

- 3.94 The Australian Government utilises home care packages in the aged care sector to allow for consumer-directed care. Depending on the level of home care package a recipient receives, they are provided with assistance across a range of services which aim to keep them healthy and independent; safe in their own home; and connected to their community.¹⁰⁴
- 3.95 These packages may be used to fund personal care, such as showering and grooming; nursing; therapy services; meal preparation; home maintenance and modifications; and other domestic assistance.¹⁰⁵ Home care package recipients work with their chosen service provider to identify their care needs and decide how to best utilise their package funding.¹⁰⁶

Emergence of platforms

- 3.96 In recent years, specialised platforms have emerged, such as Mable and Hireup, which have enabled care recipients to directly engage service providers. Through these platforms, care recipients can negotiate the type, quantity, and schedule of support services they require.¹⁰⁷
- 3.97 In her evidence to the committee, the Secretary of the Australian Services Union, Ms Natalie Lang, noted the rise of platform-based providers and the workforce models they utilise. Specifically she said:
- We have seen the rise of platform based providers in the NDIS. Between them they also have a difference in employment models. Some organisations use the contractor model, where the workers on those platforms are deemed to be self-employed by the organisation they go on.¹⁰⁸
- There are also platform models which use an employment model. Again, though, we are seeing there a significantly casual employment model that is being used, not a permanent model ...¹⁰⁹
- 3.98 The Victorian inquiry highlighted that there were 'legitimate concerns' about the impact of platforms on the care services sector, particularly in relation to health and safety, insurance, unpaid work, and the training needs of the workforce.¹¹⁰
- 3.99 Mable and Hireup provided the committee with contrasting perspectives on the best workforce approach for the sector, and highlighted the key differences between employment-based versus contractor-based models. In its submission

¹⁰⁴ See: <https://www.myagedcare.gov.au/help-at-home/home-care-packages>

¹⁰⁵ Victorian on-demand workforce report, p. 88.

¹⁰⁶ See: <https://www.myagedcare.gov.au/help-at-home/home-care-packages>

¹⁰⁷ Victorian on-demand workforce report, p. 88.

¹⁰⁸ Ms Natalie Lang, Secretary, Australian Services Union (ASU), *Proof Committee Hansard*, 12 April 2021, p. 5.

¹⁰⁹ Ms Lang, ASU, *Proof Committee Hansard*, 12 April 2021, p. 5.

¹¹⁰ Victorian on-demand workforce report, p. 87.

to the inquiry, Hireup was highly critical of the contractor-based model, and stated the following:

... critically, growing alongside the NDIS are two versions of this disruption playing out in the disability workforce. There is one version in which support workers are employees with guarantees of wages, entitlements, conditions, and protection from liability. And there's a second version in which workers are set up as individual business entities: independent contractors to perform the same work as the first version but without the same guarantee of wages, entitlements, conditions or protection from liability.¹¹¹

3.100 In support of the above, Hireup highlighted the key advantages, to both workers and governments, of the employment model. These benefits are shown in Figure 3.1 below.

Figure 3.1 Independent contractor compared to employee

Wages guaranteed at legally determined rates, including penalty rates and overtime, which are subject to annual increases regulated by the Fair Work Commission.	Tax payments for workers' wages undertaken by the employer, rather than requiring workers to withhold a portion of their income.	Training, development, and career opportunities provided by employer organisations, which are generally unavailable to a self-employed independent contractor.
Workplace health and safety guarantees that are responsibilities of the employer, including the provision of insurance covering workers and clients. The employer typically also provides support if an incident occurs.	Superannuation paid by the employer, as well as provide default and establishment solutions for first time superannuants	Worker conditions and entitlements as determined by the industry award, such as minimum shift times, break times, allowances, and leave.
Payroll tax paid by the employer to state governments, helping to increase the tax revenue that pays for infrastructure and services.	Overarching working entitlements such as long service leave and workers compensation provided by the employer.	Formal avenues and remedies for dispute which are only available to employers and employees in the existing employment law framework

Source: Hireup, Submission 23, p. 16.

Care worker demographics and trends

3.101 Inquiry participants highlighted to the committee that authoritative and reliable data about the disability support workforce is difficult to obtain, and that what is currently available is generally of low quality or based on self-selected surveys, which may be unrepresentative of the broader population.¹¹² Hireup submitted that:

¹¹¹ Hireup, Submission 23, p. 12.

¹¹² Hireup, Submission 23, p. 17.

... [a]s a result, there are challenges to clearly demonstrating the changing dynamics of the disability workforce. That, in itself, is a risk that governments should address urgently.¹¹³

3.102 Notwithstanding this lack of clarity around the workforce, Hireup argued that there has been a rapid rise in the number of contractor platforms and contracted support workers undertaking work through them. In support of this, it noted that the number of contracted workers at one large platform more than doubled from August 2019 to August 2020, and that at a smaller platform the number of contracted workers increased by nearly 50 per cent over a seven month period from February 2020. These large increases are also reflected in the number of contractor platforms in operation, which has increased from one in 2014 to approximately eight currently.¹¹⁴

3.103 Data prepared by the Australian Bureau of Statistics also indicated that between 2014 and 2018, the number of independent contractors in the category of healthcare and social assistance increased by 29 per cent, from 70 700 to 91 700, compared to an increase of only 19 per cent in the overall sectoral workforce.¹¹⁵

3.104 Hireup concluded that this indicated the likelihood of a much faster rate of growth already occurring in work being conducted through contracting platforms than through care services provided by employer organisations.¹¹⁶ It submitted that this rapid change to the nature of the engagement of support workers could present a number of risks to the disability sector, including:

- Changing the nature of the workforce away from organised, supervised, employment-based systems, to a more fragmented, unregulated workforce where individuals accept liabilities with few external safeguards.
- Potential for lower wages for support workers operating without minimum award wage guarantees, and from a position of bargaining weakness.
- Growing liabilities on people with disability engaging their own workers, including the potential to be deemed as a worker's direct employer.
- Reduced safety and quality compliance requirements.
- Development of a two-tier NDIS, where one group of organisations incurs the costs of employment and compliance with a range of safety and quality standards, and another operates largely without these costs and provides fewer protections for workers and clients.¹¹⁷

A survey of disability and aged care platforms

¹¹³ Hireup, *Submission 23*, p. 17.

¹¹⁴ Hireup, *Submission 23*, p. 17.

¹¹⁵ Hireup, *Submission 23*, p. 18.

¹¹⁶ Hireup, *Submission 23*, p. 18.

¹¹⁷ Hireup, *Submission 23*, p. 18.

Overview of Mable

Background

3.105 Mable is a peer-to-peer online platform which aims to connect those who are ageing, or living with disability, with 'independent care and support providers, nurses and therapists, in local communities around Australia'.¹¹⁸

3.106 Mable was originally launched in 2014 under the trading name 'Better Caring', before being rebranded in 2018. In his evidence to the committee, the Chief Executive Officer of Mable, Mr Peter Scutt, articulated the purpose of the firm's online platform:

Mable is an online marketplace that's connecting older Australians and people with a disability with independent service providers in their local community. They could be providing social support and domestic assistance, personal care, nursing services, allied health services or other services that respond to an individual's needs. It is a model that reflects the unique needs of aged care at home and disability support where people are looking for solutions that are person centred and respond to their individual needs, preferences, abilities and interests where choice and flexibility are critically important, where relationships really underpin people's ability to live independently and to overcome sort of loneliness and disconnection.¹¹⁹

3.107 Mable claimed that utilisation of its platform reduces the usual overhead costs incurred by larger providers, allowing consumers to access up to double the hours of care and support they receive from their funding packages. Mable stated that this has positively impacted the lives of those who utilise its platform, increasing their quality of life and the likelihood that they can remain in their homes for longer.¹²⁰

Workforce model and earnings

3.108 In its submission to the inquiry, Mable emphasised that its platform offering does not fit the 'on-demand' or 'gig economy' model because it does not facilitate the provision of tasked-based or on-demand work.¹²¹ Rather Mable contended that its platform 'facilitates ongoing relationships of mutual choice'.¹²²

3.109 Mable stated that service providers on its platform can:

- disclose their level of skills, experience, and qualifications;
 - define the geographic locations that they are prepared to travel to;
 - set the days of the week, and hours of the day, that they are available for;
- and

¹¹⁸ Mable, *Submission 24*, p. 7.

¹¹⁹ Mr Peter Scutt, Chief Executive Officer, Mable, *Proof Committee Hansard*, 12 April 2021, p. 41.

¹²⁰ Mable, *Submission 24*, p. 7.

¹²¹ Mable, *Submission 24*, p. 2.

¹²² Mable, *Submission 24*, p. 2.

- set their rate, or rates, that they are prepared to provide their services at.¹²³

3.110 Service providers are required to sign up and build their own profiles on the platform, which are then reviewed by Mable prior to publication. Individuals seeking services are able to view published profiles, and can utilise the platform's search functionality and post jobs. Once a potential match is found, the individuals involved can engage via audio or video chat, or meet up in person, to determine whether to proceed.¹²⁴

3.111 Mr Scutt emphasised the agnostic nature of the platform, noting that the particular arrangements through which people engage via its platform are determined by those individuals involved. Specifically he said:

How people engage via the platform is agnostic. In many cases, they engage as an independent contractor relationship, but we also facilitate the parties' engagement in an employment relationship.¹²⁵

3.112 Furthermore, Mable stated that it:

- does not set the market for services;
- does not oblige service providers to adjust their rates to meet the rates offered by other service providers;
- does not penalise service providers in circumstances of non-availability;
- does not require exclusivity from service providers and, hence, allows them to make their services available across multiple platforms; and
- allows employment relationships with employers in circumstances where the provision of services via Mable's platform does not conflict with any obligation under a contract of employment.¹²⁶

3.113 Mable advised the Victorian inquiry that the average hourly rate, after service fees were paid, was between \$32 and \$33 per hour. Although noting that hourly wages vary materially with qualification levels, it submitted that the lowest wage payable for work mediated through its platform was \$23.50 per hour.¹²⁷

3.114 Since that time, Mable has raised the minimum rate a service provider can offer their services for on the Mable platform to \$25.00 an hour 'for active hours'. Mable submitted that this is 'designed to afford a layer of protection for independent workers to ensure they do not earn less than minimum wage after platform fees and superannuation'.¹²⁸

¹²³ Mable, *Submission 24*, p. 4.

¹²⁴ Mr Scutt, Mable, *Proof Committee Hansard*, 12 April 2021, p. 41.

¹²⁵ Mr Scutt, Mable, *Proof Committee Hansard*, 12 April 2021, p. 41.

¹²⁶ Mable, *Submission 24*, p. 4.

¹²⁷ Victorian on-demand workforce report, p. 87.

¹²⁸ Mable, *Submission 24*, p. 13.

3.115 Notwithstanding the above, the Health and Community Services Union (HACSU) submitted to the Victorian inquiry that Mable's minimum rate was below the legal minimum wage in the sector of \$26.22 per hour for a level one casual home care worker. The HACSU also indicated that, after incorporating its service fee and accounting for the absence of superannuation and casual loadings, the average wage was below award rates applicable to nursing or personal carers.¹²⁹

3.116 On notice Mable provided further information about how its model and its minimum rate work in practice, saying:

Mable does not set rates. Mable does not attempt to restrict when the services are available and how they might be structured (eg. hourly or fixed rates, delivery of certain services etc). These are matters for the Service Provider. ... It is up to the small business Service Provider to determine whether they want to charge a higher amount for work outside of Monday to Friday. ... It is the Service Providers that determine how they wish to present to the market and the terms and conditions upon which they are prepared to provide their services and the price... not Mable.¹³⁰

3.117 Mable submitted that it *relies* 'upon each and every Service Provider' to individually assess 'the amount and/or hourly rate or fixed price that they need to charge customers or clients'. Mable argued that the service providers engaged through its platform are 'sophisticated and commercially-minded individuals who understand their level of expenses and, as part of that assessment, they also have complete transparency on the amounts that are charged by Mable'.¹³¹

3.118 The Health Services Union expressed a different view, saying:

... the minimum rate allowed by Mable on its platform (less the 10% service fee) undercuts the legal minimum wage for a casual employee receiving the 9.5% superannuation guarantee by \$4.66 per hour or 1/5th of the legal minimum wage. Whilst on-demand platforms such as Mable would argue it is the responsibility of individual workers to negotiate a rate with a service user that reflects their own perceived value, HACSU would submit Mable exerts a significant degree of control over support workers using its platform and that they ought to be classified as employees rather than independent contractors.¹³²

3.119 Professor Paula McDonald, from the Queensland University of Technology Business School, reported on findings of research that that suggests, while care workers engaged through platforms like Mable are generally 'self-employed', 'the way they're self-employed is very precarious', and lacks autonomy.

¹²⁹ Victorian on-demand workforce report, p. 90.

¹³⁰ Mable, Answers to written questions taken on notice, 29 April 2021 (received 10 June 2021), pp. 2–4.

¹³¹ Mable, Answers to written questions, 29 April 2021, p. 4.

¹³² Health Services Union, *Submission 84*, p. 9.

Professor McDonald said these care workers are 'very much beholden to the platform itself and its technological functions in order to be able to access work, and the work that is done, especially on aged-care platforms, is very fragmented'.¹³³

3.120 In relation to earnings, Professor McDonald said:

They don't get paid for the time in which to travel between their stints of two- or three-hour work. They don't get paid to go and meet a prospective employer to find out whether that arrangement is suitable. There's all of this downtime which is unpaid. They don't get paid to keep their profile up to date or to respond to potential jobs when they pop up on the app.¹³⁴

Overview of Hireup

3.121 Hireup is an online platform provider of disability support services. It operates nationally across Australia and is a registered provider with the NDIS. Through its online platform, Hireup aims to provide people with disability the tools to find, hire, and manage support workers who fit their needs and share their interests.¹³⁵

3.122 Hireup began delivering its services in 2015 and employs its workforce on a casual basis under the Social Community, Home Care and Disability Services Award 2010 (SCHADS).¹³⁶ The submission of the Australian Services Union noted that Hireup's casual support workers are classified under the lower-paid home care stream of the SCHADS Award, rather than being properly classified under the Social and Community Services Stream, which would see Hireup's workers earn a higher rate of pay.¹³⁷

3.123 Hireup argued that it is not a 'gig economy' business, and that the services it offers are 'ongoing, relationship-based engagements between [its] workers and people with disability'.¹³⁸ More generally, it considers that disability support work is not well-suited to the classification of 'gig economy', which implies brief, one-off, engagements for a specific task.¹³⁹

¹³³ Professor Paula McDonald, Professor of Work and Organisation, Queensland University of Technology Business School (QUT), *Proof Committee Hansard*, 10 June 2021, p. 13.

¹³⁴ Professor McDonald, QUT, *Proof Committee Hansard*, 10 June 2021, p. 13.

¹³⁵ Hireup, *Submission 23*, p. 6.

¹³⁶ Victorian on-demand workforce report, p. 88.

¹³⁷ Australian Services Union, *Submission 33*, p. 23.

¹³⁸ Hireup, *Submission 23*, p. 12.

¹³⁹ Hireup, *Submission 23*, p. 12.

3.124 Hireup's Chief Executive Officer, Mr Jordan O'Reilly, stated that the typical relationship through his firm lasts for nine months or longer, and that a person is commonly engaging multiple times a week for many months at a time.¹⁴⁰

Workforce model and earnings

3.125 Hireup stated that it employs all its support workers, and that the majority of people who work for it are disability support workers who provide their services within, or from, private homes. Given this employment relationship, Hireup noted in its submission that it takes responsibility for ensuring its workers have access to 'healthy working conditions and employee benefits'.¹⁴¹

3.126 Evidence provided by Hireup to the Victorian inquiry indicated that its onboarding process involved referee checks; qualifications checks; police checks; working with children and vulnerable people checks; and a review of an online application form detailing a worker's prior experience.¹⁴²

3.127 As an online platform operating within the digital economy, Hireup believes that its employment model is unique,¹⁴³ and highlighted that the key distinction between itself and its competitors is that it is a platform *provider* and not a platform *marketplace*;¹⁴⁴ that is, its workforce is engaged on an employment basis as opposed to competitor platforms that engage their workforces as independent contractors.

3.128 Hireup currently has more than 6000 support workers engaged in working support shifts and, since 2015, has provided more than seven million hours of support to its clients.¹⁴⁵ Reflecting on its workforce model, Mr O'Reilly stated that:

... we [Hireup] have set up a platform that engages workers as employees, as casual employees to begin with, to provide those services to people with disabilities and their families. We pay by an award, which we're really proud of. We pay superannuation and we pay tax. We provide all of the entitlements and protections that any employee in any other organisation can expect.¹⁴⁶

The services are directed by the client. It's paid by the hour. We think this has all the hallmarks of traditional employment.¹⁴⁷

¹⁴⁰ Mr Jordan O'Reilly, Chief Executive Officer, Hireup, *Proof Committee Hansard*, 12 April 2021, p. 36.

¹⁴¹ Hireup, *Submission 23*, p. 6.

¹⁴² Victorian on-demand workforce report, p. 88.

¹⁴³ Hireup, *Submission 23*, p. 7.

¹⁴⁴ Hireup, *Submission 23*, p. 6.

¹⁴⁵ Hireup, *Submission 23*, p. 6.

¹⁴⁶ Mr O'Reilly, Hireup, *Proof Committee Hansard*, 12 April 2021, p. 36.

¹⁴⁷ Mr O'Reilly, Hireup, *Proof Committee Hansard*, 12 April 2021, p. 36.

3.129 In her evidence to the committee, the Senior Director of Service at Hireup, Ms Jessica Timmins, stated that Hireup has one classification for all its employees and that, for weekday shifts, the starting rate of pay is \$31.52 an hour. Ms Timmins advised that the organisation pays superannuation and penalty rates in addition to this base rate.¹⁴⁸

3.130 Notwithstanding this base rate, Mr O'Reilly noted that, although the starting rate is \$31.52, the average rate paid to the firm's employees, taking into account evening, weekend, and public holiday shifts, and superannuation payments, is approximately \$41 per hour.¹⁴⁹

Concluding comments

3.131 This chapter provided an introduction to the major platforms; their workforce models; and worker earnings, with a particular focus on those platforms operating within the rideshare, food delivery, parcel delivery, and care services sectors.

3.132 The chapter also discussed the different approaches that platforms take to engage their workers, and highlighted the contested viewpoints on which model is most appropriate. It also provided information on worker earnings and indicated that this is also a contested area between the platform providers, unions, and workers.

3.133 The next chapter discusses the impacts of on-demand and platform work in Australia, with a focus on the pros and cons for workers and businesses; the effects on individuals, families, and communities; and the broader economic effects.

3.134 The committee's views on the merits of various workforce models, the implications of the platforms' contract provisions, and earnings for platform workers, are canvassed in the following chapters.

¹⁴⁸ Ms Jessica Timmins, Senior Director of Service, Hireup, *Proof Committee Hansard*, 12 April 2021, p. 36.

¹⁴⁹ Mr O'Reilly, Hireup, *Proof Committee Hansard*, 12 April 2021, p. 37.

Chapter 4

The impacts of on-demand platform work

- 4.1 This chapter discusses the impacts of on-demand platform work, focussing on:
- pros and cons for workers and businesses;
 - impacts on individuals, families and communities; and
 - its broader economic impacts.

Pros and cons for workers and businesses

- 4.2 Submissions and evidence received by the committee point to a wide range of impacts of the on-demand work on individuals, families, businesses, Australian society and economic confidence and growth.
- 4.3 Evidence provided to the committee pointed to a range of common impacts of gig work, across a range of sectors. As the Recruitment, Consulting and Staffing Association noted in its submission:

This distortion has created an uneven playing field in the marketplace, making labour sourced through these platforms cheaper than that sourced through staffing agencies, who meet worker protections and standards under the NES [National Employment Standards] and modern awards.¹

Increased flexibility

- 4.4 The desire for flexibility in the labour market was a common theme across a wide range of submissions from individuals, business organisations, employer and industry lobby groups.²
- 4.5 For employing entities, flexibility enables them to respond quickly to changes in demand,³ funding (including government funding), business requirements, the need for different expertise and skills,⁴ changing relationships, and the ability to rapidly deliver new products and services.⁵
- 4.6 Amazon Flex highlighted the new opportunities it has been able to offer:

Amazon Australia is also proud of the support that it provides to over 10,000 Australian businesses who are now selling direct to customers through our

¹ Recruitment, Consulting and Staffing Association, *Submission 73*, p. 14.

² For example: Mr Peter Scutt, Chief Executive Officer, Mable, *Proof Committee Hansard*, 12 April 2021, p. 47; Ms Emma Dawson, Executive Director, Per Capita, *Proof Committee Hansard*, 19 April 2021, p. 20; and Mr Ashley Moreland, Private capacity, *Proof Committee Hansard*, 12 April 2021, p. 60.

³ Australian Chamber of Commerce and Industry (ACCI), *Submission 71*, [p. 9].

⁴ Recruitment, Consulting and Staffing Association, *Submission 73*, p. 3.

⁵ Victorian Government, *Submission 16*, p. 5; Per Capita, *Submission 30*, p. 10; The Australian Industry Group, *Submission 77*, p. 11.

online store. These businesses offer employment opportunities for Australians and we are proud to play a role in their growth and success. Globally, more than 58 per cent of Amazon's unit sales come from third-party selection ... This saves valuable time and money for businesses as they no longer need to individually purchase shipping materials, pack orders, store products, and make multiple trips to the post office.⁶

4.7 Mr Peter Scutt, Chief Executive Officer of Mable spoke with the committee about the opportunities of new markets and the value of platform-based services to respond flexibly, especially in 'thin markets' where there is a gap between the needs of the participants and the services available⁷ (because of geographic location, insufficient workforce,⁸ specialised needs, and/or high costs of providing a service, for example⁹).

4.8 Furthermore, Mr Scutt outlined how Mable has enabled local and community-based support and services for people requiring personal care services, providing choice and more personalised services with safeguards for consumers, and providing work and training opportunities for workers.¹⁰

4.9 In its submission, platform provider Hireup noted that companies engaging workers flexibly as independent contractors have lower costs than those engaging workers as employees, creating a two-tier system which it believes is not sustainable in the longer term:

There is also a commercial reality. Companies engaging independent contractors have lower costs than a company that employs its workers, as Hireup does. Payroll tax, superannuation, compliance and employee training add up. We believe everyone in the sector—be they small care operators, the large, traditional, not-for-profit providers, or the new crop of modern, tech-enabled platforms—should share similar responsibilities and obligations.¹¹

4.10 Maurice Blackburn Lawyers¹² and the Victorian Trades Hall Council expressed concerns over the competitive advantage of platforms which do not engage their workers as employees and the longer term impacts of this flexibility. Dr Carina Garland explained:

⁶ Amazon Australia, *Submission 114*, p. 2.

⁷ Mr Scutt, Mable, *Proof Committee Hansard*, 12 April 2021, p. 48.

⁸ Mable, *Submission 24*, p. 9.

⁹ Ernst & Young Australia prepared at the request the Commonwealth Department of Social Services, *NDIS Thin Markets Project: Discussion paper to inform consultation*, April 2019, pp. 3–4, <https://engage.dss.gov.au/wp-content/uploads/2019/04/Thin-Markets-Project-Discussion-Paper-2019-04-05.pdf> (accessed 5 June 2021).

¹⁰ Mr Scutt, Mable, *Proof Committee Hansard*, 12 April 2021, p. 48.

¹¹ Hireup, *Submission 23*, p. 3.

¹² Maurice Blackburn Lawyers, *Submission 17*, p. 13.

On the origins of the gig economy, it is really a way to compete and avoid the obligations that I think we recognise in a country like Australia—and indeed in the international standards of labour—are due from the employer to the employee. We've seen the competitive advantage arise when people create models and systems of work that are specifically designed to avoid those obligations. So, clearly, when ... we've got this environment where we've got good employers having to compete against bad employers, that's not an equal playing field in terms of the way businesses are able to succeed.¹³

- 4.11 Evidence presented to the committee about the impact of flexible platform services on service quality and business sustainability varied. Mable submitted that its consumers are receiving high quality services, have more choice, and flexibility to discontinue services where they are not satisfied:

All of the indicators we have, from the growth of the business to ratings and reviews and NPS scores, show that there are high-quality outcomes from a model like this. In fact, the evidence from users of the platform is that there is a stark difference between their quality experience versus using platforms like ours and they've experienced using traditional providers.¹⁴

- 4.12 However, the ACTU contended that gig work has had a negative impact on service quality with very real impacts for consumers,¹⁵ a view supported by Mr Lloyd Williams, National Secretary of the Health Services Union:

... [the aged care royal commission] examined Mabel and they examined other platforms, and the royal commission found them to be a safety risk and inappropriate in care work. Commissioner Briggs has made a recommendation for better labour standards and direct employment in order to deliver better quality outcomes for vulnerable people in the aged-care services. They raise real questions of risk and outcomes for recipients as well.¹⁶

- 4.13 The Victorian Government's national survey found that the key motivation for working on-demand related to flexibility.¹⁷ For individual workers, platform work can provide autonomy,¹⁸ allow them to access new work and income

¹³ Dr Carina Garland, Assistant Secretary, Victorian Trades Hall Council, *Proof Committee Hansard*, 20 April 2021, p. 44.

¹⁴ Mr Scutt, Mable, *Proof Committee Hansard*, 12 April 2021, pp. 45–46.

¹⁵ ACTU, *Submission 98*, p. 29.

¹⁶ Mr Lloyd Williams, National Secretary, Health Services Union, *Proof Committee Hansard*, 13 April 2021, p. 14.

¹⁷ Mr Paul Zahra, Australian Retailers Association, *Proof Committee Hansard*, 13 April 2021, p. 17.

¹⁸ Mr Matthew Denman, General Manager, Uber Eats, *Proof Committee Hansard*, 12 April 2021, p. 16; Transport Workers' Union of Australia (TWU), *Submission 39*, pages 7 and 46; Airtasker Ltd, *Submission 103*, p. 7.

opportunities,¹⁹ and quickly access employment—while balancing study, caring,²⁰ travel and other commitments. It can also provide options for people with health problems, or for people living with a disability.²¹

4.14 Ai Group's submission summarised it this way:

Platform work provides many benefits to workers. Individuals who wish to work flexibly around other commitments, such as studies, recreational activities, family commitments or other forms of paid employment often find the experience of working via online platforms, a useful and convenient way of earning or supplementing income.²²

4.15 Uber shared this view and provided supporting statistics in relation to its rideshare and food delivery workers:

- 78 per cent of driver-partners signed up to Uber because of its flexible opportunities—and three in five would not work at all without the flexibility the app provides ...
- The flexibility of Uber Eats also allowed delivery people to engage in other activities such as studying or other work. Four in five delivery people indicated they were working at least one other job, while 34 per cent were studying simultaneously;
- Uber's own recent survey with over 16,000 drivers and delivery people across Australia, found that flexibility and independence offered by the Uber app was the top area of satisfaction, with 94 per cent of respondents rating it as good or okay.²³

4.16 For some workers this flexibility suits their particular needs at a point in time:

This ... view can be explained, for example, by their life stage and their relative labour market position, as well as reflecting the poor quality of insecure work in other industries (e.g., in hospitality, retail or horticultural industry) making 'gig' work relatively appealing.²⁴

¹⁹ Mr Ed McManus, Chief Executive Officer, Deliveroo Australia, *Proof Committee Hansard*, 12 April 2021, p. 31; National Foundation for Australian Women (NFAW), *Submission 11*, p. 13.

²⁰ Associate Professor Alysia Blackham, *Submission 38*, [p. 15]; NFAW, *Submission 11*, p. 13.

²¹ Associate Professor Blackham, *Submission 38*, [p. 15]; Australian Chamber of Commerce and Industry (ACCI), *Submission 71*, [p. 9]; Victorian Government Department of Premier and Cabinet, *Report of the Inquiry into the Victorian On-Demand Workforce*, June 2020 (Victorian on-demand workforce report), pages 9, 12, 47 and 49, <https://engage.vic.gov.au/inquiry-on-demand-workforce> (accessed 13 June 2021).

²² Ai Group, *Submission 77*, p. 3.

²³ Uber, *Submission 19*, p. 4.

²⁴ Dr Caleb Goods, Dr Tom Barratt, Dr Brett Smith, Mr Rick Sullivan, Dr Alex Veen, *Submission 10*, p. 3.

- 4.17 Gig workers clearly appreciate the flexibility that platform work provides, but are less satisfied with associated lower earnings and fewer conditions.²⁵

Mr Moreland, a food delivery driver told the committee:

I've been a food delivery driver for four years now. I got into the work after returning to study as a mature-age student. I liked it and went for it because it was very flexible work, which fitted around a full-time study schedule. However, after starting it, I was quickly amazed by the lack of rights and the ever-declining pay rates in this style of work.²⁶

- 4.18 A number of witnesses and submissions from individuals and worker advocacy groups contended that the flexibility of platform work is largely one-sided, with platform providers reaping the benefits while workers carry the risks:²⁷

'Flexibility' is a term used to describe insecure work conditions: it is often portrayed as offering benefits to workers and employers equally, but in practice, the concept is sold to employers by labour hire companies as a way to reduce the 'ongoing burden of fixed costs'...it is of far greater benefit to business owners than it is to workers.²⁸

- 4.19 Other submissions noted the importance of flexible arrangements to consumers in a variety of respects, including their ability to access services when and where they want.²⁹ This has been accentuated since the start of the COVID-19 pandemic and the boom in food delivery services.³⁰ To a lesser extent this was expressed in submissions relating to personal care services:

... it is also important to recognise the importance of flexible employment from the perspective of a self-managing NDIS participant ... I have a physical disability and rely on care 24/7 that is carried out by both casual and contract staff. Without these staff I would not be able to survive ... because of the work they do, I am able to live a good life in the community, work, contribute to Australian society and pay taxes. Support workers are integral to my life and their job satisfaction and job security are very

²⁵ Victorian on-demand workforce report, p. 52; ARC Gig Cities Research Team, *Submission 5*, pages 4 and 6. See also: Alphabeta, *Flexibility and fairness: what matters to workers in the new economy*, March 2019, p. 15; Accenture, *Making delivery work for everyone*, March 2021, p. 23 (provided as attachment 2 to Uber, answers to questions on notice, 14 May 2021); Mr Esteban Salazar, Private capacity, *Proof Committee Hansard*, 12 April 2021, p. 64.

²⁶ Mr Ashley Moreland, *Proof Committee Hansard*, 12 April 2021, p. 60.

²⁷ For example: Ms Dawson, Per Capita, *Proof Committee Hansard*, 19 April 2021, p. 20; see also Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan, and Dr Veen, *Submission 10*, p. 8; Queensland Nurses and Midwives' Union, *Submission 15*, [p. 7]; Per Capita, *Submission 30*, p. 10.

²⁸ Per Capita, *Submission 30*, p. 10.

²⁹ Mr Michael Kaine, National Secretary, TWU, *Proof Committee Hansard*, 12 April 2021, p. 8; Victorian on-demand workforce report, pages 80 and 82.

³⁰ Accenture, *Making delivery work for everyone*, March 2021, p. 8.

important to me ... In my experience, flexible employment arrangements can benefit both parties.³¹

- 4.20 It was anticipated that the number of gig workers would increase following the start of COVID-19 and the loss of work in other sectors.³² Based on figures provided by Uber, this appears to have occurred, with nearly 60 per cent of workers joining a delivery platform during COVID-19 to support themselves financially.³³

Reduced earnings and fewer conditions

- 4.21 Obtaining gig work can be highly competitive,³⁴ especially where there is a labour oversupply or participant numbers are not capped,³⁵ and can result in a 'race to the bottom', with workers competing on price and sacrificing income and conditions.³⁶ There is some evidence that commissions taken or fees charged by platform providers have also increased over time, decreasing take-home earnings for workers.³⁷
- 4.22 Ms Lori-Anne Sharp of the Australian Nursing and Midwifery Federation told the committee that, in relation to platform work:

Allowing independent contractors to set their own rates is going to see workers competing against each other in an environment where they'll be caring for people's lives. This will just be an absolute race to the bottom, and we will see even more people, in the here and now, not being able to survive and have more precarious work, but also into the future as well.³⁸

- 4.23 Evidence about the income of gig workers was heavily contested, with evidence varying across sectors and across times of the day, depending on demand for services. It was also complicated by varying calculation methodologies, whether

³¹ Name withheld, *Submission 110*, p. 1.

³² Unions NSW, *Submission 78*, p. 14.

³³ Accenture, *Making delivery work for everyone*, March 2021, p. 13. See also Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan, Dr Veen, *Submission 10*, p. 3.

³⁴ TWU, *Submission 39*, p. 6.

³⁵ Dr Michael Reich, Private capacity, *Proof Committee Hansard*, 20 April 2021, p. 1; Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan, Dr Veen, *Submission 10*, pp. 2–3, and 4.

³⁶ Ms Lori-Anne Sharp, Assistant Federal Secretary, Australian Nursing and Midwifery Federation (ANMF), *Proof Committee Hansard*, 19 April 2020, p. 5; Dr James Stanford, Economist and Director, Centre for Future Work, Australia Institute, *Proof Committee Hansard*, 20 April 2021, pp. 51–52; Mr Salazar, *Proof Committee Hansard*, 12 April 2021, p. 64; Mr Rodney Stiles, Private capacity, *Proof Committee Hansard*, 20 April 2021, p. 6; Mr Kaine, TWU, *Proof Committee Hansard*, 12 April 2021, p. 2.

³⁷ Mr Salazar, *Proof Committee Hansard*, 12 April 2021, p. 64; Mr Dominic Taylor, General Manager, Uber Australia, *Proof Committee Hansard*, 12 April 2021, p. 22; TWU, Amazon Flex Briefing Note (tabled at public hearing in Sydney on 12 April 2021), p. 1.

³⁸ Ms Lori-Anne Sharp, Assistant Federal Secretary, ANMF, *Proof Committee Hansard*, 19 April 2021, p. 5.

or not expenses were deducted or not,³⁹ whether waiting times were factored in, and the difficulties for platforms of calculating total income for gig workers working across platforms.⁴⁰

4.24 Dr James Stanford, economist and Director of the Centre for Future Work at the Australia Institute, noted that:

... the vast majority of them [rideshare workers] do not make the minimum wage. Some of the studies that the companies themselves have put out in that regard, claiming that people are willing to do this because they appreciate the flexibility, I have found very misleading and their methodology to be very suspect.⁴¹

4.25 Mr Matthew Denman, from Uber, referenced a report by Accenture into earnings on the Uber Eats platform stating that the study found that earnings peaked at meal times, with drivers are earning over \$21 per hour, after costs (including their wait time).⁴² Ola also quoted earnings of \$21 per hour after costs.⁴³

4.26 The Accenture report found that Uber Eats delivery workers in Sydney record average pre-cost earnings per hour of between \$22.65 (bicycle), \$23.48 (motorcycle), and \$24.04 (car).⁴⁴ Accenture suggested that pre-cost earnings for workers is likely slightly higher, up to an extra \$2.41 per hour,⁴⁵ given that many workers use multiple apps.⁴⁶

4.27 The report also found that costs to gig workers vary, with Sydney-based workers incurring costs per hour of between \$0.77 (bicycle), \$1.51 (motorcycle), and \$3.30 (car), inclusive of onboarding, depreciation, maintenance and fuel or electricity.⁴⁷ Deducting costs from earnings gave actual hourly pay rates for Uber Eats workers during key mealtimes of \$20.74 (car), \$21.97 (motorcycle), and \$21.92 (bicycle).⁴⁸

³⁹ For example: Mr Denman, Uber Eats, *Proof Committee Hansard*, 12 April 2021, p. 27.

⁴⁰ Mr Denman, Uber Eats, *Proof Committee Hansard*, 12 April 2021, pp. 18, 24; Mr Assad Manzoor, Private capacity, *Proof Committee Hansard*, 12 April 2021, p. 63.

⁴¹ Dr Stanford, Australia Institute, *Proof Committee Hansard*, 20 April 2021, p. 52.

⁴² Mr Denman, Uber Eats, *Proof Committee Hansard*, 12 April 2021, pp. 18–19.

⁴³ Ms Tan, Ola Australia and New Zealand, *Proof Committee Hansard*, 12 April 2021, p. 11.

⁴⁴ Accenture, *Making delivery work for everyone*, March 2021, p. 15.

⁴⁵ Accenture, *Making delivery work for everyone*, March 2021, p. 18.

⁴⁶ Accenture, *Making delivery work for everyone*, March 2021, p. 16.

⁴⁷ Accenture, *Making delivery work for everyone*, March 2021, p. 19.

⁴⁸ Accenture, *Making delivery work for everyone*, March 2021, p. 21.

- 4.28 Uber noted that rideshare earnings are more consistent across the day and week,⁴⁹ although Mr Dominic Taylor from Uber noted that 'I spoke to a driver two Saturdays ago, and he said: 'It's the best Saturday I've had in a long time. I made \$600 in Sydney after costs.' So there are certainly key times.'⁵⁰ Mr Taylor submitted that the majority of drivers earn, on average, over the minimum wage over a two week period, with many earning over that, and closer to \$45 per hour in engaged time.⁵¹
- 4.29 The Transport Workers' Union of Australia (TWU) estimated that rates are '\$3 or \$4 below the minimum rate [national casual minimum wage of \$24.80 per hour⁵²] before costs are put into play'.⁵³
- 4.30 In its submission, the TWU provided the results of two surveys conducted in 2020 in conjunction with the Delivery Riders Alliance and the Rideshare Drivers Network.
- 4.31 These surveys returned results showing that actual hourly rates for food delivery workers were \$10.42 after costs and that 74 per cent of workers 'struggle to pay bills and buy groceries'.⁵⁴ The surveys also demonstrated that rideshare drivers are earning an hourly rate of \$12.85 after costs.⁵⁵
- 4.32 The TWU also found that costs for delivery and rideshare workers were higher than that estimated in the Accenture report—for example, between \$4.93 and \$5.60 per hour for scooter and car, not including variable fuel costs. It estimated that expenses accounted for approximately 30 per cent of the gross earnings of these workers. The TWU accounted for some additional costs, including mobile phone, GST, vehicle ownership, running costs such as fuel, maintenance and repairs, and standing costs such as registration, licences and insurances.⁵⁶
- 4.33 Research by Dr Caleb Goods, Dr Tom Barratt, Dr Brett Smith, Mr Rick Sullivan and Dr Alex Veen, found that a significant proportion of Australian consumers perceive that average earnings are below the minimum wage, as illustrated by Figure 4.1.⁵⁷

⁴⁹ Mr Denman, Uber Eats, *Proof Committee Hansard*, 12 April 2021, pp. 18–19.

⁵⁰ Mr Taylor, Uber Australia, *Proof Committee Hansard*, 12 April 2021, p. 20.

⁵¹ Mr Taylor, Uber Australia, *Proof Committee Hansard*, 12 April 2021, p. 24.

⁵² Fair Work Commission, *National minimum wage orders*, 1 July 2020, www.fwc.gov.au/awards-and-agreements/minimum-wages-conditions/national-minimum-wage-orders (accessed 30 May 2021).

⁵³ Mr Kaine, TWU, *Proof Committee Hansard*, 12 April 2021, p. 1.

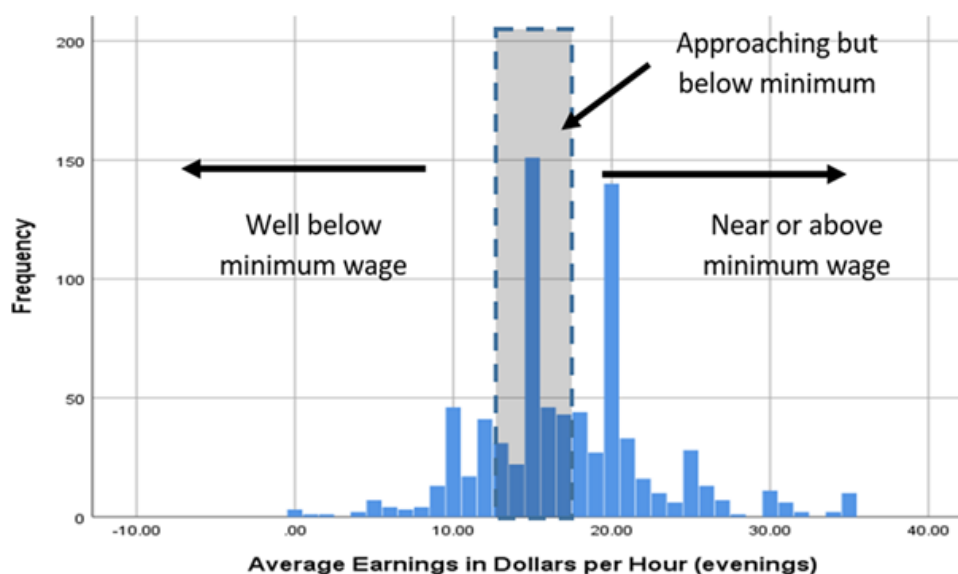
⁵⁴ TWU, *Submission 39*, p. 9.

⁵⁵ TWU, *Submission 39*, p. 14.

⁵⁶ TWU, *Submission 39*, pp. 22–23.

⁵⁷ Mr McManus, Deliveroo, *Proof Committee Hansard*, 12 April 2021, p. 28; Senator Tony Sheldon, Committee Chair, *Proof Committee Hansard*, 12 April 2021, p. 50; TWU, *Submission 39*, p. 6;

Figure 4.1 Earnings Estimate of Food Delivery Work by Australian Consumers



Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan and Dr Veen, Submission 10, p. 5.

- 4.34 The Rideshare Drivers Association of Australia (RSDAA) emphasised the long hours of work needed to meet the minimum wage:

RSDAA estimates rideshare drivers must work an average of 53 hours to reach the hourly minimum wage as drivers are currently underpaid during regular business hours. In regional regions of NSW, RSDAA suspects there would be not be enough allocated jobs to reach the minimum wage threshold.

Earnings increase during peak traffic times, in built up areas and this is causing a variety of other issues including excessive traffic congestion, lack of legal pickup/drop off locations, driver fatigue & other safety concerns.⁵⁸

- 4.35 Mr Esteban Salazar, a food delivery worker, told the committee:

I had to wait many hours to get one delivery, and I didn't have a minimum wage for an hour, which meant that, at the end of the day, I had earned \$15 after six hours of standing outside in the cold and the rain. I think that's very unfair. First of all, it's not my responsibility to bring deliveries to the company. My responsibility is to be in the streets, waiting for the job that they will give me.⁵⁹

- 4.36 Mr Assad Manzoor told the committee that his earnings were much less than estimates provided by Uber Eats, and that long hours working on the platform may only translate into limited income during busy periods.⁶⁰ Mr Moreland

Dr Caleb Goods, Dr Tom Barratt, Dr Brett Smith, Mr Rick Sullivan and Dr Alex Veen, *Submission 10*, p. 5.

⁵⁸ Rideshare Drivers Association of Australia (RSDAA), *Submission 74*, [pp. 11–12].

⁵⁹ Mr Salazar, *Proof Committee Hansard*, 12 April 2021, p. 61.

⁶⁰ Mr Manzoor, *Proof Committee Hansard*, 12 April 2021, pp. 63–64.

- confirmed that earnings were more like \$15 or \$16 per hour and that earning capacity is limited to between three and five hours a day, during busy periods.⁶¹
- 4.37 Evidence provided to the committee by the TWU stated that drivers working for Amazon Flex are receiving \$15 to \$20 per hour, after costs, also below the minimum wage and claimed that studies of Amazon Flex in the US also show earnings 'well below the minimum wage' after considering expenses.⁶²
- 4.38 Earnings appeared to be variable in the care sector. Disability care sector platform provider Mable told the committee that it typically pays hourly rates of between \$30 and \$45 (before the service fee, insurances, superannuation)⁶³, with a minimum rate of \$25 per hour.⁶⁴
- 4.39 While this rate is above the minimum wage, it means that some workers earn less than the minimum casual rate for their relevant award.⁶⁵
- 4.40 Hireup told the committee that the starting hourly rate for its workers is \$31.52 for Monday to Friday shifts, with superannuation paid on top of this rate.⁶⁶ It also advised the committee that there is a single classification for Hireup employees and that penalty rates are also paid on top of the starting rate, giving support workers an average rate of \$41 per hour. This rate includes superannuation, and penalty rates for the different shift times across a week, including evenings, weekends and public holidays.⁶⁷
- 4.41 The Australian Services Union (ASU) stated in its submission that Hireup casual workers have told the ASU that they believe they are not paid properly and are classified as home care workers in the SCHADS Award rather than disability support workers.⁶⁸ This classification was later confirmed by Hireup in response to written questions on notice.⁶⁹ This is a difference of several dollars per hour, and also excludes the workers from the benefits of the 'Equal Remuneration Order' that the Fair Work Commission applied to the disability sector.⁷⁰ The

⁶¹ Mr Moreland, *Proof Committee Hansard*, 12 April 2021, p. 64.

⁶² TWU, Amazon Flex Briefing Note (tabled at public hearing in Sydney on 12 April 2021), p. 1.

⁶³ Senator Sheldon, Committee Chair, *Proof Committee Hansard*, 12 April 2021, p. 43 and Mr Scutt, Mable, *Proof Committee Hansard*, 12 April 2021, pp. 43–44.

⁶⁴ Mr Scutt, Mable, *Proof Committee Hansard*, 12 April 2021, p. 44–45.

⁶⁵ Mr Scutt, Mable, *Proof Committee Hansard*, 12 April 2021, pp. 43–45.

⁶⁶ Ms Jessica Timmins, Senior Director of Service, Hireup, *Proof Committee Hansard*, 12 April 2021, pp. 36–37.

⁶⁷ Ms Timmins, Hireup, *Proof Committee Hansard*, 12 April 2021, pp. 36–37.

⁶⁸ Australian Services Union (ASU), *Submission 33*, pp. 23–24.

⁶⁹ Hireup, Answers to additional written questions taken on notice from Senator Sheldon, 29 April 2021 (received 13 May 2021), [p. 1].

⁷⁰ ASU, *Submission 33*, p. 23.

ASU further noted that those benefits are factored into the funding that providers receive from the National Disability Insurance Agency.⁷¹

4.42 In most cases, gig workers are not engaged as employees and do not typically receive basic entitlements that come with a standard employer-employee relationship,⁷² such as:

- minimum rates of pay, including under specific awards, shift and casual, loadings, and penalty rates;
- workers' compensation and other insurances;
- superannuation;
- annual and personal (including sick) leave; and
- workplace health and safety law protections.⁷³

4.43 Additionally, because they are not usually employees, gig workers may be unable to access, or may not have the same level of access to, other labour protections, including:

- dispute resolution protections, including for unfair dismissal;
- anti-discrimination protections; and
- anti-bullying and sexual harassment protections.⁷⁴

4.44 The committee notes however, that the anti-bullying provisions in the *Fair Work Act 2009* (section 789FC(2)) rely on the definition of 'worker' at section 7(1) of the *Work Health and Safety Act 2011*, which is much wider than the common law definition.⁷⁵ The existing use of this more widely defined term supports the case for extending the definition more broadly in the *Fair Work Act*.

4.45 A 2019 survey by the TWU found that 94 per cent of respondents erroneously thought that these entitlements and protections applied to platform workers—when in fact they did not.⁷⁶

4.46 Mr Kamal Farouque, Principal Lawyer with Maurice Blackburn Lawyers told the committee that:

⁷¹ Ms Natalie Lang, Secretary, ASU, *Proof Committee Hansard*, 12 April 2021, p. 3.

⁷² For example see: Mr Scutt, Mable, *Proof Committee Hansard*, 12 April 2021, p. 44; Ms Sharp, ANMF, *Proof Committee Hansard*, 19 April 2021, p. 5; Ms Emma King, Chief Executive Officer, Victorian Council of Social Services, *Proof Committee Hansard*, 20 April 2021, p. 13; Law Society of New South Wales, *Submission 7*, pp. 2–3.

⁷³ TWU, *Submission 39*, p. 23; NFAW, *Submission 11*, p. 23; Professor Emeritus David Peetz, *Submission 88*, pp. 24–25.

⁷⁴ For example: see Ms King, Victorian Council of Social Services, *Proof Committee Hansard*, 20 April 2021, p. 13; TWU, *Submission 39*, p. 16.

⁷⁵ See: Section 7(1), *Work Health and Safety Act 2011*.

⁷⁶ Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan and Dr Veen, *Submission 10*, p. 6; TEACHO Ltd, *Submission 52*, p. 39.

... our system of laws essentially allows engagers of workers, hirers, to devise arrangements, which are essentially employment avoidance mechanisms, to prevent the workers from receiving the protective benefit of arrangements under the Fair Work Act. There is a need to adopt one or both of those methodologies to ensure that vulnerable workers, particularly in the gig economy, receive adequate protection.⁷⁷

- 4.47 The TWU stated that as it currently stands on-demand workers are more vulnerable to exploitation, adverse working conditions and unfair treatment with fewer options for redress.⁷⁸ The committee heard evidence that workers who raised issues about their engagement and conditions were branded as 'trouble makers', and were suspended or banned from platforms or received significantly reduced hours. Other witnesses thought that workers may not have the means or confidence to take their case further:⁷⁹

The lack of effective protections for vulnerable workers in the gig/on-demand/digital economy is intolerable. We see there is an urgent need to regulate digital platform operators to ensure workers are receiving a decent income, have safe working conditions and have access to prompt and low-cost options to resolve workplace disputes.⁸⁰

- 4.48 On-demand workers receive less work-related training, skills development and education than traditional employees.⁸¹ As discussed above, this has implications for worker and client health and safety; however it also has wider capability implications.
- 4.49 Capability development is important to workers in insecure work. Without training, skills development and education opportunities that provide career pathways and lead to economic security, these workers face reduced job satisfaction and an ongoing cycle of precarious work.⁸² This is particularly so for vulnerable workers—migrants and permanent residents, older workers, youth—who may be low-skilled, may not have qualifications that are

⁷⁷ Mr Kamal Farouque, Principal Lawyer, Maurice Blackburn Lawyers, *Proof Committee Hansard*, 20 April 2021, p. 61.

⁷⁸ TWU, *Submission 39*, pp. 5–6, and 24. See also: Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan and Dr Veen, *Submission 10*, p. 4; WEstjustice, *Submission 12*, [p. 48].

⁷⁹ Springvale Monash Legal Service, *Submission 56*, p. 10; Ms Jo Briskey, Official, United Workers' Union, *Proof Committee Hansard*, 14 April 2021, p. 28.

⁸⁰ Springvale Monash Legal Service, *Submission 56*, p. 12.

⁸¹ Associate Professor Angela Knox and Associate Professor Susan Ainsworth, *Submission 35*, pp. 3–4. See also: Professor Michael Quinlan and Professor Elsa Underhill, *Submission 2*, pp. 8–9, 19; ARC Gig Cities Research Team, *Submission 5*, p. 7; Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan and Dr Veen, *Submission 10*, p. 4.

⁸² Ms Patricia Sparrow, Chief Executive Officer, Aged and Community Services Australia, *Proof Committee Hansard*, 19 April 2021, p. 32; Ms Cull, Brotherhood of St Laurence, *Proof Committee Hansard*, 20 April 2021, pp. 28–30; Per Capita, *Submission 30*, p. 12.

recognised in Australia, or who may be changing careers. The Brotherhood of St Laurence observed that:

It's absolutely about the investment in the individual—for young people to have that investment from someone, and it's for employers as well, in fact, where they have positions and they're able to invest in a person, develop them and get the best for their business. The work that we're doing is about working from both ends: helping employers see the value in creating an entry-level role that can allow the worker to have exposure to the different types of work available within the business and then have some pathways that may allow them to progress. It may be that they go on to another employer, but that investment from an employer as well as from the young person will really help them succeed in that position, as well as into the future.⁸³

- 4.50 In some sectors, such as aged care, workers have access to some training but are often expected to complete it in their own time and at their own cost. Workers who do not complete the training may be penalised by losing shifts or being placed on reduced hours.⁸⁴
- 4.51 An unskilled workforce also has implications for consumers. For example, over the next 20 years, Australia will require increasing numbers of skilled staff to care for its growing ageing population. However, if investments in training, skill development and education are not made now there will not be sufficient numbers of qualified or experienced workers to draw upon.⁸⁵

Committee view

- 4.52 The committee acknowledges that gig work offers flexibility, which allows both businesses and gig workers to respond to the changing demands of business and personal life. Notwithstanding this, the committee feels strongly that the current arrangements, conditions and pay rates for gig workers are not acceptable and do not provide them with sufficient income and other protections to provide for themselves and their families.
- 4.53 The committee considers that it is essential for gig workers—and all workers for that matter—to be paid at a rate that rightly recognises the value of the work that they do, that they are provided with other conditions that ensure they do not have to work when they are sick, they are safe at work and their families are not left destitute when they are injured or killed, that they are paid superannuation to underpin a financially stable future, and that they can access other labour protections providing dispute resolution and mechanisms for

⁸³ Ms Cull, Brotherhood of St Laurence, *Proof Committee Hansard*, 20 April 2021, p. 30.

⁸⁴ Ms Ffion Evans, Coordinator, Member Power, United Workers' Union, *Proof Committee Hansard*, p. 14.

⁸⁵ Professor Sarah Charlesworth, RMIT University, *Proof Committee Hansard*, 19 April 2021, p. 28; Ms King, Victorian Council of Social Services, *Proof Committee Hansard*, 20 April 2021, p. 14.

addressing discrimination and harassment. Options for reform are included in Chapter 6.

Unsafe work

4.54 While work, health and safety legislation provides some protections to on-demand workers, the extent of these protections are dependent on whether the platform owes a primary duty of care in addition to a range of other factors.⁸⁶

It is clear that safety is a significant issue for many on-demand platform workers.⁸⁷ A TWU survey of food delivery drivers found that nearly 47 per cent of workers had been injured at work or knew someone who had been injured at work.⁸⁸

4.55 Early safety audits by the TWU of Amazon Flex's distribution centres in Australia identified numerous complaints of overcrowding and overloading from drivers, to the point where their rear vision was completely obscured, with drivers who refused to fill their vehicles receiving a warning. These drivers also face injury or death resulting from fatigue and speeding to meet deadlines.⁸⁹ Due to the nature of their work, the committee also presumes that these workers are at risk of manual handling injuries.

4.56 As well as being at risk of serious injury or death, gig workers also suffer abuse and assaults at work,⁹⁰ are at higher risk of experiencing sexual harassment,⁹¹ and suffer discrimination at work.⁹² Figure 4.2 shows the results of the TWU rideshare driver survey, highlighting the extent of these issues:

Figure 4.2 Rideshare safety concerns

⁸⁶ Safe Work Australia, *Submission 22*, pp. 1–2. See also: ACCL, *Submission 71*, [p. 26]; Springvale Monash Legal Service, *Submission 56*, [p. 28]; Ai Group, Answers to additional written questions taken on notice, Senator Sheldon, 3 May 2021 (received 18 May 2021), pp. 2–3.

⁸⁷ For example: ARC Gig Cities Research Team, *Submission 5*, p. 7; Safe Work Australia, *Submission 22*, p. 1; ACCL, *Submission 76*, [p. 26]; ACTU, *Submission 98*, p. 42; Mr Tony LaMontagne, Dr Tania King and Ms Yamna Taouk, *Submission 81*, pp. 3–4.

⁸⁸ ARC Gig Cities Research Team, *Submission 5*, p. 7; TEACHO Limited, *Submission 52*, p. 7.

⁸⁹ TWU, Amazon Flex Briefing Note (tabled at public hearing in Sydney on 12 April 2021), pp. 1–2.

⁹⁰ TEACHO, *Submission 52*, pp. 39–40.

⁹¹ Western Australian Government, *Submission 100*, p. 11.

⁹² Westjustice, *Submission 12*, [p. 13].



Source: TWU, Rideshare Driver Survey (tabled at public hearing in Sydney), 12 April 2021, p. 1.

4.57 Westjustice stated that:

Our [on-demand work] clients were frequently injured at work, experienced discrimination and sexual harassment ... They faced uncertainty about their legal status and rights and, despite being some of Victoria's most vulnerable workers, they received limited protection from the law and limited assistance to enforce what rights they did have.⁹³

4.58 The TWU submitted evidence that the levels of harassment, assault and abuse are high. It told the committee that 66 per cent of rideshare drivers have been subject to some form of harassment, 17 per cent have been physically assaulted, 44 per cent of female drivers have been sexually harassed, and 40 per cent of drivers have experienced racial abuse.

4.59 Westjustice also noted that the discriminatory behaviour at work has caused 'significant psychological injuries' in some cases, and had longer lasting impacts.⁹⁴ They provided the example of rideshare driver 'Irimi':

Irimi came to Australia as an international student and worked as a driver for a ride-hailing company. She was engaged as an independent contractor. Although Irimi did not have a car, she was able to rent one from a company that had a contract with the ride-hailing company.

One night when Irimi was working, she received a job to pick up a group of male passengers. When Irimi arrived the men were noticeably intoxicated. While Irimi was driving, one of the men started to climb through the sunroof of the car, causing significant damage. Irimi stopped the car and the man jumped out. At this stage all the men, except for one, got out. The man that

⁹³ Westjustice, *Submission 12*, [p. 25].

⁹⁴ Westjustice, *Submission 12*, [p. 28].

stayed began to sexually harass Irini, saying things to her like 'do you want to kiss me?' which made Irini feel very uncomfortable.

Irini reported the incident to the company she worked for. They refused to cover the full cost of fixing the car, leaving her with a considerable debt to pay. Instead, they offered her a small amount of money on the condition that she would make no further attempts to claim money from them. The company also refused to take any steps to identify the passengers who damaged the car and sexually harassed her.⁹⁵

- 4.60 One respondent to the TWU survey noted that they had been subject to 'multiple threats with a knife multiple grabbing and punching',⁹⁶ while another driver said that they had:

... been called a black *** by passengers while working in QLD even though I told them that I was from Sydney and Australian and the rest shouldn't matter.⁹⁷

- 4.61 In its submission, the Rideshare Drivers Association of Australia (RSDAA) told the committee that:

To some degree advancements in GPS systems and smart phone technology protect drivers as the identification of passengers ensures more civilised behaviour, nevertheless behavioural issues are still a problem and the physical security of drivers remains an issue and one that is not being dealt with by any practises or governing rules.⁹⁸

- 4.62 RSDAA also noted the 'additional ... and unnecessary stress to the workplace environment of drivers' because some passengers manipulate the ratings system, engaging in unsafe acts, bullying and sexual harassment, endangering the lives of drivers and the safety of their property.⁹⁹

- 4.63 Professor Riley Munton noted that there is a connection between wages and conditions and safety:

... particularly in areas like transport work, there is a connection between wages and conditions and safety, because, if you're not going to earn very much for the time that you're working and you're not going to be paid any waiting time, then you'll be in a much greater hurry and will have anxiety to get the job finished so that you can then clock on for the next one. That can contribute to poor safety. We saw that in the heavy vehicle industry decades ago and we're seeing it now.¹⁰⁰

⁹⁵ Westjustice, *Submission 12*, [p. 28].

⁹⁶ TWU, *Submission 39*, pp. 14–15.

⁹⁷ TWU, *Submission 39*, pp. 14–15.

⁹⁸ RSDAA, *Submission 74*, [p. 7].

⁹⁹ RSDAA, *Submission 74*, [p. 8].

¹⁰⁰ Professor Joellen Riley Munton, Faculty of Law, University of Technology, Sydney, *Proof Committee Hansard*, 12 April 2021, p. 52.

4.64 On-demand work can be unsafe for a variety of reasons, including:

- the work environment—for example, inadequate road and path infrastructure,¹⁰¹ and lack of supervision;¹⁰²
- the nature of the work being done—such as working long hours,¹⁰³ riding a bike in heavy traffic or wet weather,¹⁰⁴ driving intoxicated clients,¹⁰⁵ and fatigue;¹⁰⁶
- unsafe models of work which encourage workers to take short-cuts to maintain their competitive edge—for example, ignoring traffic signals,¹⁰⁷ workers having to take multiple jobs to maximise their income,¹⁰⁸ and platform algorithms penalising workers for performance;¹⁰⁹
- lack of training;¹¹⁰ and
- lack of safety equipment.¹¹¹

4.65 Platform providers have a variety of systems in place to address health and safety issues including safety management systems, policies and guidelines, training programs, worker complaints assistance, provision of rider safety kits, and communications with workers:

We do a lot of driver education for our drivers. We enrol them in various modules, including disability awareness and anti-harassment. We also have policies and guidelines which are safety related. We do a lot in terms of reviewing and investigating safety complaints from a driver's point of view as well as a customer's point of view.¹¹²

4.66 A number of witnesses observed that, while platform providers say they do not incentivise unsafe work practices,¹¹³ on-demand workers try to maximise their

¹⁰¹ Uber, *Submission 19*, pp. 25–26; Deliveroo, *Submission 20*, [p. 10].

¹⁰² Professor Quinlan and Professor Underhill, *Submission 2*, pp. 8; ACTU, *Submission 98*, p. 42.

¹⁰³ RSDAA, *Submission 74*, [p. 11].

¹⁰⁴ TECHO, *Submission 52*, p. 7.

¹⁰⁵ WEjustice, *Submission 12*, [p. 25]; RSDAA, *Submission 74*, [p. 8].

¹⁰⁶ RSDAA, *Submission 74*, [pp. 5–6].

¹⁰⁷ Mr Moreland, *Proof Committee Hansard*, 12 April 2021, p. 63.

¹⁰⁸ Mr Manzoor, *Proof Committee Hansard*, 12 April 2021, p. 63.

¹⁰⁹ Mr Moreland, *Proof Committee Hansard*, 12 April 2021, p. 63.

¹¹⁰ Professor Emeritus Peetz, *Submission 88*, p. 19; Western Australian Government, *Submission 100*, p. 11; TWU, *Submission 39*, p. 28.

¹¹¹ Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan and Dr Veen, *Submission 10*, p. 4; TWU, *Submission 39*, p. 10; TEACHO, *Submission 52*, p. 8.

¹¹² Ms Tan, Ola Australia and New Zealand, *Proof Committee Hansard*, 12 April 2021, p. 13; Queensland Government, *Submission 104*, p. 21.

¹¹³ For example: Mr Denman, Uber Eats, *Proof Committee Hansard*, 12 April 2021, p. 26; Ms Julia Duck, Head of Operations, Strategy and Performance, Deliveroo Australia, *Proof Committee Hansard*,

low earnings or feel rushed to meet unrealistic performance expectations set by the platform apps.¹¹⁴

- 4.67 Job insecurity and low earnings also mean that gig workers are more likely to turn up to work while sick, work long hours leaving them fatigued, and sometimes take shortcuts such as not following traffic signals or work protocols—all factors which put themselves and others at risk and result in higher rates of injury.¹¹⁵ Professor Riley Muntun elaborated:

... particularly in areas like transport work, there is a connection between wages and conditions and safety, because, if you're not going to earn very much for the time that you're working and you're not going to be paid any waiting time, then you'll be in a much greater hurry and will have anxiety to get the job finished so that you can then clock on for the next one. That can contribute to poor safety.¹¹⁶

- 4.68 Health and safety failings also impact consumers and wider society, for example when rideshare drivers and delivery workers accidents.¹¹⁷ The impact of unsafe work environments and practices has been made particularly evident during COVID-19 and the infections and deaths in sectors characterised by on-demand work such as food delivery and aged-care.¹¹⁸
- 4.69 Gig workers are also less likely to report safety issues (including injuries and near misses) and abuse for fear of losing hours or access to work altogether. In some cases it is not possible for workers to identify who is responsible for their safety, for example in the case of sexual harassment¹¹⁹ or where they work

12 April 2021, pp. 32–33; Mr Steven Teoh, Director of Delivery, Menulog, *Proof Committee Hansard*, 12 April 2021, pp. 58–59; Mr Morten Belling, Managing Director, Menulog, *Proof Committee Hansard*, 12 April 2021, pp. 58–59.

¹¹⁴ Mr Manzoor, *Proof Committee Hansard*, p. 60 and Mr Salazar, *Proof Committee Hansard*, 12 April 2021, p. 61.

¹¹⁵ Mr Salazar, *Proof Committee Hansard*, 12 April 2021, p. 61; Mr Moreland, *Proof Committee Hansard*, 12 April 2021, p. 63; Professor Quinlan and Professor Underhill, *Submission 2*, pp. 5, 13; Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan and Dr Veen, *Submission 10*, p. 3; Associate Professor Knox and Associate Professor Ainsworth, *Submission 35*, pp. 3–4.

¹¹⁶ Professor Riley Muntun, University of Technology Sydney, *Proof Committee Hansard*, 12 April 2021, p. 52.

¹¹⁷ TWU, *Submission 39*, p. 29.

¹¹⁸ Ms Dawson, Per Capita, *Proof Committee Hansard*, 19 April 2021, p. 22; Professor Catherine Bennett, Chair in Epidemiology, Deakin University, *Proof Committee Hansard*, 19 April 2021, pp. 45–46; Ms King, Victorian Council of Social Services, *Proof Committee Hansard*, 20 April 2021, pp. 14–15; Professor Quinlan and Professor Underhill, *Submission 2*, p. 14.

¹¹⁹ Western Australian Government, *Submission 100*, p. 11; NFAW, *Submission 11*, p. 18.

across multiple apps.¹²⁰ When insecure workers do report safety concerns they are less likely to be treated seriously.¹²¹

Committee view

- 4.70 The committee considers that a safe work environment is a fundamental right for all workers, including for gig workers. The current arrangements for gig workers clearly do not offer the health and safety protections that Australian society expects—as seen in other employment arrangements—nor requirements and ongoing supports that are necessary to keep gig workers as safe as possible at work and to look after them and their families if they are injured or killed.
- 4.71 Unrealistic time and performance pressures, combined with high-risk work environments, and lack of training and appropriate protective equipment for gig workers place them at higher risk of injury at work. When these factors are combined with other elements of gig work—inadequate job security, earnings and conditions—it is clear that gig workers are vulnerable and have little capacity to make safety improvements to their work environment, to the detriment of them and their families.
- 4.72 Options for reform are included in Chapter 6.

Lower job security

- 4.73 Gig work is, by its nature, insecure.¹²² There are usually no ongoing commitments for either platforms or workers, work can very quickly commence and be terminated by either party, earnings are often low, there are often no minimum or set work hours, workers may be underemployed, in some instances the work is low-skilled, and offers opportunities to people who might otherwise have difficulty entering the job market.¹²³
- 4.74 Lack of security in the gig economy has increased since the start of the COVID-19 pandemic. Some opportunities decreased (e.g. rideshare),¹²⁴ people lost other jobs or lost hours,¹²⁵ and the competition for gig work increased. The effects of the pandemic are continuing to be felt by on-demand workers.¹²⁶

¹²⁰ Mr Belling, Menulog, *Proof Committee Hansard*, 12 April 2021, p. 59.

¹²¹ Professor Quinlan and Professor Underhill, *Submission 2*, p. 10.

¹²² ARC Gig Cities Research Team, *Submission 5*, pp. 4–7; Australian Institute of Employment Rights, *Submission 6*, pp. 10–11.

¹²³ Ms Dawson, Per Capita, *Proof Committee Hansard*, 19 April 2021, pp. 16–20; ARC Gig Cities Research Team, *Submission 5*, pp. 4–7.

¹²⁴ Uber, answers to questions on notice, 14 May 2021, p. 11.

¹²⁵ Professor Quinlan and Professor Underhill, *Submission 2*, p. 12.

¹²⁶ Ms Briskey, United Workers Union, *Proof Committee Hansard*, 14 April 2021, pp. 24–25; Professor Quinlan and Professor Underhill, *Submission 2*, p. 16–18; Dr Goods, Dr Barratt, Dr Smith,

The inherent risk for these [gig] workers is the downward pressure on payrates and job security by an 'employer' who exerts control but doesn't take any responsibilities and risks of an employer ... Such downward pressure is of great concern in an industry that already fails to match the social value of the work with proportionate remuneration.¹²⁷

4.75 However, the committee also heard evidence from a small number of platform providers who are successfully using or trialling other employment models. Mr Jordan O'Reilly, Chief Executive Officer and co-founder of Hireup told the committee that it employs its workers directly and provides all the entitlements, rights and conditions that apply in an employee–employer relationship, while using platform technology to engage with its clients:¹²⁸

... we can absolutely use good technology that puts choice and control in people's hands, along with employing a workforce with all of the entitlements, rights and conditions that come along with that. I disagree with people that say that it can't be done. Hireup is proof that we can do that.¹²⁹

You will hear today from organisations and people who say that, to access the benefits of technology and the flexibility that comes with platforms, we have to treat the workforce as independent contractors. I believe that's rubbish. I people will say that it is too hard to create a platform that engages workers as employees. I would say that we need to try harder.¹³⁰

Decreased power and workplace rights

4.76 A significant characteristic of on-demand platform work is the power imbalance between employing entities and individual workers, in favour of the platforms.¹³¹ A number of submissions highlighted the reduced power of individuals working in insecure jobs, with platform and labour hire companies setting terms ranging from payment, conditions and protections, to working specific jobs, hours and locations, and the ability to work multiple jobs or platforms.¹³²

Mr Sullivan and Dr Veen, *Submission 10*, p. 2 and pp. 4–5; Australia Institute, Centre for Future Work, *Submission 41*, p. 8; United Workers Union, *Submission 54*, p. 20.

¹²⁷ United Workers Union, *Submission 54*, p. 24.

¹²⁸ Mr O'Reilly, Hireup, *Proof Committee Hansard*, 12 April 2021, pp. 36–37 and 40.

¹²⁹ Mr Jordan O'Reilly, Chief Executive Officer and co-Founder, Hireup, *Proof Committee Hansard*, 12 April 2021, p. 40.

¹³⁰ Mr O'Reilly, Hireup, *Proof Committee Hansard*, 12 April 2021, p. 36.

¹³¹ Australian Institute of Employment Rights, *Submission 6*, p. 32; Victorian Government, *Submission 16*, pages 11 and 24; Professor Emeritus Peetz, *Submission 88*, p. 24; ACTU, *Submission 98*, p. 43.

¹³² Mr Moreland, *Proof Committee Hansard*, 12 April 2021, pp. 60–61 and 65; Mr Manzoor, *Proof Committee Hansard*, 12 April 2021, p. 65; Professor Emeritus Peetz, *Submission 88*, p. 14; Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan and Dr Veen, *Submission 10*, p. 4.

4.77 The insecure nature of this work means that workers are less able to advocate for their rights or better terms, refuse additional hours or jobs, or report sexual harassment, bullying, discrimination, safety issues, or fraud, for fear of losing work or being suspended or banned from platforms.¹³³

4.78 Ms Emma Dawson, Executive Director, Per Capita, described the power imbalance this way:

What we have actually seen play out is that the flexibility, particularly in gig economy work but across all forms of insecure work, is very much one way, that there is very limited flexibility in being a rideshare driver or a food delivery driver because of the way the algorithms work—which is that, if you do consistently turn down shifts or make yourself unavailable, then you simply don't get any additional work from the platform. Again, it comes back to that practical application and that power imbalance.¹³⁴

4.79 Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan and Dr Veen have been researching the impact of platform work with an emphasis on worker experiences since 2017, and supported the idea of a power imbalance between platform providers and workers:

... the insecurity faced by app-based delivery workers as workers bear the economic risks and are reliant on the platforms to generate an income, creating, and then reinforcing a power imbalance between workers that leaves them with limited opportunity to overcome this income insecurity.¹³⁵

4.80 The study into Digital Platform Work in Australia commissioned by the Victorian Department of Premier and Cabinet identified three levels of control unique to platform work. Firstly, the value of the gig is often determined by an algorithm which is opaque to the worker; secondly, reputational rating systems operate as powerful forms of indirect digital control and place structural power with clients rather than workers; and thirdly the extent of monitoring and control of workers is unprecedented, including through productivity metrics and gamification of apps.¹³⁶

4.81 Action can be taken by platform providers against workers immediately without notice and with limited or no effective appeal or redress mechanism.

¹³³ Mr Manzoor, *Proof Committee Hansard*, 12 April 2021, p. 62; Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan and Dr Veen, *Submission 10*, p. 8; WESTjustice, *Submission 12*, p. 5; Associate Professor Blackman, *Submission 38*, [p. 14]; Springvale Monash Legal Service, *Submission 56*, p. 8; Kingsford Legal Centre and Redfern Legal Centre, *Submission 92*, pp. 2–3 and 19; Job Watch Inc., *Submission 95*, p. 20; ACTU, *Submission 98*, p. 6; Western Australian Government, *Submission 100*, pp. 11–12.

¹³⁴ Ms Dawson, Per Capita, *Proof Committee Hansard*, 19 April 2021, pp. 18–20.

¹³⁵ Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan, Dr Veen, *Submission 10*, p. 4.

¹³⁶ Prof Paula McDonald, Dr Penny Williams, Prof Andrew Stewart, A/Prof Robyn Mayes and Dr Damian Oliver, *Digital Platform Work in Australia: Prevalence, Nature and Impact* (Digital platform work in Australia), commissioned by the Victorian Department of Premier and Cabinet, June 2019, pp. 16–17, <https://apo.org.au/node/242706> (accessed 13 June 2021).

Results from a TWU survey found that 58 per cent of rideshare drivers had been treated unfairly by their company without being able to defend themselves, and 29 per cent had been suspended or deactivated as a result of a false allegation.¹³⁷

One respondent noted that:

Drunk passengers falsely claimed sexual inappropriate behaviour by the driver. I was deactivated and they got a free trip and a great laugh.¹³⁸

4.82 The levels of control over platform workers is considerable both through algorithmic allocation of work, and by performance through the gathering of ratings, reducing the overall flexibility of the arrangement for workers:¹³⁹

... it has been instrumental in enabling platform firms to create novel forms of work organisation. Partly with the support of consumers, platforms collect a range of data on worker performance, but only share limited information with workers as to how this is used to allocate work or prevent workers from being “locked out” of apps – a serious issue in terms of work security. This means that workers are indeed controlled by a combination of market necessity and the need to meet the concealed but significant demands of the algorithmic manager. Thus, flexibility appears overstated.¹⁴⁰

4.83 A judgement in the Fair Work Commission (FWC) involving Deliveroo and one of its drivers, Mr Diego Franco, found that Mr Franco was an employee of Deliveroo and that he had been unfairly dismissed for not meeting delivery times. As part of its deliberations over Mr Franco's employment status the FWC considered Deliveroo's level of control and the capacity to exercise control over Mr Franco.¹⁴¹

4.84 The FWC found that Mr Franco was deemed an employee, because Deliveroo used performance data and algorithms to terminate Mr Franco's account. This case has highlighted the significant control held by platform providers over how work is done, when it is done and who receives the work.¹⁴²

¹³⁷ TWU, Rideshare Survey (tabled at public hearing in Sydney on 12 April 2021), p. 2.

¹³⁸ TWU, Rideshare Survey (tabled at public hearing in Sydney on 12 April 2021), p. 2.

¹³⁹ Mr Kaine, TWU, *Proof Committee Hansard*, 12 April 2021, p. 7; Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan and Dr Veen, *Submission 10*, p. 8; Maurice Blackburn Lawyers, *Submission 17*, p. 19.

¹⁴⁰ Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan and Dr Veen, *Submission 10*, p. 8.

¹⁴¹ Alex Veen, Caleb Goods, Rick Sullivan, and Tom Barratt, ‘An employee, not a contractor: unfair dismissal ruling against Deliveroo is a big deal for Australia’s gig workers’ (An employee, not a contractor), *The Conversation*, 19 May 2021, <https://theconversation.com/an-employee-not-a-contractor-unfair-dismissal-ruling-against-deliveroo-is-a-big-deal-for-australias-gig-workers-161173> (accessed 1 June 2021).

¹⁴² Associate Professor Blackham, *Submission 38*, [p. 14]; see also, Hannan, Ewin, ‘FWC Ruling a win for gig workers’, *The Australian*, 19 May 2021, p. 3; ‘An employee, not a contractor: unfair dismissal ruling against Deliveroo is a big deal for Australia’s gig workers’, *The Conversation*, 19 May 2021.

- 4.85 These aspects of control and power are significant and in a state of flux, with courts finding in favour of both platform providers and workers at different times.¹⁴³
- 4.86 The Centre for Future Work¹⁴⁴ called for this power imbalance to be addressed and adjusted in favour of gig workers to address inequalities, a view supported by the ACTU:
- Our laws and institutions should be designed to protect everyone, especially those most vulnerable to exploitation. The basic premise of labour law is that a power imbalance exists between the individual worker and the employer. That imbalance is particularly pronounced for the vast majority of insecure, nonstandard workers. Our labour laws, and labour market institutions, should be reformed to assist this vast majority of insecure workers who face a very dramatic power deficit in their employment relationship.¹⁴⁵
- 4.87 The committee heard that collective representation in the Australian labour market has declined over the last decade,¹⁴⁶ and it is clear that on-demand workers are even less able to bargain either individually or collectively for better rates of pay, conditions or work health and safety.¹⁴⁷
- 4.88 This is partly due to the precarious nature of gig work and fear of losing work or platform access; however it also arises from the structure of gig work. Workers are often paid by job, they have no shared physical workspace, they have limited ways of engaging with each other, and workers turn over quickly. These factors make it difficult for workers to bargain individually or organise and take action collectively.¹⁴⁸

¹⁴³ Veen et. al., An employee, not a contractor; Edwin Hannan, 'FWC Ruling a win for gig workers', *The Australian*, 19 May 2021, p. 3; Bernard Keane, 'That crashing sound is the exploitation industry starting to collapse', *Crikey.Daily*, 19 May 2021, <https://www.crikey.com.au/2021/05/19/crashing-sound-exploitation-industry-starting-collapse/> (accessed 1 June 2021); Australian Industry Group (Ai Group), *Submission 77*, p. 6; Centre for International Corporate Tax Accountability and Research (CICTAR), *Submission 93*, pp. 5–6.

¹⁴⁴ For example: Mr Dan Nahum, Economist, Centre for Future Work, Australia Institute, *Proof Committee Hansard*, 20 April 2021, p. 46.

¹⁴⁵ ACTU, *Submission 98*, p. 43.

¹⁴⁶ Dr Stanford, Australia Institute, *Proof Committee Hansard*, 20 April 2021, p. 49. See also: Professor Emeritus Peetz, *Submission 88*, p. 10.

¹⁴⁷ Australia Institute, *Submission 41*, p. 20; Mr Williams, Health Services Union, *Proof Committee Hansard*, 13 April 2021, p. 13; Mr Nahum, Australia Institute, *Proof Committee Hansard*, 20 April 2021, p. 45; Professor Quinlan and Professor Underhill, *Submission 2*, p. 8.

¹⁴⁸ Mr Moreland, *Proof Committee Hansard*, 12 April 2021, p. 60; Per Capita, *Submission 30*, p. 11.

- 4.89 The Centre for Future Work deemed that the ability for on-demand workers to take collective action is essential to ensuring they have more stable jobs, better rates of pay, safety and improved conditions¹⁴⁹:

We believe that workers must be able to collectively bargain for improved workplace standards with the controlling economic entities across industries and along supply chains ... Industry bargaining is a necessity for resolving worker bargaining imbalances created ... insecure working conditions, decentralised working and attacks on unions that create barriers for union power in the workplace ... reliable workers should have jobs they and their families can rely on with fair and predictable pay and hours of work, access to important conditions like annual leave, paid sick leave, overtime, penalty rates and long service leave, protection from unfair dismissal, and quality skills and training and career opportunities.¹⁵⁰

Industry or sector-specific impacts

- 4.90 Individual industries or sectors experience specific impacts due to the nature of the work and the nature of the engagements commonly used.

Transactional versus relationship-based services

- 4.91 The evidence to this committee shows that the impacts of gig work are different depending on whether transactional or more personal services are being delivered. The former is less complicated and less nuanced—consumers engage workers for a single service and once it has been delivered the relationship with the consumer generally ends. This type of work includes rideshare, parcel and food delivery, and some professional and technical services such as graphic design or writing. The latter is much more complex and generally involves the development of trust and a relationship between the worker and the client—such as that seen in aged-care, disability care and cleaning services.

Rideshare and delivery services

- 4.92 Engagement of on-demand workers in the rideshare and delivery sector is commonly through platforms and apps including Uber and Deliveroo. Workers are generally engaged as independent contractors and have not usually been recognised as employees.¹⁵¹
- 4.93 People work in this sector because of the low entry barrier—they may have limited English, limited skills or experience, or visa restrictions¹⁵²—they often

¹⁴⁹ Australia Institute, *Submission 41*, pages 5 and 20.

¹⁵⁰ ACTU, *Submission 98*, pp. 37 and 44.

¹⁵¹ Mr Denman, *Uber Eats*, *Proof Committee Hansard*, 12 April 2021, p. 16; Mr McManus, *Deliveroo*, *Proof Committee Hansard*, 12 April 2021, p. 29.

¹⁵² Accenture, *Making delivery work for everyone*, March 2021, p. 12.

work across multiple apps and there is significant turnover, with workers moving in and out of this work as their circumstances change.¹⁵³

- 4.94 Consumers may be less impacted by worker turnover in this sector because there is little or no expectation of an ongoing relationship—they expect to deal with a different worker each time they use the service.

Personal care and community services

- 4.95 The personal care and community services sector operates differently. Engagement of workers in this sector is largely through labour hire companies,¹⁵⁴ and increasingly through platform providers¹⁵⁵ such as Hireup, Mable, and Find a Carer. Under the former arrangement, workers are engaged by a labour hire company or operate as independent contractors and work is directed through the labour hire company.¹⁵⁶
- 4.96 As outlined in Chapter 3, Mable is an online marketplace that connects consumers with independent service providers.¹⁵⁷ By contrast Hireup directly employ their workers and pay superannuation, tax, insurance and other entitlements.¹⁵⁸ Both providers offer their services via an online platform.
- 4.97 Work within the sector is variable, with some unskilled work such as personal shopping, transport and cleaning, and progressively more skilled and professional work, ranging from personal care, to medication management and bowel care, to nursing services.¹⁵⁹ Some people work in this sector because of the low entry barrier, while others work in the sector because they are qualified or experienced in the field, or they are passionate about caring work.¹⁶⁰
- 4.98 The Australian Nursing and Midwifery Federation stated that 90 per cent of workers in the nursing sector are women, with even higher figures in aged-care.¹⁶¹ The sector also has a higher proportion of migrants, with

¹⁵³ Ms Tan, Ola Australia and New Zealand, *Proof Committee Hansard*, 12 April 2021, p. 9; Ms Tamsin Lawrence, Deputy Director, Workplace Relations, ACCI, *Proof Committee Hansard*, 21 April 2021, pages 13 and 18; RSDAA, *Submission 74*, [p. 11].

¹⁵⁴ Queensland Nurses and Midwives' Union, *Submission 15*, [p. 10].

¹⁵⁵ Queensland Nurses and Midwives' Union, *Submission 15*, [p. 15]; Hireup, *Submission 23*, p. 18.

¹⁵⁶ Mr Scutt, Mable, *Proof Committee Hansard*, 12 April 2021, p. 41; Mr O'Reilly, Hireup, *Proof Committee Hansard*, 12 April 2021, pp. 35–36; Australian Nursing and Midwifery Federation (ANMF), *Submission 27*, p. 4.

¹⁵⁷ Mr Scutt, Mable, *Proof Committee Hansard*, 12 April 2021, p. 41.

¹⁵⁸ Mr O'Reilly, Hireup, *Proof Committee Hansard*, 12 April 2021, pp. 35–36.

¹⁵⁹ Mr O'Reilly, Hireup, *Proof Committee Hansard*, 12 April 2021, pp. 35–36; Hireup, <https://hireup.com.au/> (accessed 6 May 2021); Mable, <https://mable.com.au/> (accessed 6 May 2021).

¹⁶⁰ Ms Tracey Colbert, Member, United Workers' Union, *Proof Committee Hansard*, 19 April 2021, p. 13.

¹⁶¹ Ms Annie Butler, Federal Secretary, ANMF, *Proof Committee Hansard*, 19 April 2021, p. 3.

50 per cent of aged-care attendants being born overseas, predominantly women.¹⁶²

- 4.99 The committee was unable to definitively determine why, in this sector in particular, platform providers and labour hire companies do not engage more workers as employees on a permanent part time basis, given the allegedly lower costs of this engagement model and that consumer demand for care requirements are largely known. From evidence provided to the committee it is clear that client care needs mean that care hours are being utilised but that some workers are engaged on low or no contract hour arrangements and routinely work well above those hours, often at multiple sites:¹⁶³

If it [the single-site policy] worked during COVID, why can't we now have an industry that says, 'We're not going to have people working across three, four or five sites as casuals. We'll give them permanent part-time work'?'¹⁶⁴

- 4.100 Witnesses to the inquiry suggested a number of reasons for this engagement model including that it enables platform providers and labour hire companies to retain maximum flexibility and power by engaging workers less securely. This arrangement means they can respond to changing requirements for numbers of workers or the qualifications and skills of workers. Other witnesses noted that the power imbalance motivates workers to work harder and reduce sick leave for fear of losing work, it means penalty rates do not need to be paid, and that some workers prefer to work casually and to work across facilities.¹⁶⁵

- 4.101 Several witnesses spoke about the impacts of insecure employment, and in particular gig work, on the reduced ability of the sector to attract and retain staff in the short to long term, a significant issue for the growing aged and disability care sectors¹⁶⁶:

We are going to need an employment system that seeks to recruit and retain employees. For that to happen, we need a sound structure and secure work for them to work in. It's very difficult work. It's been explained how difficult it is to retain people. ... So this model of employment is not the way to go in retaining and recruiting an aged-care workforce into the future.¹⁶⁷

¹⁶² Ms Dawson, Per Capita, *Proof Committee Hansard*, 19 April 2021, p. 21.

¹⁶³ Ms Sharp, ANMF, *Proof Committee Hansard*, 19 April 2021, pp. 3–4; Ms Evans, United Workers Union, *Proof Committee Hansard*, 19 April 2021, p. 12; Ms Sparrow, Aged and Community Services Australia, *Proof Committee Hansard*, 19 April 2021, p. 33.

¹⁶⁴ Mr Collins, Health Workers Union, *Proof Committee Hansard*, 19 April 2021, pp. 9–10.

¹⁶⁵ Mr Collins, Health Workers Union, *Proof Committee Hansard*, 19 April 2021, pp. 6–9.

¹⁶⁶ Dr Stanford, Australia Institute, *Proof Committee Hansard*, 20 April 2021, pp. 48–49.

¹⁶⁷ Ms Sharp, ANMF, *Proof Committee Hansard*, 19 April 2021, p. 5.

4.102 Hireup advocated for improvements in earnings, entitlements and protections for care workers across the disability care sector in order to attract workers to the sector.¹⁶⁸

4.103 Personal care and community services work is characterised by the development of relationships and trust between workers and their clients. Workers typically enter the homes or residences of their clients and may provide very personal services such as bathing or administering medications.¹⁶⁹ Mable described:

... the unique needs of aged care at home and disability support where people are looking for solutions that are person centred and respond to their individual needs, preferences, abilities and interests where choice and flexibility are critically important, where relationships really underpin people's ability to live independently and to overcome sort of loneliness and disconnection.¹⁷⁰

4.104 Numerous workers spoke of the importance of the client–worker relationship, and of the direct links between the quality of the relationship, continuity and the quality of services received by clients. In particular, workers spoke of the relationships they developed with their clients and the levels of trust required to deliver services appropriately:¹⁷¹

... the profile of people in residential aged care, this is an extremely fragile, frail population. For them, the best quality care is relationship based, not transaction based. The more that they get to know people and the more continuity they get from day to day, the safer those residents feel and, in fact, the safer they are.¹⁷²

4.105 Hireup highlighted the importance of investment in the workers as an investment in the sector and, in turn, the resulting benefits, including improved quality of services to clients and improved retention of workers.¹⁷³

4.106 There was widespread agreement with the findings of the Royal Commission into Aged Care Quality and Safety that the current funding model and levels of

¹⁶⁸ Mr O'Reilly, Hireup, *Proof Committee Hansard*, 12 April 2021, p. 39.

¹⁶⁹ Mr Williams, Health Services Union, *Proof Committee Hansard*, 13 April 2021, p. 11; Ms Butler, ANMF, *Proof Committee Hansard*, 19 April 2021, p. 2; Mr Paul Bott, Member, ANMF, *Proof Committee Hansard*, 19 April 2021, p. 2; Professor Eagar, University of Wollongong, *Proof Committee Hansard*, 19 April 2021, pp. 39–40.

¹⁷⁰ Mr Scutt, Mable, *Proof Committee Hansard*, 12 April 2021, p. 41.

¹⁷¹ Mr Williams, Health Services Union, *Proof Committee Hansard*, 13 April 2021, p. 11; Ms Evans, United Workers' Union, *Proof Committee Hansard*, 19 April 2021, p. 11.

¹⁷² Professor Kathy Eagar, Director, Australian Health Services Research Institute, University of Wollongong, *Proof Committee Hansard*, 19 April 2021, p. 39.

¹⁷³ Mr Jordan O'Reilly, Chief Executive Officer and co-Founder, Hireup, *Proof Committee Hansard*, 12 April 2021, p. 35.

funding are insecure and insufficient to meet people's care needs and do not recompense workers adequately.¹⁷⁴

4.107 The committee has heard that consumers are benefiting from alternative ways of obtaining care services through various online platforms, with individuals having greater choice and able to exercise greater agency in their own care arrangements.¹⁷⁵ However the committee also heard that there are risks for consumers, with reduced regulation, breakdown of holistic care into itemised tasks,¹⁷⁶ and longer term implications for the caring workforce and professions.¹⁷⁷

Impacts on individuals, families and communities

4.108 The Australian Institute of Employment Rights contended that:

Insecure and precarious work can also be thought of as substandard work that falls short of the International Labour Organization's (ILO) notion of 'decent work' ... "Decent work sums up the aspirations of people in their working lives—their aspirations for opportunity and income; rights, voice and recognition; family stability and personal development; and fairness and gender equality".¹⁷⁸

4.109 The committee received evidence from a wide range of witnesses about the impacts of gig work on workers and their families, in addition to those impacts already considered.

Job satisfaction

4.110 The committee heard varying evidence as to how satisfied on-demand workers were with their work. For people gig work provides autonomy and a sense of entrepreneurship which can be very satisfying.¹⁷⁹ A Deliveroo survey found that 84 per cent of riders were satisfied with their work and that thousands of new applications to ride are received per week, showing that it is an attractive form of work, and that workers value the flexibility.¹⁸⁰

¹⁷⁴ Ms Butler, ANMF, *Proof Committee Hansard*, 19 April 2021, p. 2; Royal Commission into Aged Care Quality and Safety, *Final report: Care dignity and respect*, volume 2: the current system, 2021, pp. 185–188, and 197, pp. 211–213.

¹⁷⁵ Name withheld, *Submission 110*, p. 1; Mr O'Reilly, Hireup, *Proof Committee Hansard*, 12 April 2021, p. 35.

¹⁷⁶ Professor Sara Charlesworth, *Submission 89*, p. 27.

¹⁷⁷ Mr O'Reilly, Hireup, *Proof Committee Hansard*, 12 April 2021, p. 35; Mr Williams, Health Services Union, *Proof Committee Hansard*, 13 April 2021, p. 9; Mable, *Submission 24*, p. 6; Hireup, *Submission 23*, pp. 13–14.

¹⁷⁸ Australian Institute of Employment Rights, *Submission 6*, p. 10.

¹⁷⁹ TWU, *Submission 39*, p. 7; ACCI, *Submission 71*, [p. 5].

¹⁸⁰ Mr McManus, Deliveroo, *Proof Committee Hansard*, 12 April 2021, p. 31.

4.111 The committee heard contrasting evidence from other submitters, including that insecure work is a barrier to job satisfaction.¹⁸¹ A report prepared by the Faculty of Law at the University of Technology Sydney for the Transport Education Audit Compliance Health Organisation (TEACHO) noted that:

Job security enables workers to refuse unsafe working conditions without the threat of job loss. Income security (notwithstanding absences from work due to illness or injury) supports an adequate level of overall remuneration, sufficient to allow for annual recreation breaks and to prepare for retirement. Implicit in these four interests are also the need for appropriate mechanisms for setting rates of pay; for consulting on the terms and conditions of work; and for resolving disputes and adequate enforcement.¹⁸²

Negative health impacts

4.112 Insecure workers, particularly those who are underemployed, are more likely to suffer ill health, including physical ill health and in particular mental health related issues such as depression, anxiety and suicide.¹⁸³

4.113 As was seen during COVID-19 lockdowns, in particular, gig workers are more likely to go to work when they are sick because of the insecure nature of their work and low income. This, in turn, created unsafe work environments for workers, clients and for the families of workers:¹⁸⁴

... there is opportunity in this policy space to deliver better outcomes for workers, increase their job security and provide them with the kind of security that means that they don't have to turn up to work sick or that they know that they can take some time off on school holidays because they've got to take care of their kids. We need to think about work as being more than just a financial transaction between an employer and employee and about supporting and sustaining the lives of all workers beyond work as well.¹⁸⁵

4.114 As discussed earlier in the chapter, safety is an issue for gig workers, with real impacts for individuals and families when injuries or illness stop them working, or if they are killed while working. Mr Michael Kaine, National Secretary of the TWU told the committee about the impacts for five gig workers and their families when the workers were killed in 2020:

Ik Wong, Dede Freedy, Xiaojun Chen, Chow Khai Shien and Bijoy Paul ... lost their lives last year in a space of 11 weeks. Their families have been left destitute. They had to work. Some of them were here trying to put

¹⁸¹ For example: Franklin Women, *Submission 58*, [p. 7]; ARC Gig Cities Research Team, *Submission 5*, p. 6; Queensland Nurses and Midwives' Union, *Submission 15*, [p. 7].

¹⁸² TEACHO, *Submission 52*, p. 39.

¹⁸³ Per Capita, *Submission 30*, p. 11.

¹⁸⁴ Professor Emeritus Peetz, *Submission 88*, pp. 19–20.

¹⁸⁵ Mr Ryan Batchelor, Executive Director, McKell Institute Victoria, *Proof Committee Hansard*, 19 April 2021, pp. 56–57.

themselves through university. Some of them were looking after their families. None of them got the workers compensation payment that other Australians get, and their families are destitute. That's the gig economy.¹⁸⁶

4.115 Because these workers often have fewer resources at their disposal, these effects are disproportionate on individuals and their families and contribute to overall negative impacts on family life.¹⁸⁷

Financial instability and inability to plan ahead

4.116 The lower incomes and job insecurity typical of gig work create financial instability for workers, giving them less financial and career security and making it harder for some them to meet the costs of everyday life¹⁸⁸ or to plan ahead. It is more difficult for on-demand workers to plan ahead financially, in relation to study or career progression, relocation, planning for holidays, planning if or when to start a family or have more children, planning childcare, and planning for retirement.¹⁸⁹

4.117 Work and income instability means that on-demand workers are less likely to have savings and be able to afford holidays, a car and—significantly—housing.¹⁹⁰

4.118 Lack of a regular, predictable income means that gig workers may not be able to pay rent¹⁹¹ and are less likely to receive approval for a loan or mortgage.¹⁹² The Springvale Monash Legal Service said that:

Insecure work creates housing inequality for workers. The sudden loss of income for vulnerable or disadvantaged workers may lead to a real risk of homelessness, spiralling debts and may impact significantly on mental health. This may have particularly serious implications for clients with dependent children or other dependents. For workers experiencing disadvantage, it may well take a prolonged period of time to recover from the financial crisis of job loss if finding comparable alternative work is limited.¹⁹³

¹⁸⁶ Mr Kaine, TWU, *Proof Committee Hansard*, 12 April 2021, p. 8.

¹⁸⁷ Professor Quinlan and Professor Underhill, *Submission 2*, pages 4 and 13; Mr LaMontagne, Dr King and Ms Taouk, *Submission 81*, pp. 3–4; ACTU, *Submission 98*, p. 6.

¹⁸⁸ Victorian Council of Social Service, *Submission 13*, p. 15; Victorian Trades Hall Council, *Submission 31*, [p. 4]; Young Workers Centre, *Submission 99*, [p. 13].

¹⁸⁹ ARC Gig Cities Research Team, *Submission 5*, pp. 4–5; Per Capita, *Submission 30*, p. 10.

¹⁹⁰ Ms Dawson, Per Capita, *Proof Committee Hansard*, 19 April 2021, p. 20.

¹⁹¹ Kingsford Legal Centre and Redfern Legal Centre, *Submission 92*, p. 10; Young Workers Centre, *Submission 99*, [p. 13].

¹⁹² NFAW, *Submission 11*, p. 25; Victorian Government; *Submission 16*, p. 8; Victorian Council of Social Service, *Submission 13*, p. 15.

¹⁹³ Springvale Monash Legal Service, *Submission 56*, p. 9.

4.119 Insecure work, underemployment and lower incomes affect not only immediate earnings but also lifetime earnings, with the associated loss of superannuation and wages growth due to limited experience and qualifications and lack of career pathway.¹⁹⁴

4.120 These factors combine to make it very difficult for people and families to set and achieve personal goals, and to meet common societal expectations such as moving out of home, buying a house or 'settling down'. For gig workers it is more difficult to build a sense of achievement or satisfaction with their lives, and contribute to wider society.

Less time with family and friends

4.121 Gig workers report job insecurity, being lowly paid, working long hours, working hours that take them away from their families,¹⁹⁵ and working multiple jobs.¹⁹⁶ These prevent gig workers from spending time with their families and friends, isolates workers from their families and other support networks,¹⁹⁷ and creates practical problems and stresses for families when alternative arrangements for care need to be made for children or other family members. All of these experiences create considerable uncertainty for gig workers. Ms Dawson from Per Capita observed that:

... what we are hearing from so many people now, particularly since the return to work after the recession, is that gig economy work is a necessary second job that really eats into their family time and their leisure time.¹⁹⁸

4.122 Some gig workers also spend considerable time trying to source work or waiting for work, meaning that they are effectively 'on call'. This can mean that they have little opportunity to separate leisure and family time and work time.¹⁹⁹

4.123 These factors have been shown to create long-term impacts for individuals and families, creating tensions in close relationships and contributing to conflict and relationship breakdown.²⁰⁰

Vulnerable groups

4.124 The committee heard evidence that on demand work is more likely to attract workers from vulnerable groups in society including women, young people,

¹⁹⁴ Per Capita, *Submission 30*, p. 11.

¹⁹⁵ Senator Sheldon, Committee Chair, *Proof Committee Hansard*, 19 April 2021, p. 20.

¹⁹⁶ Ms Dawson, Per Capita, *Proof Committee Hansard*, 19 April 2021, p. 20.

¹⁹⁷ ARC Gig Cities Research Team, *Submission 5*, p. 7.

¹⁹⁸ Ms Dawson, Per Capita, *Proof Committee Hansard*, 19 April 2021, p. 20.

¹⁹⁹ ARC Gig Cities Research Team, *Submission 5*, p. 5.

²⁰⁰ Mr Tony LaMontagne, Dr Tania King, Ms Yamna Taouk, *Submission 81*, p. 3; ARC Gig Cities Research Team, *Submission 5*, p. 7.

older workers, Aboriginal and Torres Strait Islanders, people living with a disability, migrants, students, low income earners, and the formerly unemployed.²⁰¹

4.125 The report into Digital Platform Work in Australia supported this evidence, finding that higher proportions of young people, Aboriginal and Torres Strait Islanders, people living with a disability, temporary and permanent residents, and unemployed people working as platform workers.²⁰²

4.126 For vulnerable people with limited employment options on-demand work offers an employment opportunity,²⁰³ with a survey of Uber Eats drivers finding that three in five find it challenging to access traditional work as a casual or permanent employee.²⁰⁴

4.127 For these people gig work offers them an employment option because it has:

- a low barrier for entry—this makes it easier for people to access work with low educational attainment, few or no qualifications, or where their qualifications are not recognised in Australia,²⁰⁵ and while they are mastering English as a second language; and²⁰⁶
- flexibility²⁰⁷—enabling workers to balance work with caring responsibilities, study and other commitments, to manage when and where they work, health requirements, and the ability to manage their work to meet visa restrictions.²⁰⁸

4.128 Researchers for the Digital Platform Work in Australia report had a different perspective:

... another interpretation is that platform work – or at least that which is low paid and insecure—does little to redress existing structural inequalities in the labour market. This perspective decries the promotion of such work as

²⁰¹ Liberty Victoria, *Submission 72*, p. 3; see also Ms King, Victorian Council of Social Services, *Proof Committee Hansard*, 20 April 2021, pp. 11–15; Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan and Dr Veen, *Submission 10*, p. 3.

²⁰² *Digital Platform Work in Australia*, November 2019, pp. 32–35.

²⁰³ Ms King, Victorian Council of Social Services, *Proof Committee Hansard*, 20 April 2021, pp. 14–15; see also *Digital Platform Work in Australia*, November 2019, pp. 21–22, and 61 .

²⁰⁴ Accenture, *Making delivery work for everyone*, March 2021, p. 12.

²⁰⁵ Multicultural Youth Advocacy Network, *Submission 66*, p.3; Springvale Monash Legal Service, *Submission 56*, p. 7.

²⁰⁶ Ms King, Victorian Council of Social Services, *Proof Committee Hansard*, 20 April 2021, pp. 15; Accenture, *Making delivery work for everyone*, March 2021, p. 12.

²⁰⁷ *Digital Platform Work in Australia*, November 2019, p. 22.

²⁰⁸ Accenture, *Making delivery work for everyone*, March 2021, pages 12 and 23.

'an opportunity' or as a flexible and accessible solution to the challenges faced by vulnerable groups in accessing decent and secure work.²⁰⁹

4.129 For vulnerable workers gig work can also have negative impacts. They may find it harder to access secure work, meaning that they are more likely to accept lower pay and conditions.²¹⁰ Women completing gig work are more likely to be paid less than male gig workers,²¹¹ and migrants and temporary residents who may also compare their earnings and conditions with pay and conditions in their country of birth, rather than looking to Australian labour market expectations.²¹²

4.130 Mr Farouque put it this way:

Many of those workers are from what could be described as vulnerable cohorts of workers—migrant workers and younger workers. It's apparent to us that the existing regime of regulation or laws relating to those workers is insufficient to protect them and afford them basic rights. The existing laws don't provide for the types of basic frameworks that many of us come to assume are essential to ordinary working life. ...

They are not complex matters. We're actually talking about those basic entitlements. They're very simple matters. No doubt, during the course of your employment, you have been able to in a prior life being able to access those types of benefits, as many other workers are denied today. They are simple benefits. Complexity is not a problem in terms of conferring rights upon cohorts of insecure workers those basic rights. They're not that hard.²¹³

4.131 Vulnerable workers are less likely to know what their labour rights and entitlements²¹⁴ are and they are less likely to make complaints for fear of losing work or being banned from platforms permanently.²¹⁵ For migrant workers the issues can be compounded because of language barriers and different cultural understandings,²¹⁶ or because they fear deportation, or other legal immigration issues.²¹⁷

²⁰⁹ *Digital Platform Work in Australia*, November 2019, p. 82.

²¹⁰ Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan and Dr Veen, *Submission 10*, p. 2; TEACHO, *Submission 52*, p. 1.

²¹¹ *Digital Platform Work in Australia*, November 2019, p. 19.

²¹² Mr Manzoor, *Proof Committee Hansard*, 12 April 2021, p. 60.

²¹³ Mr Farouque, Maurice Blackburn Lawyers, *Proof Committee Hansard*, 20 April 2021, p. 58.

²¹⁴ Westjustice, *Submission 12*, p. 6.

²¹⁵ National Youth Commission Australia, *Submission 32*, p. 7.

²¹⁶ Westjustice, *Submission 12*, [p. 54].

²¹⁷ NFAW, *Submission 11*, p. 38; Multicultural Youth Advocacy Network, *Submission 66*, pp. 9–10.

4.132 Gig workers are also subject to racial and gender discrimination through their work²¹⁸ and report higher frequencies of discrimination and harassment.²¹⁹ For the reasons outlined above, they are less likely to take action for inappropriate behaviour.

4.133 Critically for young people, platform providers and labour hire companies often provide little training, skills development or education. So while these jobs provide an income, they do not generally improve capability or provide a career path for these workers, with long-term consequences.²²⁰ The National Youth Commission Australia wrote that:

The insecurity associated with casual and gig work has long-term consequences, leaving young people vulnerable to insecure housing or compromised health outcomes, including mental illness.²²¹

4.134 Young people have been disproportionately affected by suppressed wages growth. This has a significant impact on their ability to engage in secure work and full economic participation over time with longer term impacts for economic confidence and growth,²²² as explained by the Young Workers Centre:

There are significant divisions across age groups, with increased precarity a reality for younger workers. While younger workers are experiencing the greatest degree of precarity, it is unclear whether these workers will 'graduate' to more secure work as they gain experience in the workforce. We do not have adequate information about whether this group of workers will remain entrenched in less secure employment throughout their careers. Even if it is a 'rite of passage' for younger workers, this does not justify the increase in precarious employment that these younger workers face. It appears the "... uncertainty of the education to-work nexus and precarious work in general is having a significant impact upon how young people construct their identity and imagine their futures, which is heavily classed and gendered" (Churchill, Rayn and Craig 2019).²²³

4.135 The pressures felt by migrants and temporary residents (including international students) became particularly apparent during COVID-19 as they were not generally eligible for government assistance.²²⁴ Uber Eats found that 77 per cent of its drivers were not eligible for government support during COVID-19 and

²¹⁸ *Digital Platform Work in Australia*, November 2019, p. 22.

²¹⁹ TWU, *Submission 39*, p. 15; WEstjustice, *Submission 12*, [p. 13].

²²⁰ National Youth Commission Australia, *Submission 32*, p. 3; Ms Cull, *Proof Committee Hansard*, 20 April 2021, p. 30.

²²¹ National Youth Commission Australia, *Submission 32*, p. 4.

²²² Brotherhood of St Laurence, *Proof Committee Hansard*, 20 April 2021, p. 27; Young Workers Centre, *Submission 99*, [p. 10].

²²³ Young Workers Centre, *Submission 99*, [p. 10].

²²⁴ Accenture, *Making delivery work for everyone*, March 2021, p. 5.

that 65 per cent of these workers reported visa status as their main barrier.²²⁵ Additionally, the TWU found that 76 per cent of rideshare drivers were not provided with any sick leave or compensation if they had to self-isolate, compounding the financial stresses for workers without government assistance.²²⁶

Broader Economic Impacts

Underemployment

4.136 The committee heard evidence from a range of witnesses and submitters that around 10 per cent of workers—including on-demand workers—are underemployed and would like to be working additional hours.²²⁷

4.137 In February 2021 the broad underemployment rate rose by 0.4 points to 8.5 per cent, despite a drop in unemployment to 5.8 per cent.²²⁸ Underemployment amongst part-time workers is between 26 and 27 per cent,²²⁹ with underemployment likely to be higher amongst young people²³⁰ and migrant workers.²³¹ There are a number of explanations for the underemployment rate: low rates of pay for on-demand work, low employed hours and job insecurity.²³²

4.138 Per Capita noted the multiplier effects of underemployment, estimating losses to the Australian economy of more than \$30 billion per year.²³³ It observed that the cost of job insecurity is significant—through lost wages, lower household income and consumption, lost superannuation savings and lost tax revenue.²³⁴

4.139 Per Capita identified the loss of tax revenue as one of the macroeconomic costs of gig work. It estimated that income tax on wages lost to underemployment would have generated at least \$4.35 billion per year.²³⁵ It also found that, prior

²²⁵ Accenture, *Making delivery work for everyone*, March 2021, p. 13.

²²⁶ TWU, *Rideshare Survey* (tabled at public hearing in Sydney on 12 April 2021), p. 2.

²²⁷ Per Capita, *Submission 30*, p. 8; United Workers Union, *Submission 54*, p. 3; Australian Institute of Employment Rights, *Submission 6*, p. 19; McKell Institute Victoria, *Submission 86*, [p. 27].

²²⁸ Per Capita, *Submission 30*, p. 8.

²²⁹ Per Capita, *Submission 30*, p. 8.

²³⁰ Ms King, Victorian Council of Social Services, *Proof Committee Hansard*, 20 April 2021, p. 11.

²³¹ Professor Charlesworth, RMIT University, *Proof Committee Hansard*, 19 April 2021, p. 25.

²³² Per Capita, *Submission 30*, pp. 8–9.

²³³ Per Capita, *Submission 30*, p. 12.

²³⁴ Per Capita, *Submission 30*, p. 12.

²³⁵ Per Capita, *Submission 30*, p. 12.

to COVID-19, total wages lost to underemployment across the Australian economy was \$24 billion per year.²³⁶

Economic confidence and growth

4.140 In contrast, the committee received evidence of the compelling link between strengthened workers' rights and economic growth.²³⁷ A number of submissions also linked improvements in job security, including for on-demand workers, with increases in economic security.²³⁸ The committee heard that, improvements in job security would lead to greater household confidence, wages growth and increased spending, and positive impacts for wider economy.²³⁹ Per Capita advised that:

If we are to restore the promise of the good life that Australia has always offered to working people, then the fallacy that workplace flexibility benefits workers has to be overturned for job security and full employment, and, by that, we mean genuine full employment—we believe the rate has probably got a two in front of it. It must be at the centre of the government's approach to our economic reconstruction.²⁴⁰

4.141 Mr Dan Nahum, Economist at the Centre for Future Work also supported this view:²⁴¹

Improving the security of the labour market for workers and their families should be a key component of a long-term strategy for inclusive macroeconomic recovery, including expanded public investment, increased spending power for workers to lift aggregate demand and improved job stability and equity.²⁴²

4.142 Liberty Victoria²⁴³ and the Centre for Future Work²⁴⁴ also submitted that improving earnings for on demand workers would result in higher spending, with earnings going directly into communities and businesses. Dr Garland agreed:

When people in local communities have good, secure jobs, where they know how many hours they're going to have a week and how much they're going

²³⁶ Per Capita, *Submission 30*, p. 12.

²³⁷ Liberty Victoria, *Submission 72*, p. 6.

²³⁸ Mr Nahum, Australia Institute, *Proof Committee Hansard*, 20 April 2021, pp. 46, 48; McKell Institute Victoria, *Submission 86*, [p. 30].

²³⁹ Per Capita, *Submission 30*, p. 12

²⁴⁰ Ms Dawson, Per Capita, *Proof Committee Hansard*, 19 April 2021, p. 16.

²⁴¹ See also, Mr Batchelor, McKell Institute Victoria, *Proof Committee Hansard*, 19 April 2021, pp. 59–60; Per Capita, *Submission 30*, p. 13.

²⁴² Mr Nahum, Australia Institute, *Proof Committee Hansard*, 20 April 2021, p. 46.

²⁴³ Liberty Victoria, *Submission 72*, p. 7.

²⁴⁴ Mr Nahum, Australia Institute, *Proof Committee Hansard*, 20 April 2021, p. 46.

to earn, then their confidence in spending increases. We've seen that. To use the example of businesses doing well, that often doesn't translate into their passing that money to the rest of the community, because people tend to save a lot when they're earning a lot or they hold onto that money as profits. Whereas if you're paying that money to workers then they're more likely to be spending in the community, stimulating the economy and therefore creating more jobs.²⁴⁵

4.143 Per Capita reflected that the costs not only impact individuals, but society more widely.²⁴⁶ Mr Nahum shared the same sentiment and outlined the impacts for social cohesion in more detail:

... [insecure work is] obviously going to be socially deleterious, of course, because people are going to find it very hard to establish stable lives and establish families, and housing tenure—regardless of whether it's purchasing or renting—is going to be more difficult if your income is insecure. Those are some of the factors that come to mind. It strikes me that this is a trend that, for the sake of our social cohesion as well as our economic resilience, needs to be reversed.²⁴⁷

4.144 Mr Bernie Smith, from the Shop, Distributive and Allied Employees Association, cautioned that 'breaking' the relationship between workers and those who provide work, 'perpetuates insecurity'. This is inherent in both 'labour hire forms of work [and] gig economy forms of work', and is compounded by the lack of union representation for these workers. Mr Smith added that 'casual conversion rights ... do not apply to labour hire or gig workers with their host employer; they do not have that security'.²⁴⁸

4.145 In relation to the arguments of platform companies that their business models provide economic growth and benefits, Mr Smith said:

Automation and its productivity benefits are beneficial only if the benefits are fairly shared and the work is sustainable. If work is not sustainable due to automation or surveillance at work, and workers become disposable, then work cannot be secure.²⁴⁹

Loss of tax revenue

4.146 Loss of tax revenue due to platform work was raised in the context of payroll and similar taxes.²⁵⁰ Maurice Blackburn Lawyers suggested that governments

²⁴⁵ Dr Garland, Victorian Trades Hall Council, *Proof Committee Hansard*, 20 April 2021, p. 43.

²⁴⁶ Per Capita, *Submission 30*, p. 12.

²⁴⁷ Mr Nahum, Australia Institute, *Proof Committee Hansard*, 20 April 2021, pp. 49–50.

²⁴⁸ Mr Bernard (Bernie) Smith, Branch Secretary-Treasurer, Shop, Distributive and Allied Employees Association, NSW Branch (SDA NSW), *Proof Committee Hansard*, 10 June 2021, p. 30.

²⁴⁹ Mr Smith, SDA NSW, *Proof Committee Hansard*, 10 June 2021, p. 30.

²⁵⁰ Hireup, *Submission 23*, pp. 3, 16, 21–22; see also Victorian Council of Social Services, *Submission 13*, p. 14; NFAW, *Submission 11*, p. 41 and pp. 48–48.

may be losing tax revenue as a direct result of misclassification of workers as independent contractors.²⁵¹

4.147 The Centre for International Corporate Tax Accountability and Research (CICTAR)²⁵² and Unions NSW both identified profit-shifting by global companies as an issue, alleging that platform providers are seeking to avoid corporate tax obligations:

Unions NSW understands the Federal Treasury has sought to engage with industry about how to consistently tax participants of the Gig Economy. While this is indeed important to ensure tax compliance is easier for individuals working in the gig economy and provide greater transparency, the real issue is taxation compliance from the platforms themselves. In 2018 Uber Australia made a gross profit of \$785 million, yet paid a mere \$8.5 million in tax. Most of Uber's profit was transferred offshore, facilitated by corporate tax loopholes that Treasury is content to keep open ...²⁵³

4.148 CICTAR cited evidence that:

Uber's operations in Australia may provide insights into Uber's operations in other countries. On reported revenue in 2019 of AUD\$1,161.6 million (Australian dollars), Uber paid AUD\$11.1 million in income tax, less than 1% in contrast to the corporate income tax rate of 30%.²⁵⁴

4.149 Gig workers themselves are also liable for tax obligations including income²⁵⁵, and some gig workers (for example, rideshare drivers, workers providing services with a GST turnover of \$75 000 or more) must also pay GST.²⁵⁶

4.150 The committee heard that, while platforms encourage workers to meet their taxation obligations,²⁵⁷ the report into Digital Platform Work in Australia found that around half of digital platform workers do not pay tax on their income, although it noted that this may be so because of intermittent, infrequent participation and/or few hours being spent working through platforms. In these

²⁵¹ Maurice Blackburn Lawyers, *Submission 17*, p. 22.

²⁵² CICTAR, *Submission 93*, pp. 1–2.

²⁵³ Unions NSW, *Submission 78*, p. 19.

²⁵⁴ CICTAR, *Submission 93*, [p. 32].

²⁵⁵ Australian Taxation Office, *Ride-sourcing*, QC 53224, 12 June 2019, <https://www.ato.gov.au/general/the-sharing-economy-and-tax/ride-sourcing/> (accessed 6 May 2021).

²⁵⁶ Australian Taxation Office, *Income from more than one job*, QC 50527, 15 October 2020, <https://www.ato.gov.au/Individuals/Working/Working-as-an-employee/Income-from-more-than-one-job/> (accessed 6 May 2021); see also Uber, answers to questions on notice, 14 May 2021, Alphabet, *Flexibility and fairness: what matters to workers in the new economy*, March 2019, p. 20; Accenture, *Making delivery work for everyone*, March 2021, p. 35.

²⁵⁷ Mr Scutt, Mable, *Proof Committee Hansard*, 12 April 2021, p. 42; see also: Airtasker, *Submission 103*, pp. 10–11.

instances the income for some workers may not meet minimum tax thresholds.²⁵⁸

4.151 The TWU expressed its concern at the collapse of the employment relationship, with much wider implications:

Unless we get this right, what we will see is the collapse of the employment relationship, the collapse of good employers and the collapse of state revenues as they move away from payroll tax, workers compensation systems and the like.²⁵⁹

Superannuation and government support

4.152 Gig workers deemed as independent contractors are not paid for superannuation and are generally excluded from the Superannuation Guarantee.²⁶⁰ Platform providers recommend that workers take this into account when setting their rates, or anticipate that workers will put money away for superannuation.²⁶¹

4.153 The committee notes that some platform workers may in fact be eligible for the Superannuation Guarantee under existing definitions within the *Superannuation Guarantee Administration Act 1992*. Section 12(3) expands the meaning of employee by specifying that: 'If a person works under a contract that is wholly or principally for the labour of the person, the person is an employee of the other party to the contract'.²⁶² This could cover gig workers even if as a matter of practice the platforms don't pay superannuation for their contractors.

4.154 While Ms Sharp, Assistant Federal Secretary, Australian Nursing and Midwifery Federation told the committee that it was unrealistic to expect gig workers to put money aside for superannuation:

If you're on a minimum wage and you're living week to week to look after your family and pay rent, who is going to be able to afford to put that little bit of extra away for personal leave, for sick leave and for carers leave million, let alone a super guarantee? Who's going to be able to put into their retirement fund at [9.5] per cent when they're getting \$25 hour on a Saturday

²⁵⁸ *Digital Platform Work in Australia*, November 2019, pages 58 and 81; see also: Uber, answers to questions on notice, 14 May 2021, Alphabeta, *Flexibility and fairness: what matters to workers in the new economy*, March 2019, p. 23.

²⁵⁹ Mr Kaine, TWU, *Proof Committee Hansard*, 12 April 2021, p. 2.

²⁶⁰ Australasian Centre for Corporate Responsibility, *Submission 46*, p. 7.

²⁶¹ Mr Scutt, Mable, *Proof Committee Hansard*, 12 April 2021, p. 42; Mr Williams, Health Services Union, *Proof Committee Hansard*, 13 April 2021, p. 11; Ms Sharp, ANMF, *Proof Committee Hansard*, 19 April 2021, p. 5; TWU, *Submission 39*, pages 23 and 27.

²⁶² Section 12(3), *Superannuation Guarantee Administration Act 1992* (cth).

night? It is just not going to happen, and we're going to see more people retire into poverty.²⁶³

4.155 Liberty Victoria submitted that gig workers receiving lower pay make far lower superannuation contributions.²⁶⁴ The 2020 Ride Share Network and TWU survey found that over 60 per cent of drivers could not save enough to pay themselves superannuation and annual leave.²⁶⁵ One rideshare driver said that 'Money is so poor that it cannot cover for superannuation and sick leave'.²⁶⁶

4.156 The committee received evidence that when gig workers rely on this form of engagement in the longer term there are significant impacts on their ability to retire with dignity and financial security, particularly for women.²⁶⁷ The Actuaries Institute calculated that 'workers who spent five to 10 years ... participating in the gig economy may be between \$48,000 or \$92,000 worse-off in superannuation savings at retirement'.²⁶⁸

4.157 For workers who rely on gig work in the medium to long term, lower incomes,²⁶⁹ fewer assets²⁷⁰ and minimal or no superannuation²⁷¹—will potentially increase public spending on government support and demands for other services, such as housing.²⁷²

4.158 Professor Riley Munton supported this:

If you still recognise that there are some fundamental needs that all people who work in our economy have—and it is in our interests that they have, because if they don't get it from their work then they have to get it from the social security system. Somebody is going to have to pay for the maintenance of their citizens. It's proper that a proper rate comes through their work.²⁷³

Wider impacts

²⁶³ Ms Sharp, ANMF, *Proof Committee Hansard*, 19 April 2021, p. 5.

²⁶⁴ Liberty Victoria, *Submission 72*, p. 7.

²⁶⁵ TEACHO, *Submission 52*, p. 6.

²⁶⁶ TWU, *Rideshare Survey* (tabled at public hearing in Sydney on 12 April 2021), p. 1.

²⁶⁷ Per Capita, *Submission 30*, p. 11; Associate Professor Blackham, *Submission 38*, [pp. 4–5]; NFAW, *Submission 11*, p. 24.

²⁶⁸ Australasian Centre for Corporate Responsibility, *Submission 46*, p. 8.

²⁶⁹ NFAW, *Submission 11*, p. 26.

²⁷⁰ The Salvation Army, *Submission 45*, p. 18.

²⁷¹ Australasian Centre for Corporate Responsibility, *Submission 46*, p. 7.

²⁷² Liberty Victoria, *Submission 72*, p. 7; The Salvation Army, *Submission 45*, p. 18; Associate Professor Blackham, *Submission 38*, [pages 94 and 116]; McKell Institute Victoria, *Submission 86*, [p. 36].

²⁷³ Professor Riley Munton, University of Technology, Sydney, *Proof Committee Hansard*, 12 April 2021, p. 50.

4.159 Dr Sandra Peter, Director, Sydney Business Insights, University of Sydney Business School spoke with the committee about the impacts that platforms have on the wider environment in which they operate, with particular reference to transport and the impact on our cities. In particular she referenced the numbers of cars on the road and the demographics of populations served by platforms.²⁷⁴

4.160 In Australia, Uber has already impacted on public transport, providing options for consumers at times when public transport may be infrequent or not available, and increasing overall urban mobility. Uber now has integrated public transport journey planning in Sydney, Melbourne and Brisbane. It provided this evidence in relation to urban mobility:

Uber is working to extend the reach of public transport, helping unlock economic opportunity for more Australians. This phenomenon was reflected in a New South Wales Independent Pricing and Regulatory Tribunal (IPART) survey of point to point transport which found that in 2018, "the use of ridesharing in urban areas outside Sydney (Newcastle, Wollongong, Gosford and Wyong) more than doubled from 10 to 28 per cent", a vast improvement in urban mobility for traditionally underserved areas ... By empowering consumers with more choice, we are helping to encourage the most efficient use of our urban transport networks.²⁷⁵

4.161 Uber also wrote about its potential to impact our cities in other ways, noting that the rise of bicycle food delivery had highlighted deficiencies with current cycling infrastructure:

Cycling's growing role in our urban freight task needs to be supported with the right infrastructure, particularly separated infrastructure on busy arterial roads. Uber wants to work with governments to identify where there are current gaps in cycling networks and we can use our data to support business cases for existing and planned bike paths.²⁷⁶

4.162 This view was shared by Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan and Dr Veen, who noted that the built environment contributes to issues around work security, with road conditions in Australian cities making rideshare and delivery platform jobs riskier than other work:

Developed for motor vehicles rather than bicycles, urban infrastructure adds another layer of risk. Workers are often in dangerous situations such as riding in tunnels or sharing lanes with [buses].²⁷⁷

Committee view

²⁷⁴ Dr Sandra Peter, Director, Sydney Business Insights, University of Sydney Business School, *Proof Committee Hansard*, 12 April 2021, p. 50.

²⁷⁵ Uber, *Submission 19*, pp. 13–14.

²⁷⁶ Uber, *Submission 19*, p. 26.

²⁷⁷ Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan and Dr Veen, *Submission 10*, p. 3.

- 4.163 The committee recognises that gig services have provided unprecedented opportunities for consumers to travel, eat, order online, be cared for, and receive other services more flexibility and cheaply.
- 4.164 It also acknowledges that the flexibility of gig work has provided undeniable benefits to businesses, enabling the number and skill mix of workers to be flexed up and down to meet demands for services, and to engage workers cheaply with few overheads and ongoing obligations.
- 4.165 Evidence from witnesses has also shown that many workers value this flexibility as it suits their personal circumstances and enable them to balance different commitments, to supplement their stable income stream, and to fill short-term shortfalls in work.
- 4.166 However, the committee has also heard that a significant proportion of on-demand workers rely on insecure platform work that is poorly paid and offers few conditions and protections. Gig workers who rely on this income are working long hours, often doing unsafe work in unsafe conditions, placing themselves and their families at risk of illness or financial stress as a result.
- 4.167 The committee is concerned that on-demand platform work is disproportionately and negatively affecting vulnerable groups, including women, young people, older workers, Aboriginal and Torres Strait Islanders, people living with a disability, migrants, students, low income earners, and the formerly unemployed.
- 4.168 The short and longer term effects of gig work on individuals and their families are considerable. The committee has heard that some on-demand platform workers are unable to buy food or pay for housing and that their families are unable to spend time together. It is devastating for people to be unable to plan ahead for their lives and to feel like they cannot set goals for the future and achieve them.
- 4.169 The committee considers that fundamental changes to the structure of on-demand platform work are required to ensure that people are given some certainty in their work, that they are paid fairly, are able to work as safely as possible, and that they have protections for themselves and their families when they are ill, injured or if they are killed at work.
- 4.170 Furthermore, it is essential that platform workers are provided with future career opportunities and the opportunity to achieve financial security, including for retirement, to enable them to participate fully in society. The committee is firmly of the opinion that improved job and financial security for gig workers will improve household confidence, and see greater economic growth across the Australian economy, with wider economic benefits and better social outcomes.

Chapter 5

The current regulatory regime

- 5.1 Australia's existing system of laws and regulations were not designed to accommodate the kinds of employment relationships that have emerged as part of the gig economy.
- 5.2 Industrial relations (IR) laws govern the relationship between employers and employees. However, rather than 'employees', on-demand platform workers are generally classified as 'independent contractors',¹ leaving these workers without the protections provided to most Australian workers.
- 5.3 Independent contractors and those who run their own businesses have access to a number of potential remedies under legislation, including remedies for 'unfair contract' provisions, and protections against 'unconscionable conduct'. However, evidence to this inquiry has indicated that these provisions are unsuitable, inappropriate, and largely inaccessible to most on-demand platform workers.²
- 5.4 This chapter explores the adequacy and applicability of existing Australian regulation applying to workers in the on-demand platform sector, looking specifically at:
- existing IR regulation and platform work;
 - existing contractor and small business regulation and platform work; and
 - work health and safety (WHS) law and workers' compensation, as they apply to platform workers.
- 5.5 A discussion of regulatory models in other jurisdictions is included at Appendix 3 of this report.
- 5.6 This chapter also includes the committee's view and recommendations in relation to WHS and workers' compensation, while broader recommendations for regulatory reform are included in Chapter 6.

Existing IR regulation and platform work

- 5.7 Australia's current regulatory framework embeds a dichotomy between 'employees' and 'independent contractors' in workplace laws. However, many

¹ Some platforms engage workers as employees—such as Hireup—but this is an exception, not the rule.

² Victorian Government Department of Premier and Cabinet, *Report of the Inquiry into the Victorian On-Demand Workforce*, June 2020 (Victorian on-demand workforce report), pp. 159–162, <https://engage.vic.gov.au/inquiry-on-demand-workforce> (accessed 13 June 2021).

labour market arrangements that are common in the gig economy do not fit neatly into either category.

- 5.8 In Australia, employees enjoy minimum protections under the *Fair Work Act 2009* (Cth) (Fair Work Act), which:

... provides 'a safety net' which includes ten National Employment Standards. These cover hours of work, forms of leave, notice of termination and redundancy, minimum wages, rights of representation, and other entitlements, and cannot be 'undercut by any other arrangement'.³

- 5.9 In contrast, workers who do not have the status of 'employees' are 'not entitled to the majority of protections provided by the Fair Work Act', or the protections provided by industry awards, including: award wages, penalties, overtime, dispute resolution procedures, consultation procedures and minimum engagement periods.⁴

- 5.10 Workers who are not employees may also be unentitled (or less entitled) to a number of other 'protections and obligations', including: workers' compensation, superannuation and anti-discrimination protections, as the laws applying these obligations to employers often define them as obligations owed to employees.⁵

- 5.11 This section looks at evidence around whether on-demand platform workers should be classified as employees, and considers how existing employment legislation currently applies (or does not apply) to these workers.

Classifying on-demand platform workers

- 5.12 The inquiry into the Victorian On-Demand Workforce (Victorian inquiry) observed in its June 2020 report that problems arise in instances where 'the real nature' of the employment relationship is unclear, or there is a 'misalignment between the way the relationship has been described and the way in which the parties are working':

Parties may badge the relationship as a non-employment relationship, but its real status depends on how the work is done and how the parties interact. This can change over time. A contract can begin as a clear, non-employment relationship but evolve into an employment relationship.⁶

- 5.13 Courts and tribunals apply a multifactor legal test which involves considering a set of indicia, developed over time, to test the status of work arrangements. The approach 'weighs up all the features of the relationship', including:

³ Victorian on-demand workforce report, p. 100.

⁴ Victorian on-demand workforce report, p. 101.

⁵ Victorian on-demand workforce report, p. 101.

⁶ Victorian on-demand workforce report, p. 104.

- the right or legal authority to exercise control over the worker (not its actual exercise) and the extent or ability to delegate work to others;
- whether the worker is integrated into the organisation hiring their service;
- the substance of the relationship, not just the terms of the contract;
- who provides and maintains tools and equipment;
- if there is an opportunity to earn a profit or risk incurring a loss;
- if payment is for completion of tasks, or wages in exchange for time worked; and
- if the person is working in an employer's business or carrying on their own business.⁷

5.14 The Victorian inquiry noted that 'commentators, experts, unions, and businesses' are divided on the "'true status" of platform workers', with many considering it 'unsettled':

The arrangements often feature some of the 'employment' indicia with the platform or, potentially, an end user. But elements that suggest otherwise are generally also present.⁸

Relevant cases

5.15 A number of cases have come before the Fair Work Commission (FWC), Fair Work Ombudsman (FWO), and the Federal Court of Australia disputing the categorisation of various workers as independent contractors.

5.16 An early case related to a worker for food delivery platform Foodora. Foodora operated for a short time in Australia before ceasing operations in 2018 in the wake of Australian Tax Office (ATO) and FWC findings that its workers were not independent contractors, but employees.⁹

5.17 In contrast to the Foodora case, in 2019 the FWO found that 'the relationship between Uber Australia and the drivers is not an employment relationship'. Fair Work Ombudsman, Ms Sandra Parker PSM, said that FWO inspectors had examined 'a wide range of evidence', and found no 'obligation for an employee to perform work when it is demanded by the employer'—a condition the Ombudsman considered must exist for a court to identify an employment relationship. However, the Ombudsman was careful to point out that the findings in relation to Uber did not necessarily extend to other companies or arrangements:

Our investigation found that Uber Australia drivers are not subject to any formal or operational obligation to perform work ... [However] Companies in the gig economy use a range of business models and the Fair Work Ombudsman will continue to assess allegations of non-compliance on a

⁷ Victorian on-demand workforce report, p. 105.

⁸ Victorian on-demand workforce report, p. 106.

⁹ Victorian on-demand workforce report, pp. 155–157.

case-by-case basis. Anyone with concerns about their employment arrangements should contact the FWO.¹⁰

The Amita Gupta Uber Eats case

5.18 Similarly, in April 2020 the FWC found that Uber Eats driver, Amita Gupta was *not* an employee, 'even though she was not conducting a business in her own right', and as such, she was not protected from unfair dismissal as an Uber Eats delivery partner.¹¹

5.19 In the Gupta decision, the Commissioner wrote: 'There are some competing indicia however in my view the more significant factors tend to weigh in favour of this particular relationship not being that of employment'.¹²

5.20 Ms Gupta was granted permission to appeal the decision and the appeal was dismissed. In dismissing the appeal, Deputy President Coleman stated that he upheld the Commission's finding that Ms Gupta was not an employee, but disagreed with its characterisation of her as an independent contractor to Portier Pacific (the payment collection agent that invoices restaurants and transfers payments to delivery drivers; a subsidiary of Uber),¹³ saying Ms Gupta was 'simply working for herself'.¹⁴

5.21 The Victorian inquiry noted that the Gupta decision has 'been criticised by some commentators', and said the case illustrates potential issues with Australia's current dichotomous regulatory system:

The common law work status test in the 'real' world is not maintaining a clear distinction between an independent, autonomous worker operating their 'own' business and an employee working as part of another's enterprise. Some platforms' arrangements are blurring the distinctions.¹⁵

Uber's settlement with Amita Gupta

5.22 In December 2020, Uber reached a confidential out-of-court settlement with Ms Gupta after she took her case to the Federal Court of Australia (Federal Court) with the support of the TWU. During hearings in the Federal Court, judges questioned Uber's argument that drivers are not employees, and said:

We actually operate in the real world here... This is not a debating club.
We've not just got a theoretic construct to ask ourselves about... I'm puzzled

¹⁰ Fair Work Ombudsman, Answer to question taken on notice, Uber Australia investigation finalised, Melbourne, 21 April 2021 (received 22 April 2021), p. [1].

¹¹ Victorian on-demand workforce report, p. 113.

¹² [2020] FWCFB 1698, paras. 27–28, *Gupta v Portier Pacific Pty Ltd; Uber Australia Pty Ltd t/a Uber Eats*, <https://www.fwc.gov.au/documents/decisionssigned/html/2020fwcfb1698.htm> (accessed 13 June 2021).

¹³ [2020] FWCFB 1698, para. 81.

¹⁴ *Gupta v Portier Pacific/Uber Eats*, para. 83.

¹⁵ Victorian on-demand workforce report, p. 113.

as to why your client doesn't offer the court an analysis of the true factual element of the characterisation of the relationship.¹⁶

5.23 The Court identified a 'quadrilateral relationship' between four parties: Uber Eats, the restaurant, the delivery driver and the customer, and questioned Uber's claim that there would 'truly be no consequences for failing to deliver an order'.¹⁷

5.24 Before the Court could hand down its judgement, Uber settled the case with Ms Gupta for an undisclosed amount. Asked why it chose to settle its case with Ms Gupta, Uber said:

We welcomed the resolution of this case, which involved Ms Gupta discontinuing her claim and allowing the two decisions of the Fair Work Commission (which found Ms Gupta to be an independent contractor) to stand.¹⁸

5.25 As a party to the settlement between Ms Gupta and Uber, the TWU was asked to give evidence about the settlement at a committee hearing on 10 June 2021. Noting advice on parliamentary privilege and the protection of witnesses, National Secretary, Mr Michael Kaine provided the following summary:

This was a case where Amita Gupta was sacked by being but a few minutes late for a delivery. It was a harsh, unfair dismissal, and the TWU, on the Guptas' behalf, took up an appeal for them, after they had failed at first instance in taking the case to the Fair Work Commission. The Fair Work Commission made a ruling. We appealed that ruling to the full bench of the Federal Court of Australia. Some time in December last year the full Federal Court packed up after a day's long hearing in relation to the Guptas' case. In that case, the various members of the court spent a significant period of time systematically unpicking the fiction of Uber Eats' arrangements. ... It was very clear, and it's very clear to anyone from the reading of that transcript, that the full bench was completely unimpressed with Uber's approach. ...

But the most telling feature of this settlement was the extent of the settlement. **Amita Gupta, even if she had won an unfair dismissal case, would have been entitled to a maximum of around about \$15,000 for six months work. The settlement that was made was \$400,000.** This I have provided in an answer to a direct question from the Senate committee. It is subject to a settlement document, but I think it is very clear that Uber Eats wanted to ensure that there was no risk that its exploitative system would be overturned by the full Federal Court. They were willing to pay an

¹⁶ Federal Court Justice Richard White, quoted in: Candice Prosser, 'Uber settles out of court with driver who alleged unfair dismissal for late delivery', *ABC News online*, 30 December 2020, www.abc.net.au/news/2020-12-30/uber-settles-with-delivery-driver-who-claimed-unfair-dismissal/13021798 (accessed 9 June 2021).

¹⁷ Candice Prosser, 'Uber settles out of court with driver who alleged unfair dismissal for late delivery', *ABC News online*, 30 December 2020.

¹⁸ Uber, Answers to written questions taken on notice, 29 April 2021 (received 16 May 2021) (answers to written questions), [p. 9].

incredible amount of money, a life-changing amount of money for the Guptas, to ensure that that moment in time did not occur.¹⁹

The case of Mr Diego Franco versus Deliveroo

5.26 A more recent decision has opened up the debate again. In *Diego Franco v Deliveroo Australia Pty Ltd* (2021), the FWC considered 'whether Mr Franco was an employee of Deliveroo and therefore protected from unfair dismissal'.

5.27 According to the Transport Workers Union (TWU), who supported Mr Franco in his case against Deliveroo:

While working as Deliveroo, Diego was recognised as one of the best performing and long-serving delivery workers and flown over to Melbourne to engage in a select committee of Deliveroo delivery workers.

In May 2020, Diego received an email notifying him that he would be terminated within 7 days for allegedly delivering orders too slowly. Diego was provided no prior warning and despite his pleas, Deliveroo refused to review Diego's case or give him another chance. Diego was left 7 days to find a new job, in the middle of the Coronavirus pandemic, with a young daughter to provide for.²⁰

5.28 In considering the case the FWC considered 'issues of both fact and law', applying the same multifactorial approach as applied in the Gupta case, which considered the relevant indicia, but coming to a different conclusion. The judgement stated:

Following detailed examination of all of the evidence regarding the relevant factors and application of the relevant common law principles, the Commission has determined that the applicant, Mr Franco, was an employee of the respondent, Deliveroo ... Subsequent consideration as to whether the dismissal of the applicant was harsh, unjust or unreasonable, has established that there was no valid reason for the dismissal of Mr Franco relating to his capacity or conduct. The substantive reason for the dismissal of Mr Franco was not sound, defensible, or well-founded.²¹

5.29 A key consideration was around the indicia of 'control'. While Deliveroo claimed riders could log on whenever they want to, and choose when and if to undertake deliveries, the FWC said 'a more detailed examination beyond the mere appearance of the apparent freedoms that were provided to Mr Franco, reveals a very different picture':

Consequently, although it appeared that Mr Franco had the freedom to choose when and where to work, the practical reality was that the SSB system directed him to undertake work at particular times, and to regularly make himself available for work, and to not cancel booked engagements.

¹⁹ Mr Michael Kaine, National Secretary, Transport Workers Union (TWU), *Proof Committee Hansard*, 10 June 2021, p. 36.

²⁰ Transport Workers Union (TWU), *Submission 39*, p. 25.

²¹ [2021] FWC 2818, para 157–158.

Although Deliveroo did not require a rider to work for any particular length of time, or to even accept a delivery order once they had logged into a booked session, the economic reality of the situation would ordinarily compel a rider to undertake delivery work. After all, the objective of the entire process is to get paid.²²

5.30 The FWC noted that Deliveroo stopped using that particular system in January 2020. However, it noted that Deliveroo retains 'the capacity ... to exercise a significant level of control', and could reintroduce that system, or a similar system at any time.²³

5.31 The FWC also observed that the terms of Mr Franco's contract/s 'clearly established that Mr Franco had no capacity to negotiate any of the terms of the supply/supplier agreements':

The practical reality of the circumstances was that Deliveroo presented the contractual arrangements to Mr Franco and other riders, as a *fait accompli*. Mr Franco could not even negotiate an additional one-off payment when he was being requested to undertake a particularly undesirable delivery order.²⁴

5.32 Further, the FWC was critical of the suggestion that Mr Franco was free to delegate work to others if he chose to, saying:

... there were clear financial constraints upon any subcontracting that involved an employment relationship between Mr Franco and any delegate because the remuneration that Mr Franco received from Deliveroo would be unlikely to cover payment of the national minimum wage to any delegate.²⁵

Work status: evidence from inquiry participants

5.33 The FWO commented that the 'individual nature' of its assessments means that its findings only apply 'to the individual workers that are the focus of the investigation', rather than having a broader application across similar workers in the sector.²⁶

5.34 The General Manager of Uber Eats Australia, Mr Matthew Denman, said that cases brought before the FWC and FWO in relation to both Uber and Uber Eats had consistently found that the relationship was that of 'an independent contractor'. Mr Denman added that, despite food delivery businesses appearing

²² [2021] FWC 2818, para 107–109.

²³ [2021] FWC 2818, para 110. Original emphasis.

²⁴ [2021] FWC 2818, para 122. Original emphasis.

²⁵ [2021] FWC 2818, para 127.

²⁶ Fair Work Ombudsman (FWO), *Submission 28*, p. 3.

to be much the same, there are differences in the way businesses conduct their work, and the levels of control they exercise over their 'delivery partners'.²⁷

- 5.35 Mr Denman said Uber's delivery partners consistently tell the company that they would prefer to be independent contractors than to be 'employed with fixed shifts'.²⁸ However, the TWU submitted results of two surveys conducted in 2020 by the union, in conjunction with the Delivery Riders Alliance and Rideshare Drivers Network: one on food delivery and one on rideshare.²⁹
- 5.36 In the food delivery sector: around 72 per cent of workers surveyed said that they believe they 'should be an employee and not an independent contractor'; almost 87 per cent of workers agreed that they 'should have access to rights like superannuation, sick leave, penalty rates and a minimum wage'; and 90 per cent of workers said: 'Delivery workers should be able to form a union to collectively represent their interests'.³⁰
- 5.37 In the rideshare sector: just under half of drivers surveyed (47.62 per cent) said that they 'should be an employee and not an independent contractor', but much larger percentages wanted better conditions and higher rates for the work they did.³¹ This suggests that there may be a greater justification for the independent contractor model in the rideshare sector than, for instance, in the food delivery sector, if driver concerns can be addressed.
- 5.38 The TWU argued that 'Australia's outdated industrial relations system ... is in urgent need of reform', as the current 'binary distinction' denies contractors any rights or protections:
- As a result, workers in highly dependent employment-like relationships who are classified as contractors are being denied access to any work rights and entitlements leading to concerning trends among workers in a highly competitive, low margin, almost no barrier to entry transport sector.³²
- 5.39 The TWU said that, while they are classified as independent contractors, most platform transport workers are engaged in 'highly dependent arrangements, with new forms of algorithmic control and management being imposed in new

²⁷ Mr Matthew Denman, General Manager, Uber Eats Australia, *Proof Committee Hansard*, 12 April 2021, p. 17.

²⁸ Mr Denman, Uber Eats, *Proof Committee Hansard*, 12 April 2021, p. 17.

²⁹ The workers in the food delivery surveyed worked for: Uber Eats = 67.46%, Deliveroo = 49.28%, Menulog = 31.58% and Doordash = 31.58%. The workers in rideshare worked for: Uber = 94.29%, Didi = 62.38%, Ola, 53.33%, Shebah, 9.52%, others = 10.95%. A number of respondents worked for multiple platforms. TWU, *Submission 39*, pp. 9–17.

³⁰ TWU, *Submission 39*, p. 12.

³¹ TWU, *Submission 39*, p. 16.

³² TWU, *Submission 39*, pp. 6–7.

ways to undermine job security, conceal control and intensify already unsustainable work pressures in the industry'.³³

5.40 Similarly, delivery workers argued that they are not, in fact treated as independent, but are strictly controlled by platforms. One of these workers, Mr Assad Manzoor said:

They are apps where you have to apply for shifts, and you hope that your shift gets applied. You work as an employee. Take the definition of 'employee'—they get everything out of you as an employee. They are actually tracing you while you are doing jobs. If I take a wrong right turn, I will get a call from them saying, 'You're going in the opposite direction of where you're supposed to go' while I'm doing that. So they treat you as complete employees. But, when it comes to it, they are very specific that you are not employees; you are contractors.³⁴

5.41 The Rideshare Drivers Association of Australia (RSDAA) submitted the following reasons why it believes drivers are not truly independent contractors:

- (a) All Goodwill from trips is associated to Rideshare Platform Operators
- (b) Platform operators apply quality control to drivers to protect the Operators goodwill
- (c) Terms are set solely by Platform Operators
- (d) Drivers have no control over price
- (e) Drivers have no knowledge of destination, prior to acceptance of trip
- (f) Platform Drivers cannot delegate tasks or sub contract
- (g) Platform operators have full control over tasks
- (h) At no point has a contract between consumer and driver been established
- (i) Drivers have no power over payment from consumer
- (j) Drivers must use signage of Platform Operator to be recognised
- (k) Platform operators charge drivers a cancellation fee which may be paid by drivers
- (l) Platform operators have made private payments to drivers for compensation
- (m) Platform operators pay cleaning fees to drivers for disarray left by passengers
- (n) Drivers are not allowed to provide driver contact details to passengers
- (o) Drivers are not permitted to contact rider to organise future transport
- (p) Drivers are not permitted to build their own. 'Small Business Operations'.³⁵

5.42 The RSDAA contended that platform operators are 'transportation companies offering transport services':

³³ TWU, *Submission 39*, p. 6.

³⁴ Mr Assad Manzoor, Private capacity, *Proof Committee Hansard*, 12 April 2021, p. 65.

³⁵ Rideshare Drivers Association of Australia (RSDAA), *Submission 74*, [p. 8].

Drivers, at least as Independent Contractors, merely fulfil the needs of the transport platform operators by responding to requests made to drivers by the platform itself, NOT by the consumer. This is certainly the overwhelming view also held by consumers ...³⁶

- 5.43 Documents submitted by Uber to the inquiry indicated that while Uber Eats delivery partners are not allowed to charge a customer *more* than the set rate on the Uber Eats app to deliver food, restaurants can charge whatever they like, increasing the prices of their food to compensate for the commission that Uber Eats takes. Mr Denman said: 'The restaurants have complete control over their pricing'.³⁷ This difference in the two relationships demonstrates the relative lack of leverage that delivery drivers have in relation to their contracts.

Sham contracting

- 5.44 In some instances employers attempt to represent employment relationships as independent contractor relationships in order to avoid providing minimum wages and conditions; this is called 'sham contracting'.
- 5.45 It is theoretically open to gig workers to appeal to the FWO or FWC to allege sham contracting, but the Victorian inquiry found this pathway is not accessible, affordable or well-understood by gig workers, and has not proven to be an effective approach in litigation.³⁸

Existing contractor and small business regulation and platform work

- 5.46 The common law concept of 'employment' distinguishes it from commercial arrangements. In the traditional concept of employment, 'the employer typically assumed the risks and liabilities associated with work done under the contract and, in return, commanded control over their workers'. On the other hand, independent contractors provide services, operate 'autonomously', and carry 'the risk and the reward of applying their skills':

Independent contractors are self-directed in their work and exercise a high degree of control over how it is done, generally being paid for producing a particular outcome.³⁹

- 5.47 Independent contractors are not eligible for protections under the Fair Work Act that apply to employees, such as minimum wages, rights of representation, minimum terms of engagement, or protection against unfair dismissal. Certain obligations, such as the obligation to provide and maintain a safe working environment, *do* generally extend to independent contractors.⁴⁰

³⁶ RSDAA, *Submission 74*, [p. 8].

³⁷ Mr Denman, Uber Eats, *Proof Committee Hansard*, 12 April 2021, p. 23.

³⁸ Victorian on-demand workforce report, pp. 159–166.

³⁹ Victorian on-demand workforce report, pp. 101–103.

⁴⁰ Victorian on-demand workforce report, p. 116.

Contractor and small business regulation

5.48 There are a number of regulatory options for small businesses or independent contractors to pursue to 'seek support and remedies in relation to their arrangements'. However, the Victorian inquiry found that 'while these options are theoretically available to platform workers, they are not regularly accessed by them'.⁴¹ Evidence received during the course of this inquiry so far supports the findings of the Victorian inquiry.

5.49 Regulatory options available to contractors include:

- small business support and remedies, including 'unfair contract' processes, and assistance with seeking 'relief from unconscionable and unfair practices' (in the Australian Consumer Law); and
- some provisions in the *Independent Contractors Act 2006* (Cth).

The Victorian inquiry overwhelmingly found that these remedies were unsuited to platform workers, were not designed for them, were not targeted to them, and/or were prohibitively expensive or difficult to pursue.⁴²

5.50 The Victorian Government observed that the report found unfair contracts remedies under Australian Consumer Laws 'are deficient because there is no penalty for including unfair terms in contracts'; and that 'it is uncommon for a contract to be amended to remove any unlawful terms', leading to businesses continuing to use 'unlawful terms' in their future contracts.⁴³

Dispute resolution mechanisms

5.51 Platform providers who use independent contractor models were asked about their dispute resolution models. Director of Ola Australia, Ms Ann Tan said that Ola's drivers have used mechanisms such as Fair Trading to lodge disputes regarding income and pay.⁴⁴

5.52 Deliveroo said it uses a manual review system:

If we have to make the tough decision, it all goes under a manual review. For every single decision where we've decided to end an agreement, we make sure that it's done by a person who is specifically trained in that process and looking at all of the scenarios and situations. It's based on an average of activity as well. It's never on a one-off basis in a one-off situation

⁴¹ Victorian on-demand workforce report, p. 158.

⁴² Victorian on-demand workforce report, pp. 159–166.

⁴³ Victorian Government, *Response to Victorian On-Demand Workforce Report* (VIC Government response to the on-demand workforce review), 13 May 2021, p. 15, <https://engage.vic.gov.au/inquiry-on-demand-workforce> (accessed 12 June 2021).

⁴⁴ Ms Ann Tan, Director and Head of Business Excellence and Legal, Ola Australia, *Proof Committee Hansard*, 12 April 2021, p. 14.

in a particular delivery scenario. ... Riders are also never blocked from the app without 'any sort of human interaction'.⁴⁵

5.53 Workers reported being very concerned about the lack of security that their status as independent contractors provided them, with a number reporting that they had been removed from, or blocked from accessing, apps for reasons they believed were unfair, and that they had little to no recourse. Mr Manzoor said he had been blocked from two apps and that his complaints to the apps did not result in a satisfactory result:

They have blocked my access and eventually they just fired me from the apps based on some performance, like one late delivery or some other issue. They blocked my access so that I can't influence anyone else. I have no recourse. I can't go to Fair Work. I can't challenge that. I don't have money to challenge that in any way. They just kicked me out.⁴⁶

5.54 The TWU's survey indicated that around 86 per cent of food delivery workers reported being 'dependent on food delivery work as a main source of income'; and 61.27 per cent of workers said they had 'been unfairly treated by a company without being able to defend [themselves]'.⁴⁷

5.55 The rideshare survey indicated:

- around 18.5 per cent of workers reported being 'suspended without pay';
- just over 9 per cent had 'been terminated as a result of a false allegation'; and
- 83 per cent said they wanted better dispute resolution mechanisms.⁴⁸

5.56 Dispute mechanisms for Amazon Flex delivery drivers in New South Wales (NSW) and Victoria are subject to some regulatory control, because Amazon complies with the owner-driver regulations in these states. Amazon explained that it has 'off-boarded' 19 drivers who have appealed the decision and been reinstated. Drivers who are 'off-boarded'—generally 'as a result of reliability issues'—have '24 or 48 hours' to lodge an appeal, and Amazon will assess the appeal and reinstate the driver if they have a good reason for failing to delivering their blocks. Mr Michael Cooley, Director of Public Policy Australia and New Zealand, said:

... if they are repeatedly accepting blocks and then not turning up to deliver the blocks, then we suspend their account, we notify them of that and we give them an opportunity to appeal. Where they have a good reason—perhaps personal circumstances, which has occurred in a couple of instances—and they bring that to our attention then we're sensible and

⁴⁵ Ms Julia Duck, Head of Operations, Strategy and Performance, Deliveroo Australia, *Proof Committee Hansard*, 12 April 2021, pages 30 and 33.

⁴⁶ Mr Manzoor, *Proof Committee Hansard*, 12 April 2021, p. 62.

⁴⁷ TWU, *Submission 39*, pp. 10–11.

⁴⁸ TWU, *Submission 39*, pp. 15–16.

approach these things with a great attitude, and we'll reinstate them where appropriate.⁴⁹

Independent Contractors Act

5.57 The Commonwealth *Independent Contractors Act 2006* (the IC Act) was designed to ensure that 'genuine independent contracting relationships' would be 'governed by commercial rather than industrial law'. The IC Act recognises independent contracting as 'a legitimate form of work arrangement' that is commercial, rather than industrial; protects 'the freedom of independent contractors to enter into services contracts'; and prevents 'interference with the terms of genuine independent contracting arrangements'. The IC Act prevents state and territory governments from legislating for independent contractors to have 'employment like entitlements', 'subject to certain exceptions', and creates unfair contract provisions for independent contractors.⁵⁰

5.58 The Victorian inquiry found that, while platform workers could potentially use the IC Act to apply for a review of a contract on the grounds that it is unfair or harsh, there are no penalties for unfair terms, parties must pay their own costs (unless a claim is vexatious), and:

The Inquiry is not aware of any platform worker seeking to bring a claim using this remedy. The avenue does not appear to have been highly utilised or well supported. With only 16 matters being filed in court under the [IC] Act since 2014, comes the suggestion that this little used jurisdiction has produced few positive outcomes.⁵¹

5.59 The TWU submitted that the IC Act is 'entirely ineffective and inaccessible':

Claims brought under the [IC Act] would require a worker to fund their own legal case which could take years with limited prospects of success given the severe limitation on protections offered by the [IC Act].⁵²

Issues under competition law

5.60 The fact that most platform workers are classed as independent contractors means they are also captured by competition laws. This, in effect, means that it is illegal for them to engage in collective bargaining, or jointly negotiating terms, conditions and prices.⁵³

⁴⁹ Mr Michael Cooley, Director, Public Policy Australia and New Zealand, Amazon Commercial Services Pty Ltd (Amazon Australia), *Proof Committee Hansard*, 10 June 2021, p. 21.

⁵⁰ Victorian on-demand workforce report, p. 166.

⁵¹ Victorian on-demand workforce report, pp. 166–167.

⁵² TWU, *Submission 39*, p. 36.

⁵³ VIC Government response to the on-demand workforce review, p. 14.

5.61 In its response to the Victorian inquiry, the Victorian Government noted that the Australian Competition and Consumer Commission (ACCC) is currently seeking to introduce reforms to change this:

... by implementing a class exemption, so that certain businesses (with less than \$10 million aggregated annual turnover in the financial year prior to the business joining the collective bargaining group or it being formed), could lawfully bargain collectively to jointly negotiate terms, conditions and prices (without offending competition laws).⁵⁴

5.62 Mr Denman said that competition laws also make it difficult for platform providers in the industry to work together to establish better conditions for workers. However, committee members noted that it would be possible to seek an exemption from the ACCC to anti-collusion laws, for this purpose.⁵⁵

Regulations applying to platform NDIS workers

5.63 In 2020, the National Disability Insurance Scheme (NDIS) had 390 000 participants.⁵⁶ Total scheme payments increased from \$2.18 billion in the first year (2016–17) to \$16.11 billion in 2019–20.⁵⁷ Funding for the NDIS is provided by both the Commonwealth and state governments, as well as through an increase to the Medicare Levy.⁵⁸

5.64 The Australian Government estimates the disability care workforce will grow to 190 000 workers by 2024 (Figure 5.1), meaning:

[T]he NDIS is expected to be one of the largest job creation opportunities in Australian history, with up to an additional 90,000 full time equivalent employees (FTE) needed over the next five years. This will include a mix of highly skilled positions and a large number of roles that do not require formal qualifications.⁵⁹

⁵⁴ VIC Government response to the on-demand workforce review, p. 14.

⁵⁵ Mr Denman, Uber Eats, *Proof Committee Hansard*, 12 April 2021, p. 23.

⁵⁶ National Disability Insurance Agency, *Annual Report 2019-20* (NDIA Annual Report 2019–20) 15 October 2020, p. 5, www.ndis.gov.au/media/2724/download (accessed 4 June 2021).

⁵⁷ NDIA Annual Report 2019–20, p. 20.

⁵⁸ Dr Luke Buckmaster, 'Paying for the National Disability Insurance Scheme', *Parliamentary Library Briefing Book – 45th Parliament*, August 2016, www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook45p/NDIS (accessed 4 June 2021).

⁵⁹ Department of Social Services, *Growing the NDIS Market and Workforce*, 2019, p. 4, www.dss.gov.au/sites/default/files/documents/03_2019/220319_-_growing_the_ndis_market_and_workforce_2019_accessible.docx (accessed 9 June 2021).

Figure 5.1 NDIS workforce growth required (published 2019)



Department of Social Services, Growing the NDIS Market and Workforce, 2019, p. 4.

5.65 Secretary of the Australian Services Union, Ms Natalie Lang described the NDIS as 'nation building at its finest', and suggested it provides opportunities for the government invest in building secure jobs and a skilled workforce for the future. However, the ASU suggested this opportunity is not being maximised due to the unregulated nature of the workforce, including the proliferation of on-demand platform providers, like Mable.⁶⁰

5.66 Ms Lang said the NDIS has created a 'false market', where government funding is being provided to participants at rates that factor in award wages, training, and minimum protections for workers. However, platforms like Mable are facilitating arrangements where workers engaged as sole traders accept lower rates to deliver the services. Ms Lang said:

In terms of the pricing, the pricing is actually determined by the NDIA. So, again, it's a false market. It's really not up to what any person wishes to pay for a service in a completely unfettered way. The NDIA determines unit prices for the supports that a participant would access in their plan. They do so using a formula that actually accounts for all of the workplace entitlements. ... **The missing piece of the puzzle is the regulation that then requires that money to be spent accordingly.** So, whilst the NDIS participant which has a plan that says the items of support that they are able to access and the amount of funding that sits in their package ... **it doesn't require the employer to pay the worker according to the award.**⁶¹

5.67 The NDIS changed the way disability funding was provided so that it no longer goes to the service provider (or 'the employer'), who then provides services, but now 'rests with the NDIS participant so that they can exercise choice and

⁶⁰ Ms Natalie Lang, Secretary, Australian Services Union (ASU), *Proof Committee Hansard*, 12 April 2021, p. 4.

⁶¹ Ms Lang, ASU, *Proof Committee Hansard*, 12 April 2021, p. 3. Emphasis added.

control'. Ms Lang said that this 'is a good thing and [the ASU] strongly support[s] it'. However, this model has led to 'a rise' in platform service providers employing different models based on the use of independent contractors, or casual employment models, that do not always facilitate consistent client/worker relationships. Also, Ms Lang noted that it is estimated that less than 10 per cent of NDIS workers have permanent full-time jobs.⁶²

5.68 Witnesses highlighted the complexity and specialisation of disability care work, the fact that the work is relationship-based, rather than transactional, and the potential vulnerability of participants.⁶³ Ms Lang said this is why the government established the NDIS Quality and Safeguards Commission, which oversees 'a competency framework' for the provision of services: 'Every worker in the NDIS and our NDIS registered organisations are required to comply with the capability framework'.⁶⁴

5.69 Unlike most on-demand platforms, Hireup engages workers as employees. Chief Executive Officer and co-Founder, Mr Jordan O'Reilly, argued that disability and care work provided under the NDIS 'has all the hallmarks of traditional employment':

What we're seeing is that these are services that are engaged by our clients. A person with disability is choosing a support worker and often engaging directly multiple times a week, if not more, for many months at a time. The services are directed by the client. It's paid by the hour.⁶⁵

5.70 Along with these hallmarks, services supplied under the NDIS must meet quality standards, and various safeguards, qualifications, and credentials need to be in place. Ms Jessica Timmins, Senior Director of Service at Hireup, explained that meeting these regulatory obligations requires a 'back-office staff of 230 people'. It is unreasonable, Ms Timmins argued, to expect individual NDIS participants to understand the regulatory regime, and to appreciate the reasons why certain costs may need to be applied.⁶⁶

5.71 Given an option to pay less, as participants are when engage services in an unregulated market, such as Mable, Ms Timmins said it is understandable that individual participants may choose this option. Participants may not understand that the workers are missing out on 'entitlements, protections and award wages'.⁶⁷

⁶² Ms Lang, ASU, *Proof Committee Hansard*, 12 April 2021, pp. 5–6.

⁶³ Mr Jordan O'Reilly, Chief Executive Officer and co-Founder, Hireup, *Proof Committee Hansard*, 12 April 2021, p. 35; Ms Lang, ASU, *Proof Committee Hansard*, 12 April 2021, p. 3.

⁶⁴ Ms Lang, ASU, *Proof Committee Hansard*, 12 April 2021, p. 3.

⁶⁵ Mr O'Reilly, Hireup, *Proof Committee Hansard*, 12 April 2021, p. 36.

⁶⁶ Ms Jessica Timmins, Senior Director of Service, Hireup, *Proof Committee Hansard*, 12 April 2021, p. 37.

⁶⁷ Ms Timmins, Hireup, *Proof Committee Hansard*, 12 April 2021, pp. 38–39.

5.72 Mr O'Reilly said that, while Hireup supports the employee model for support workers engaged through platforms, it also sees that there would be merit in simplifying the award, which is complex, and may currently act as a disincentive to platforms using an employment model.⁶⁸

Existing work health and safety regulation and workers' compensation

5.73 Evidence in relation to safety in the gig economy has been among the most concerning evidence received during the course of the inquiry so far. This section looks at the current legislative framework around Work Health and Safety (WHS) and workers' compensation, and considers:

- issues with current framework; and
- the impact of worker status.

5.74 The section looks at evidence on:

- injuries and fatalities of platform workers;
- how platforms, their contracting arrangements and algorithms provide incentives to workers to behave in ways that are unsafe; and
- issues around establishing who is liability and responsibility for OH&S.

5.75 It finishes by discussing proposals for reform and presenting the committee's views and recommendations.

Health and safety laws and platform workers

5.76 Safe Work Australia is a statutory agency established under the *Safe Work Australia Act 2008* (Cth) and was responsible for developing the model Work Health and Safety (WHS) laws in 2011 'to harmonise the regulation of WHS in each Australian jurisdiction'. To become legally-binding the laws were separately implemented in all jurisdictions, except Victoria. The model WHS laws consist of:

- the model WHS Act;
- the model WHS Regulations; and
- model Codes of Practice.⁶⁹

5.77 The Model WHS laws are intentionally 'broad in scope and application'. They cover 'a person conducting a business or undertaking (PCBU), workers and workplaces'. The terms used are 'deliberately broad', so that the laws will apply to 'all types of modern working arrangements, including those that extend beyond the traditional employer-employee relationship'. Safe Work Australia submitted that the laws aim to 'provide all workers in Australia with the same

⁶⁸ Mr O'Reilly, Hireup, *Proof Committee Hansard*, 12 April 2021, p. 40.

⁶⁹ Safe Work Australia, *Submission 22*, p. 1.

standard of health and safety protection regardless of the work they do, where they work, or their remuneration and entitlements'.⁷⁰

- 5.78 The TWU said the definition of PCBU 'includes most business operations, including businesses such as Amazon Flex, Uber and Deliveroo', and that the definition of 'worker' under the laws is 'any person who carries out work in any capacity for a PCBU'. This includes 'contractors and subcontractors, such as rideshare or food delivery workers':

These broad definitions nominally ensure that transport companies, including 'gig' companies, are not able to avoid their work health and safety obligations at any level of the supply chain by lawfully exposing their workers to dangerous workplace hazards on the basis of their employment status (or lack thereof).⁷¹

- 5.79 Safe Work Australia submitted that organisations that provide a platform for gig economy work 'may be regarded as a PCBU', and 'the platform will owe a duty to the gig participant, as a worker'. Also, the platform will 'owe duties to an entity that consumes services from the platform (the client) as an other person'.⁷²

Safety issues in the gig economy

Injuries and fatalities

- 5.80 Safe Work Australia expanded its data collection to include food delivery workers in 2019 and noted three work-related deaths that year and five in 2020.⁷³ However Safe Work Australia and others noted that its statistics are limited as gig workers are not classed as employees and so it is difficult to get a clear and current view of what is happening in the sector in relation to health and safety.⁷⁴
- 5.81 The TWU submitted that in a number of cases, 'the deaths of the [platform] workers were not even reported to the relevant regulatory authorities by the companies that had engaged them at the time of their deaths'.⁷⁵
- 5.82 Uber submitted that all platforms 'have a responsibility to [their] riders, consumers and the community to keep people safe'. In NSW, Uber is 'required' to notify SafeWork NSW about 'certain safety incidents'. Between January and October 2020, it provided notification of 74 incidents relating to the Uber Eats

⁷⁰ Safe Work Australia, *Submission 22*, p. 1.

⁷¹ TWU, *Submission 39*, p. 39.

⁷² Safe Work Australia, *Submission 22*, p. 2.

⁷³ Safe Work Australia, *Submission 22*, pp. 3–4.

⁷⁴ Ms Charlotte Newbold, Policy Advisor, Victorian Council of Social Services, *Proof Committee Hansard*, 20 April 2021, p. 16; Safe Work Australia, *Submission 22*, p. 4; Western Australian Government, *Submission 100*, p. 11.

⁷⁵ TWU, *Submission 39*, p. 26.

platform, and between May 2020 and May 2021, it provided notification of 12 incidents relating to the Uber ridesharing platform.⁷⁶

5.83 Uber further reported that the NSW Centre for Road Safety identified 55 food delivery rider casualties in 2019 and 2020. These all related to bicycle and motorcycle riders and accounted for 1.19 per cent 'of all motorcycle and pedal cycle rider casualties in that period'.⁷⁷

5.84 Menulog tracks safety incidents that are reported by couriers, customers or restaurants. Data around incidents is tracked as:

- incidents
- injuries, and
- serious injuries.⁷⁸

5.85 For the period January 2020 to May 2021, Menulog reported:

- 647 incidents
- 85 injuries, and
- 4 serious injuries.

The four serious injuries were reported to Safework NSW.⁷⁹

5.86 Deliveroo relies on self-reporting of accidents by riders, which it 'proactively encourages riders to do'. In the year 1 May 2020 to 30 April 2021, Deliveroo 'logged the following incidents (nationally)':

- category 1 – loss of life or permanent disability = 0 claims;
- category 2 – requires medical attention, e.g. broken bones or hospitalisation = 25% of all claims; and
- category 3 – minor injury, petty theft or abuse = 75% of all claims.⁸⁰

5.87 The TWU raised significant concerns about the introduction of Amazon Flex in Australia, saying: that studies in the United States indicate it is 'one of the most dangerous last-mile delivery options in the transport sector':

In 2019, an investigation of Amazon Flex in the US found 60 instances where drivers had been involved in serious accidents involving 10 deaths, with poor safety management and unsustainable work intensification being key factors reported in many instances.⁸¹

⁷⁶ Uber, Answers to written questions taken on notice, 29 April 2021 (received 16 May 2021) (answers to written questions), [p. 5].

⁷⁷ Uber, Answers to written questions, 29 April 2021, [p. 5].

⁷⁸ Menulog Australia, Answers to written questions taken on notice, 29 April 2021 (received 20 May 2021), [p. 4].

⁷⁹ Menulog, Answers to written questions, [p. 8].

⁸⁰ Deliveroo, Answers to written questions taken on notice, 29 April 2021 (received 28 May 2021), [p. 2].

⁸¹ TWU, *Submission 39*, p. 28.

- 5.88 Mr Scott McDine, from the International Transport Workers Federation, told the committee that Amazon in the United States has 'a much higher rate of injuries' than similar companies:

There were 27,000 injuries in total at Amazon warehouses last year. Amazon drivers are also injured more often and more seriously than drivers at UPS, another competitor. When we are talking about injuries, not just serious injuries, Amazon drivers sustain 13.3 injuries for every 100 workers. Compare this to UPS, with nine injuries per 100 workers. Then you couple that with the complete lack of engagement, and we are seeing that here in Australia.⁸²

- 5.89 Safe Work Australia talked about the difficulty capturing reliable data on injuries and fatalities among gig workers. One source suggested was the Australian Bureau of Statistics (ABS) Work-Related Injuries Survey, conducted every four years:

This provides information on all workers, regardless of their employment arrangements. SWA is working to increase use of this data and capture insights on priority workers. This includes gig and other workers who are not working under employee arrangements. The next ABS survey period is 2021-22.⁸³

- 5.90 Safe Work Australia was asked if it believed 'work performed in the gig economy is inherently more dangerous or more likely to lead to an adverse health and safety outcome versus work that's undertaken in a traditional employment context'. Ms Meredith Bryant said that Safe Work Australia will be 'looking keenly' at the data that is captured in the next ABS Work-Related Injury Survey 'to see what we can glean about those smaller population groups and those not covered by workers compensation data'.⁸⁴

- 5.91 Ms Bryant said Safe Work Australia has not observed a marked difference in the level of injuries and fatalities among employees with paid leave compared to employees without paid leave. However, noting most gig workers are not 'employees':

... gig is one for which it is much more difficult to get a sufficient level of granularity without having too high a standard error. We're trying to look at that to see what broader insights we might be able to gain, but it is difficult based on the small population that is an area like gig.⁸⁵

Incentives to be unsafe

⁸² Mr Scott McDine, Head, Sydney ITF Office, International Transport Workers Federation, *Proof Committee Hansard*, 10 June 2021, p. 34.

⁸³ Safe Work Australia, *Submission 22*, p. 4.

⁸⁴ Ms Meredith Bryant, Branch Manager, Safe Work Australia, *Proof Committee Hansard*, 10 June 2021, p. 39.

⁸⁵ Ms Bryant, Safe Work Australia, *Proof Committee Hansard*, 10 June 2021, p. 40.

5.92 Participants raised concerns raised that some of the rates paid, contracting arrangements and algorithms applied by platforms may create perverse incentives that encourage unsafe behaviours.

5.93 The TWU submitted:

As gig companies continue to compromise working conditions to maintain their competitive position in an unregulated market, by reducing pay and avoiding minimum legal obligations, workers are being pressured to work longer hours and engage in dangerous road practices.⁸⁶

5.94 Workers said that platforms sometimes encourage them to act in ways that are unsafe. Mr Esteban Salazar connected the low wages provided through the work to safety issues:

... we didn't have a minimum wage, and we still don't have it—and the lack of safety on the roads, especially when we are being forced to take the times that the app tells us to, to always be on time. For example, sometimes the apps would lie to us in saying that it is a 15-kilometre distance. If we record these distances with different apps, we realise that it is actually a longer distance. But we need to take the same time that the apps are telling us, otherwise we would probably face unfair sackings from the apps.⁸⁷

5.95 Delivery worker, Mr Ashley Moreland said that, because the algorithm is 'based on your proximity to the restaurant':

[Speed is] at the forefront of your mind, basically—to do it as quickly as possible. That often comes at the expense of traffic signals, I might add. I'm an educated person who is aware of the risks of that, but the ever-declining rates of pay mean that you feel pressed—ignoring the threats side of it ... Sydney roads are so dangerous that you're often forced to ride on footpaths just from a safety perspective—as you can see with the two riders who were killed on Cleveland Road last year.⁸⁸

5.96 Menulog expressed a preference to move to an employment model for its couriers, and is launching a trial in Sydney in 2021 (discussed in Chapter 6), provided evidence that explains why platform workers in food delivery and courier services sectors might engage in risky behaviour. Menulog submitted that its riders 'can safely complete (on average approximately) two deliveries per hour and ... earn \$11-12 per delivery'. This suggests that in order to earn any more than the minimum casual hourly wage, riders have an incentive to 'unsafely' complete *more than* two deliveries per hour, something they often achieve by 'multiapping'.⁸⁹

⁸⁶ TWU, *Submission 39*, p. 26.

⁸⁷ Mr Esteban Salazar, Private capacity, *Proof Committee Hansard*, 12 April 2021, p. 61.

⁸⁸ Mr Ashley Moreland, Private capacity, *Proof Committee Hansard*, 12 April 2021, p. 63.

⁸⁹ Menulog, Answers to written questions, [p. 6].

5.97 The TWU said food delivery and rideshare workers generally report being provided with 'little-to-no safety training or personal protective equipment',⁹⁰ and that its investigations into Amazon Flex have revealed a number of practices that may lead to injury or loss of life:

- Earning between \$10-15 per hour on average after costs,
- Regularly overloading vehicles (commonly personal cars) to a point where driving vision is dangerously obstructed,
- Delivering packages which require two or more people to carry and transport,
- Feeling pressured to engage in dangerous road practices in order to complete an unrealistic number of deliveries in short windows,
- Failing to provide sufficient training to workers with all training limited to a short 2-minute training video covering safety, manual handling and use of the app prior to commencement of work.⁹¹

5.98 Amazon told the committee that the company has stated 'a commitment to become Earth's best employer and the safest place to work', and that, in 2020 Amazon made 'over 150 significant process changes and invested millions of dollars to keep workers safe at [its] sites across Australia'.⁹²

5.99 However the TWU said that Amazon Flex drivers are 'engaged with no training, no support and limited on-boarding'. Mr Kaine said drivers simply 'download an app and watch a two-minute 'safety video''.⁹³

5.100 Mr Kaine said the TWU had photographic evidence that some Amazon Flex drivers were using 'very old, small, clearly domestic cars', which were 'filled, pushing and squashing, to the brim with no visibility left': 'There's no suggestion that this is being done in a professional and a safe way'.⁹⁴

COVID safety

5.101 Unions and workers provided evidence that platforms failed to provide 'sufficient PPE, training or instruction' to workers during the pandemic. The TWU's rideshare drivers' surveys found:

- 65.38% delivery workers & 53.81% rideshare drivers were not provided any COVID safety training;
- 49.04% delivery workers & 48.57% rideshare drivers were not provided sufficient & free protective equipment (masks, sanitisers, gloves);

⁹⁰ TWU, *Submission 39*, p. 27.

⁹¹ TWU, *Submission 39*, p. 28.

⁹² Mr Cooley, Amazon Australia, *Proof Committee Hansard*, 10 June 2021, p. 15.

⁹³ Mr Kaine, TWU, *Proof Committee Hansard*, 10 June 2021, p. 30.

⁹⁴ Mr Kaine, TWU, *Proof Committee Hansard*, 10 June 2021, p. 33.

- 78.37% delivery workers and 74.76% rideshare drivers were not provided any paid leave or financial assistance when needing to isolate after being affected by the COVID;
- 59.62% of delivery workers said that the company they worked for promoted full contact-free delivery; and
- 1/5 delivery workers and rideshare drivers said the company they worked for took no measures to respond to COVID.⁹⁵

Issues with the current framework

5.102 The TWU submitted that the model WHS laws 'provide a powerful example of how future regulatory reform can be shaped to extend rights and protections to workers in dependent work arrangements'. However, the way in which the laws are currently being applied is insufficient, 'given limited enforcement to date and a tendency to ignore safety issues which arise from economic and contracting pressures in the road transport industry'.⁹⁶

5.103 Evidence suggested that current model WHS laws and safe work regulators focus on training, equipment, and safety practices, and largely ignore the 'rates of pay, remuneration structure and other contracting practices' which appear to be leading to 'poor safety outcomes' in sectors of the gig economy.⁹⁷

5.104 Further, there is evidence that platform companies may not believe the laws apply to them:

In 2019, six Deliveroo food delivery workers in Sydney issued a request to commence negotiations for workgroups, nominating the TWU as their authorised representative. During negotiations for workgroups, which took an unprecedented one and a half years to resolve, Deliveroo took exception with the application of these laws in its business model, in attempts to first deny and then water down its obligations to worker safety. The following excerpt is provided from a high ranking Deliveroo manager during the early stages of these negotiations: "**The nature of the provisions of this legislation does not readily apply to the flexible nature of our relationship with independent contractors engaged** to provide delivery services, and their delegates, working across multiple platforms, in varying locations and at variable, unpredictable times of their choosing."⁹⁸

5.105 Safe Work Australia submitted that, while a PCBU 'cannot punish a worker for raising WHS issues', workers in these sectors 'may be hesitant to raise WHS issues due to concerns around job security or culturally and linguistically diverse backgrounds'.⁹⁹

⁹⁵ TWU, *Submission 39*, p. 33.

⁹⁶ TWU, *Submission 39*, p. 39.

⁹⁷ TWU, *Submission 39*, p. 40.

⁹⁸ TWU, *Submission 39*, p. 40. Emphasis added.

⁹⁹ Safe Work Australia, *Submission 22*, p. 3.

Difficulty establishing liability and responsibility

5.106 The obligation to provide and maintain a safe working environment *does* generally extend to independent contractors. However, in the case of on-demand platform work, it can be difficult to determine what constitutes the 'workplace' or 'working environment', and whether a worker is engaged by the platform or by the end user. In these circumstances, whether or not this obligation applies is very unclear.¹⁰⁰

5.107 This concern was most apparent in relation to Mable, which operates as an 'online marketplace', connecting NDIS participants with workers who can provide services under the NDIS. Chief Executive Officer of Mable, Mr Peter Scutt, acknowledged that most people on the platform are sole traders, engaged as independent contractors. These workers are covered by insurance through Mable:

... since the inception of Mable, when we were on board with the first 50 workers back in 2014, we arranged a number of insurance policies on behalf of those workers: professional indemnity, public liability and personal accident cover. We've had that in place since inception. It's not something that we started looking at a couple of years ago when this became a topic for discussion.¹⁰¹

5.108 However, Mable's terms of use state that contracts are between 'Customers' (NDIS participants) and 'Support Workers', and that 'Mable is not a party to that contract'. The terms of use stipulate that support workers must make *themselves* 'aware of' and 'comply with all laws and regulations relating to the provision of the Care Services'. This includes workplace laws and applicable occupational health and safety laws, policies, procedures.¹⁰²

5.109 Mable also requires Customers (that is, individual people with disabilities) to have 'inspected their premises' and to guarantee that 'those premises are a safe work environment for the Support Worker to provide the Care Services'; and that Customers 'have made themselves aware of and will comply with all laws and regulations relating to the engagement of Support Workers, including any applicable workplace laws and any applicable occupational health and safety policies or procedures'.¹⁰³

5.110 Safe Work Australia submitted that it is 'possible' for a client to be considered a PCBU under the laws, and for a gig worker to be 'a worker of the platform and the client at the same time':

¹⁰⁰ Victorian on-demand workforce report, p. 116.

¹⁰¹ Mr Peter Scutt, Chief Executive Officer, Mable, *Proof Committee Hansard*, 12 April 2021, p. 44.

¹⁰² Mable, *Mable User Agreement (Terms of Use)*, 2021, clause 7: 'Care Services and the Support Worker Contract', <https://mable.com.au/terms-of-use/>, (accessed 7 June 2021).

¹⁰³ Mable, *Terms of Use*, 2021, clause 7.

As PCBUs, the platform and the client would be concurrent duty holders. A gig participant [platform worker] may also, at the same time as being a worker for the platform or client, be a PCBU and officer in their own right, if using the platform as a mechanism to carry out work in their own business. Whether a gig participant is a PCBU in their own right is determined by looking at their working arrangements and the type of services being delivered. This will need to be assessed on a case by case basis.¹⁰⁴

5.111 Safe Work Australia told the committee that there could 'certainly' be other PCBUs 'involved in a gig arrangement that will owe the same duty of care to their gig participant as a worker', because the model WHS laws 'contemplate that you can share duties'. However, there has been no case testing the application of the law in this kind of situation, at this time.¹⁰⁵

5.112 Under the model WHS laws, an individual worker working for a business or undertaking is *not* a PCBU:

Section 5 (4) of the WHS Act makes it clear that an individual is not a PCBU if they are involved in the business or undertaking only as a worker or officer of the business or undertaking.¹⁰⁶

5.113 While the WHS Act does not define PCBU, Safe Work Australia provides guidance as to who and what may be considered a PCBU, for example, the following would *all* be PCBUs:

The principal contractor on a construction site, sub-contractors engaged by the principal contractor, sub-contractors engaged by the sub-contractors (including self-employed contractors), along with the client engaging the principal contractor.¹⁰⁷

5.114 The guidance also notes that, in some circumstances, an owner-builder may be a PCBU:

Where work requires approval from the relevant building regulator an owner-builder may be a PCBU and owe duties to any workers or other persons at the workplace. In some circumstances where a landlord is carrying out work on an investment property that creates a risk to health and safety to other persons at the property they could also be a PCBU.¹⁰⁸

¹⁰⁴ Safe Work Australia, *Submission 22*, p. 2.

¹⁰⁵ Ms Sarah Costelloe, Branch Manager, Safe Work Australia, *Proof Committee Hansard*, 10 June 2021, p. 41.

¹⁰⁶ Safe Work Australia, *Interpretive guideline—Model Work Health and Safety Act: the meaning of 'person conducting a business or undertaking'*, [p. 1], www.safeworkaustralia.gov.au/system/files/documents/1702/interpretive_guideline_-_pcbu.pdf (accessed 19 June 2021).

¹⁰⁷ Safe Work Australia, *Interpretive guideline—Model Work Health and Safety Act: the meaning of 'person conducting a business or undertaking'*, [p. 3].

¹⁰⁸ Safe Work Australia, *Interpretive guideline—Model Work Health and Safety Act: the meaning of 'person conducting a business or undertaking'*, [p. 3].

5.115 The WHS Act specifies certain exemptions, including volunteer associations and residential strata title bodies that manage common areas (unless they engage employees).¹⁰⁹

5.116 The WHS Act is drafted with the *intent* that 'individual householders who engage persons to carry out ad hoc home maintenance and repairs or other domestic work, e.g. casual babysitters; tradespeople to undertake repairs', are **not** to be considered PCBUs. Safe Work Australia notes that most tradespeople engaged by a householder will 'either be a worker for a business or undertaking, or a business or undertaking in their own right if the tradesperson is self-employed'.¹¹⁰ In this case the PCBU is the business the worker is employed by, or the contractor themselves.

5.117 However, Safe Work Australia states that individual householders *may* have the duties of a PCBU 'if they engage a worker, for example, employing a nanny to care for children in the householder's home':

While the householder is not employing the worker as part of a business, employing the worker to carry out certain duties at the home is regarded as an 'undertaking'. Consequently, the householder has a duty of care as a PCBU and the person employed by the householder has the worker's duty of care under the WHS Act.¹¹¹

5.118 According to the current guidance, it appears conceivable that a individual person with a disability, engaging a worker through a platform using their NDIS funding could be considered a PCBU.

5.119 Mable's terms of use purport to exempt Mable from any liability or responsibility for the quality of care provided through its platform. Terms d) and e) state that Mable:

- (q) makes no representation or warranty regarding the quality of any Care Services or any other services provided by any Member, or the accuracy or reliability of any information provided by any Member on its Site and/or Services; and
- (r) is not responsible for the interactions between Users including under any Support Worker Contract.¹¹²

5.120 Regarding the question of whether a platform can legitimately claim to be exempt from any obligations under WHS laws, Safe Work Australia said:

¹⁰⁹ Safe Work Australia, *Interpretive guideline—Model Work Health and Safety Act: the meaning of 'person conducting a business or undertaking'*, [p. 3].

¹¹⁰ Safe Work Australia, *Interpretive guideline—Model Work Health and Safety Act: the meaning of 'person conducting a business or undertaking'*, [p. 3].

¹¹¹ Safe Work Australia, *Interpretive guideline—Model Work Health and Safety Act: the meaning of 'person conducting a business or undertaking'*, [p. 4].

¹¹² Mable, Terms of Use, 2021, clause 7.

A platform, an organisation that provides the gig economy work—again, this is a generalisation, Senator—would generally, as a PCBU, owe a duty to gig participants who are workers of the platform and to its clients as other persons.¹¹³

5.121 Safe Work Australia further submitted that in general, 'a gig platform such as Mable is likely to be a PCBU as they will be a person conducting a business', and that: 'Duty holders, including PCBUs cannot transfer their WHS duties to another person (s 14)'.¹¹⁴

5.122 Mr Scutt was asked whether Mable takes any responsibility for the quality of training and qualifications of the support workers registered on its site. In response, Mr Scutt said:

Mable takes the safeguarding of the community that engages via its website very seriously. We have a layered approach, with worker screening, with people being able to choose who supports them and to continue where it's working or discontinue, ratings and reviews, access to our learning hub. There are 120 courses on our learning hub from subject matter experts that are freely available to people on the platform. We have qualification checks, depending on the services. If you're offering personal care, we do check qualifications ... There are a lot of safeguards built into the platform. But the responsibilities of Mable reflect that we're a marketplace. We're not a service provider, and the responsibilities and terms of use reflect that nature.¹¹⁵

5.123 However, the terms of use also require members who are Support Workers to 'report any incidents of abuse or neglect of a child, an elder or a person with a disability to the relevant state authority and to Mable's customer care team', which demonstrates that Mable *does* take some care and responsibility in relation to relationships between customers and workers.¹¹⁶

5.124 The Australian Services Union (ASU) submitted that regulatory confusion puts workers in a precarious position, as they find themselves in an 'unsupported situation if something goes wrong'.¹¹⁷

5.125 The ASU submitted that several workers engaged through platforms have told the union they have 'been in situations' in which they have been asked:

... to complete work that is unsafe and/or not covered by NDIS funding, including performing tasks for other family members. One worker told the ASU that they had to stop working with participants in the past because of the requests of unsafe work, and the lack of support or information they

¹¹³ Ms Costelloe, Safe Work Australia, *Proof Committee Hansard*, 10 June 2021, p. 43.

¹¹⁴ Safe Work Australia, Answers to questions taken on notice, public hearing, Canberra 10 June 2021 (received 17 June 2021), [pp. 1–2].

¹¹⁵ Mr Scutt, Mable, *Proof Committee Hansard*, 12 April 2021, p. 45.

¹¹⁶ Mable, Terms of Use, 2021, clause 8.

¹¹⁷ Australian Services Union (ASU), *Submission 33*, p. 23.

were able to access from the platform provider through which they had been employed.¹¹⁸

The impact of worker status

5.126 Mr Kaine argued that the 'out of date' binary divide between employees and contractors is leading to worker deaths:

Our binary divide between an employee, on the one hand, that gets everything and someone who falls just on the independent contractor side of the employee-independent contractor divide is out of date.¹¹⁹

5.127 Mr Kaine referred to the deaths of five delivery riders in the space of 11 weeks (in 2019–2020), saying, '[n]one of them got the workers compensation payment that other Australians get, and their families are destitute'. These cases demonstrate, Mr Kaine argued, that the current model of regulation provides insufficient protection for platform workers in the food delivery and rideshare sectors.¹²⁰

5.128 As mentioned in Chapter 3, some platforms in Australia provide accident cover and other insurances but these are provided on a voluntary basis by the companies and can be removed. For instance, Uber and Uber Eats provide a 'minimum insurance policy', which includes a death benefit of \$500 000.¹²¹ Deliveroo provides accident and injury insurance.¹²² Ola Australia *used to* provide accident insurance for its drivers, but ceased this benefit in June 2020, after making 'a financial decision' due to the impacts of COVID-19 on the business.¹²³

5.129 Mr Dominic Timothy Taylor, General Manager of Uber Australia, told the committee that Uber has 'led the industry' in terms of safety, having introduced an income protection policy for injury. However, Uber believes without regulation requiring all platforms to provide coverage, there is no reliable safety net for drivers.¹²⁴

5.130 In contrast to Uber's evidence that its workers are covered for injuries, delivery worker, Mr Salazar said that when he was injured delivering for Uber Eats, he had to pay his own medical expenses:

¹¹⁸ ASU, *Submission 33*, p. 24.

¹¹⁹ Mr Kaine, TWU, *Proof Committee Hansard*, 12 April 2021, p. 7.

¹²⁰ Mr Kaine, TWU, *Proof Committee Hansard*, 12 April 2021, p. 8.

¹²¹ Mr Denman, Uber Eats, *Proof Committee Hansard*, 12 April 2021, p. 19.

¹²² Ms Duck, Deliveroo Australia, *Proof Committee Hansard*, 12 April 2021, p. 28.

¹²³ Ms Tan, Ola Australia, *Proof Committee Hansard*, 12 April 2021, p. 9.

¹²⁴ Mr Dominic Timothy Taylor, General Manager, Uber Australia, *Proof Committee Hansard*, 12 April 2021, p. 17.

As a consequence of this rushing, I had an accident on 20 September last year. It was raining. I fell on the tracks of light rail and that caused me a lot of pain in my back. I had to go to the doctor. When I went to the doctor, I realised that we were not covered as any other worker in this country. I was not covered at all. Uber Eats didn't assume my medical expenses. I had to use my healthcare insurance for some of the costs. I also had to pay from my own pocket. Even knowing all those things, they never even asked me how I was feeling or about the accident. That made me realise that these companies don't really care about their workers; they just care about making workers do what they ask them to do. It's very frustrating.¹²⁵

- 5.131 Chief Executive Officer of Deliveroo Australia, Mr Ed McManus explained that Deliveroo originally included rider earnings 'in the rateable remuneration calculation for state based workers compensation schemes', theoretically making riders eligible for WorkCover 'in various states'. However, Mr McManus reported that Deliveroo riders who were injured and attempted to make claims under WorkCover were frequently rejected—generally on the basis that they were independent contractors and not employees. As a result, Deliveroo chose to move to a third-party insurance policy.¹²⁶
- 5.132 Ms Tan acknowledged that, since Ola stopped providing insurance for its drivers in June 2020, a driver who might be injured whilst working for Ola would have no income support or coverage for medical expenses provided by Ola.¹²⁷
- 5.133 At the hearing, Ms Tan, who is also head of legal at Ola, said she did not know if Ola *required* its drivers to hold their own insurance.¹²⁸ However, in responses to written questions, Ola made it clear that it only 'recommends' its drivers take out their own insurance, as communicated on Ola's website in the 'Driver Guidelines' section.¹²⁹
- 5.134 Menulog currently requires its couriers delivering by car, scooter or motorbike to hold compulsory third party (CTP) motor vehicle insurance.¹³⁰
- 5.135 Menulog expressed the view that moving an employment model would allow it to have 'direct control over safety' and lead to fewer accidents and casualties.¹³¹

¹²⁵ Mr Salazar, *Proof Committee Hansard*, 12 April 2021, p. 61.

¹²⁶ Mr Ed McManus, Chief Executive Officer, Deliveroo Australia, *Proof Committee Hansard*, 12 April 2021, p. 29.

¹²⁷ Ms Tan, Ola Australia, *Proof Committee Hansard*, 12 April 2021, p. 14.

¹²⁸ Ms Tan, Ola Australia, *Proof Committee Hansard*, 12 April 2021, p. 11.

¹²⁹ Ola Australia, 'Ola Driver Counselling Support and Driver Insurance', <https://ola.com.au/driver/drivers-guidelines/ola-driver-counselling/> (accessed 4 June 2021).

¹³⁰ Menulog, Answers to written questions, 29 April 2021, [p. 5].

¹³¹ Mr Steven Teoh, Director of Delivery, Menulog, *Proof Committee Hansard*, 12 April 2021, p. 59.

- 5.136 The TWU cautioned that an impending 'fourth wave of the gig economy now threatens the freight and trucking industry in Australia'. According to the TWU, Uber and Amazon are 'rapidly' expanding their offering to provide 'Uber Freight' and 'Amazon Freight Partners' in the United States, replacing jobs in the freight and trucking industries with unregulated, insecure, 'gig economy' jobs, if the government does not regulate.¹³²
- 5.137 The TWU told the committee that Amazon had failed to provide 'Blue Card training ... critical occupational health and safety training' to Amazon Flex drivers in NSW, which is required under the NSW regulation, until the TWU raised the issue. Mr Kaine said this was indicative of a pattern of behaviour in which platform companies, like Amazon, 'will comply with laws only when they're caught red-handed'.¹³³
- 5.138 With the road transport sector employing 648 700 people in 2018, the numbers of workers in these sectors are much higher than seen in rideshare and food delivery, and the 'implications for worker and public safety are more concerning'. The TWU submitted:

In 2019, heavy vehicle fatalities accounted for 56% of all fatalities as a result of a vehicle collision. Road transport workers more generally remain the most likely to be killed at work, with a fatality rate 9.4 times higher than the average across all industries. In the past 10 years, 1,896 transport workers and members of the general public have been killed as a result of collisions with heavy vehicles alone.¹³⁴

Workers' Compensation

- 5.139 A number of submitters expressed concerns about the lack of adequate protections and financial coverage for on-demand platform workers in the case of workplace injury or illness.¹³⁵
- 5.140 The TWU said workers in the gig economy have 'almost no protections and entitlements' under the *Workplace Injury Rehabilitation and Compensation Act 2013*,¹³⁶ because:

[State-based] Workers Compensation Scheme[s] [do] not define a worker in the intentionally broad way that the Model WHS Laws do. Because of this, transport workers in the gig economy do not clearly fit within the definitions of worker or deemed worker and instead are considered contractors for the purposes of workers compensation.¹³⁷

¹³² TWU, *Submission 39*, p. 29.

¹³³ Mr Kaine, TWU, *Proof Committee Hansard*, 10 June 2021, pp. 30–31.

¹³⁴ TWU, *Submission 39*, p. 29.

¹³⁵ See for instance: Australian Institute of Employment Rights, *Submission 6*, p. 48.

¹³⁶ TWU, *Submission 39*, p. 35.

¹³⁷ TWU, *Submission 39*, pp. 41–42.

5.141 In its joint submission, the Commonwealth Government explained that, in Australia, the states, territories and Commonwealth 'have jurisdiction over their own workers' compensation schemes, and coverage rules differ between jurisdictions'. The submission confirmed that workers' compensation schemes 'generally cover employees', with employers either self-insuring or paying premiums to an insurer to cover their employees:

Some schemes deem particular workers to be employees for workers' compensation purposes and, in limited circumstances, independent contractors may be deemed to be employees under statutory schemes. The differences between workers' compensation schemes present significant challenges for national policy efforts.¹³⁸

5.142 As they are not generally employees, platform workers may have access to insurance from two sources:

- policies they individually take out, or
- policies provided by the platforms they work for.

According the TWU, the cost of both of these types of policies are often 'worn by the worker', either directly or indirectly, and generally 'there is no obligation for this type of insurance to actually be taken out'. Further, most of these policies provide 'less coverage than would otherwise be available through the Workers Compensation Scheme' (see Figure 5.2).¹³⁹

Figure 5.2 Insurance comparison between workers compensation and gig worker arrangements

¹³⁸ Joint Federal Government submission, *Submission 75*, p. 31.

¹³⁹ TWU, *Submission 39*, p. 42.

	The Workers Compensation Scheme	Deliveroo – Personal Accident and Income Protection Policy	Uber – Partner Support Insurance Policy	Amazon Flex
Weekly payments	Up to 95% of preinjury average weekly earnings for first 13 weeks, up to 80% thereafter. Maximum of \$2224 per week.	Up to 90% of salary for 104 weeks. Maximum of \$1625 per week.	\$150 per day for a maximum of 30 days.	No coverage
Permanent impairment	Up to \$631000 lump sum	Up to \$500000 lump sum	Up to \$400000 lump sum	No coverage
Medical, hospital and rehabilitation expenses	Maximum of \$50000 for medical treatment, \$50000 for hospital treatment and \$10000 for ambulance treatment.	Up to \$2000 for out of pocket expenses.	Up to \$5000 for reasonable out of pocket costs.	No coverage

TWU, Submission 39, p. 43.

5.143 The TWU observed that, the benefits provided to platform workers are particularly inferior 'in regards to the payment for medical, hospital and rehabilitation services and the weekly payment for time off work':

In the tragic case of a workplace death, a gig workers life is worth less than half that of any other worker who would have access to workers compensation ... They are fundamentally unable to provide a suitable pathway for injured workers to recover at work.¹⁴⁰

5.144 The Australian Institute of Employment Rights explained that the way in which employment is defined in relevant state legislation generally excludes platform workers and 'characterization of a contract ... can be arbitrary and manipulable', allowing platforms successfully 'seek to avoid participation in statutory workers' compensation schemes'.¹⁴¹

5.145 The Institute said addressing the regulatory gap that leaves platform workers without workers' compensation 'is an urgent problem':

Reports of workers killed or injured in the course of this kind of delivery work are alarmingly frequent. In September 2020 two young men, Dede Fredy and Xiaojun Chen, were killed doing this kind of work (Nick

¹⁴⁰ TWU, *Submission 39*, p. 44.

¹⁴¹ Australian Institute of Employment Rights, *Submission 6*, p. 49.

Bonyhady and Tom Rabe 'Rider deaths reveal risky safety practices' Sydney Morning Herald, 3-4 October 2020, 24). In November three more cyclists were killed while making deliveries.¹⁴²

State and territory legislation

5.146 The submission from the Transport Education, Audit and Compliance Health Organisation Limited (TEACHO), provided further detail about the functioning of state-based legislative regimes. TEACHO explained that in NSW, workers' compensation legislation includes 'deemed worker provisions', which deem taxi drivers and similar workers to be employees for workers' compensation purposes. However, 'this provision, as it presently stands, would not cover on demand drivers who own their own vehicles'.¹⁴³

5.147 Two decisions in relation to on-demand food delivery workers in NSW 'have found that the workers could not bring claims against Uber'.¹⁴⁴

5.148 In Victoria, an individual owner driver is a 'deemed worker' if they drive their own vehicle 'mainly for the purposes of providing transport services to the principal'. However, this does not apply if the owner-driver 'is carrying on an independent trade or business'. In order to be a deemed worker in Victoria for workers' compensation, owner drivers must meet the following conditions:

- ... the owner-driver must be unincorporated.
- They must not engage relief drivers to perform 20 per cent or more of the contracted work.
- They must not earn less than 80 percent of their income from the hirer.
- They must not provide services for fewer than 180 days a year (six months), or for fewer than three days per week.¹⁴⁵

5.149 TEACHO stated that Tasmanian legislation also includes provisions similar to NSW and Victoria in relation to taxi drivers and other drivers:

These are similar to the bailment provisions in the NSW and Victorian legislation and depend upon the driver not owning the vehicle themselves. Section 4E also makes provision for prescription of relationships to be worker/employer relationships, so there is apparently scope within the Act for the making of regulations to include on demand workers, should the legislature be minded to do so.¹⁴⁶

5.150 The Australian Capital Territory's legislation requires work performed by contractors to be 'regular and systematic' to meet the requirements to qualify for workers' compensation, which would exclude many platform workers.

¹⁴² Australian Institute of Employment Rights, *Submission 6*, p. 49.

¹⁴³ TEACHO Limited, *Submission 52*, p. 28.

¹⁴⁴ TEACHO Limited, *Submission 52*, p. 28.

¹⁴⁵ TEACHO Limited, *Submission 52*, pp. 28–29.

¹⁴⁶ TEACHO Limited, *Submission 52*, p. 30.

In Queensland, an individual 'who falls within the requirements to deduct PAYG withholding tax is a worker ... and a worker who does not fall with those requirements is not a worker'. The Northern Territory takes a similar approach. The relevant Act in South Australia provides for 'self-employed workers', and leaves the decision on who fits this description up to the 'Return to Work Corporation'.¹⁴⁷

5.151 In Western Australia, the relevant Act defines a worker as:

... any person engaged by another person to work for the purpose of the other person's trade or business under a contract with him for service, the remuneration by whatever means of the person so working being in substance for his personal manual labour or services.¹⁴⁸

5.152 TEACHO suggested that existing provisions in state and territory legislation indicate that 'legislatures have been willing to define or deem certain workers to be covered by workers' compensation insurance', and have also been willing to identify entities responsible to take out cover. This is the case 'whenever the worker is performing the service personally, as an unincorporated individual with no trade or business identity of their own'.¹⁴⁹

5.153 In line with existing provisions, TEACHO argued it would not be 'a radical proposal' for state legislatures to 'enact further deeming provisions' to cover on-demand platform workers:

From a broad policy point of view, it would be consistent for workers' compensation coverage to be extended to on demand road transport workers who provide labour without operating their own independent businesses. ... A workers' compensation system that requires payment of premiums by the business controller who determines the systems of work is far better suited to providing an incentive to improve safety standards, than a system that merely compensates victims after accidents have occurred. And a system that provides for rehabilitation of workers, income maintenance during time off, and facilitates a return to work after recovery, deals more comprehensively with workers' need for economic security.¹⁵⁰

Proposals for reform

Reforms in work health and safety

¹⁴⁷ TEACHO Limited, *Submission 52*, pp. 29–30.

¹⁴⁸ TEACHO Limited, *Submission 52*, p. 30.

¹⁴⁹ TEACHO Limited, *Submission 52*, p. 30.

¹⁵⁰ TEACHO Limited, *Submission 52*, pp. 30–31.

- 5.154 The submission from the Attorney-General's Department, Department of Education, Skills and Employment and Department of Industry, Science, Energy and Resources (joint Federal Government submission) said an independent review of the model WHS laws in 2018 found that the model WHS laws 'are largely operating as intended and noted that they do contemplate non-traditional working relationships'. The review found that regulators 'generally' consider the current laws to be 'broad enough to deal with emerging business models'. However, the review *did* recommend that Safe Work Australia develop criteria 'to continuously assess new and emerging business models, industries and hazards in the context of considering the need for any legislative change, new model WHS Regulations or Codes'.¹⁵¹
- 5.155 The joint Federal Government submission acknowledged that 'more needs to be done to protect and promote the health and safety of workers engaged in the on-demand economy', particularly in light of the 'tragic fatalities of food delivery riders working for several platforms in New South Wales and Victoria'.¹⁵²
- 5.156 The submission noted that the Commonwealth's WHS jurisdiction 'encompasses Australia Government departments and agencies and certain non-government self-insured licensees'. As such, the Attorney-General's Department stated that 'on-demand platforms and participants therefore generally fall outside the scope of the Commonwealth's jurisdiction, and instead are within the purview of the states and territories'.¹⁵³
- 5.157 Regardless of this, the Commonwealth has added 'rider safety' to the agenda of a future intergovernmental WHS meeting, as a 'priority item':

The Commonwealth will continue to monitor the operation of the WHS framework in relation to workers engaged in the ondemand economy, noting that this is primarily a matter for the states and territories. It is noted that SWA is currently developing specific guidance on the application of WHS laws to the ondemand economy and is continuing to monitor and investigate issues regarding WHS coverage of workers.¹⁵⁴

- 5.158 Safe Work Australia reported that a 2018 review of the model WHS laws recommended Safe Work Australia develop a model Code of Practice to 'provide practical guidance on how PCBUs can meet their obligations associated with the principles that apply to duties'. This included how the principles should apply to 'the gig economy and other modern working arrangements. The

¹⁵¹ Attorney-General's Department, Department of Education, Skills and Employment and Department of Industry, Science, Energy and Resources (Joint Federal Government submission), *Submission 75*, p. 30.

¹⁵² Joint Federal Government submission, *Submission 75*, p. 30.

¹⁵³ Joint Federal Government submission, *Submission 75*, p. 30.

¹⁵⁴ Joint Federal Government submission, *Submission 75*, p. 30.

2018 recommendations are currently 'being considered by Commonwealth, state and territory ministers responsible for WHS'.¹⁵⁵

5.159 Additionally, Safe Work Australia reported that it is currently developing 'guidance material to assist gig participants and platforms in the food delivery industry understand their WHS obligations'. The material will take into account the *NSW Joint Taskforce: Food Delivery Rider Safety* report, issued in April 2021, which Safe Work Australia submitted will 'provide a sound basis for SWA's national guidance'.¹⁵⁶

5.160 The *NSW Joint Taskforce: Food Delivery Rider Safety* report was focused on enforcing compliance with safe riding practices and road rules, such as:

- Helmets and their compliance
- Riding in a safe manner
- Using a device when riding
- Breaking road rules when riding
- Roadworthiness of vehicle and the use of non-compliant e-bikes.¹⁵⁷

5.161 The report does not address the safety implications of contracting arrangements, rates of pay, platform algorithms, or the issue of multi-apping.¹⁵⁸

5.162 Asked if Safe Work Australia is taking into account factors including remuneration that might 'incentivise breaches of road rules or other unsafe practices', Branch Manager, Ms Sarah Costelloe replied:

We are developing some guidance on gig-rider safety, and that was something that our Safe Work Australia members agreed to prioritise. As part of that, we are looking at the hazards that might potentially result in delivery riders engaging in unsafe work practices and the possible control measures to reduce those risks. This could include consideration of payment processes and the impact on work practices. I guess the critical part is whether those processes decrease safety, but the primary duty rests with the person conducting or undertaking the business to identify hazards and eliminate or minimise those risks.¹⁵⁹

5.163 Safe Work Australia also submitted that 'public submissions to the 2018 Review of the model WHS laws' indicated that work health and safety regulators 'are considering emerging issues arising from the introduction of the NDIS'.¹⁶⁰

¹⁵⁵ Safe Work Australia, *Submission 22*, p. 3.

¹⁵⁶ Safe Work Australia, *Submission 22*, pp. 4–5.

¹⁵⁷ Safe Work NSW, *Joint Taskforce: Food Delivery Rider Safety*, 1 April 2021, p. 10, www.safework.nsw.gov.au/compliance-and-prosecutions/joint-taskforce-food-delivery-rider-safety (accessed 10 June 2021).

¹⁵⁸ Safe Work NSW, *Joint Taskforce: Food Delivery Rider Safety*, 1 April 2021.

¹⁵⁹ Ms Costelloe, Safe Work Australia, *Proof Committee Hansard*, 10 June 2021, p. 40.

¹⁶⁰ Safe Work Australia, Answers to questions taken on notice, public hearing, Canberra 10 June 2021 (received 17 June 2021), [p. 2].

- 5.164 The TWU proposed that safety in the platform sector would be most effectively addressed through broader industrial relations reforms to ensure all workers, regardless of their employment classification, 'have access to an effective regulatory system which can ensure that workers in dependent work arrangements are afforded minimum work rights and entitlements'.¹⁶¹
- 5.165 The ASU recommended that WHS Regulators be 'funded appropriately to allow access to workers and enforcement of workplace health and safety legislation for all workers within the NDIS, regardless of the nature of their employment'.¹⁶²
- 5.166 The Queensland Government recommended that the Australian Government undertake 'a coordinated national study to build an evidence base for WHS risks specific to gig economy workers [which should] include future forecasting of likely emerging gig economy work'.¹⁶³

Reforming workers' compensation

- 5.167 Maurice Blackburn Lawyers noted that the impacts of 'failing to provide certainty of coverage' for accident, illness and injury for is often 'devastating to gig economy workers and their families'. Frequently impacting 'vulnerable workers', Maurice Blackburn Lawyers argued that it also leads to 'increased costs to the public purse':

For example, injuries that should have been covered by workers compensation will instead be covered by Medicare, and workers who missed out on superannuation will instead be forced to rely on the pension in retirement.¹⁶⁴

- 5.168 While noting that workers' compensation schemes are state-based, the Australian Institute of Employment Rights, recommended that the federal government 'seek to influence the adoption of measures to ensure that all vulnerable workers are covered by workers' compensation schemes, by promoting a harmonised approach, in the same way as the model Work Health and Safety legislation was developed'.¹⁶⁵
- 5.169 The TWU recommended that workers' compensation schemes be reformed to require businesses to provide workers compensation 'to all workers regardless of their method of engagement', and suggested:

¹⁶¹ TWU, *Submission 39*, p. 31.

¹⁶² ASU, *Submission 33*, p. 24.

¹⁶³ Queensland Government, *Submission 104*, p. 3.

¹⁶⁴ Maurice Blackburn Lawyers, *Submission 17*, p. 22.

¹⁶⁵ Australian Institute of Employment Rights, *Submission 6*, p. 50.

Enforcing obligations for companies under existing WHS Laws by providing trade unions a greater role in enforcement and clarifying obligations for gig economy companies.¹⁶⁶

5.170 Maurice Blackburn Lawyers recommended that governments amend state legislation 'to extend workers' compensation coverage to platform workers and require intermediary businesses to pay premiums'. Benefits of this approach would be:

- Fair and equal access to same level of compensation and access to common law damages for work-related injuries as workers.
- Improved timeliness of medical intervention for work-related injuries.
- Improved durable return to work outcomes.
- Improved work health and safety outcomes.
- Early medical intervention and enhanced benefits structures also improve secondary psychological impacts on the worker and their family.¹⁶⁷

5.171 The committee notes the analysis provided by TEACHO on deemed worker provisions in state and territory legislation, including in NSW, Victoria and Tasmania. These provisions provide a precedent, and offer potential models for the design of similar provisions directed at ensuring on-demand platform workers can be deemed employees for the purposes of workers' compensation.

Committee view

5.172 Safety issues are among the most concerning aspects of on-demand platform work. While the data is patchy, there is enough to indicate that food delivery riders in particular are being injured, and in some instances, killed, at an alarming rate.

5.173 Platforms owe a duty of care to these workers under current WHS legislation, even if some platforms may, at times, attempt to minimise their obligations by claiming that these obligations have uncertain application.

Application of WHS laws to on-demand platforms

5.174 The committee applauds work undertaken by Safe Work NSW through its Joint Taskforce to engage with platforms and issue improvement notices and warnings to those that are failing to comply with WHS legislation.¹⁶⁸

¹⁶⁶ TWU, *Submission 39*, pp. 45–46.

¹⁶⁷ Maurice Blackburn Lawyers, *Submission 17*, p. 23.

¹⁶⁸ Safe Work NSW, *Joint Taskforce: Food Delivery Rider Safety*, 1 April 2021, p. 9.

- 5.175 However, the committee is concerned that the approach taken by Safe Work NSW was overly focussed on 'the symptoms' of unsafe work in the food delivery sector, and seems to have ignored the causes.
- 5.176 Evidence provided to the committee by Menulog shows that its couriers cannot *safely* earn more than \$22 to \$24 an hour under the current system, compared to the award rates of \$25.81 per hour on weekdays (plus super) and \$36.14 on weekends (plus super).¹⁶⁹ The only way for couriers to earn a reasonable hourly rate is, arguably, by *unsafely* completing more deliveries in the timeframe, often through juggling multiple apps.
- 5.177 The NSW Joint Taskforce report makes no mention of these kinds of contracting arrangements, rates of pay, platform algorithms, or the issue of multiapping. Evidence to this committee from riders in the industry, transport unions, and academics, indicates that, until these issues are addressed, the incentive to behave in an unsafe manner will remain.
- 5.178 While valid, issuing guidance in multiple languages, increasing fines, and greater policing of riders are, arguably, nothing more than Band-Aid solutions.
- 5.179 These platform companies have been in operation in Australia since at least 2014. It is concerning that Safe Work Australia is only working on guidance for employers in the gig economy now, in 2021. The committee also respectfully suggests that that the NSW Taskforce report may not provide a sufficiently 'sound basis for SWA's national guidance',¹⁷⁰ and that Safe Work Australia should seek to prepare national guidance that more fully addresses unsafe practices and conditions in the sector.
- 5.180 It is clear that Safe Work Australia has significant work to do in terms of:
- better understanding the platform economy and its workforce arrangements;
 - providing meaningful national guidance on the application of the model WHS laws to platform workers in their various manifestations; and
 - ensuring that the model WHS laws meet their aim of providing 'all workers in Australia with the same standard of health and safety protection regardless of the work they do, where they work, or their remuneration and entitlements'.¹⁷¹

The issue of PCBUs in the home care sector

- 5.181 The committee is deeply concerned about the potential legal grey area exposed in evidence to this inquiry from Mable, Safe Work Australia, the Australian

¹⁶⁹ *Road Transport and Distribution Award 2020*, Part 2, Section 11: Casual Employees, https://awardviewer.fwo.gov.au/award/show/MA000038#P259_29846 (accessed 4 June 2021).

¹⁷⁰ Safe Work Australia, *Submission 22*, pp. 4–5.

¹⁷¹ Safe Work Australia, *Submission 22*, p. 1.

Services Union and others. While no case has tested the premise, witnesses confirmed that current legislative arrangements indicate that individual NDIS participants could be *personally responsible* for the occupational safety of workers provided through platforms like Mable.

- 5.182 Individuals receiving care under the NDIS are **not** conducting a business or undertaking; platforms like Mable **are**. Mable takes a significant percentage of the money paid to these workers and, thus, profits from their labour. If there are legal loopholes allowing platform companies to avoid their responsibilities on worker safety—or even more disturbingly, to put those responsibilities onto individual disability care recipients—those loopholes must be closed as a matter of urgency.
- 5.183 The NDIS Quality and Safeguards Commission confirmed during its 4 June 2021 Budget Estimates appearance that even unregistered providers, such as Mable, are subject to the NDIS Code of Conduct.¹⁷² Safe Work Australia should work with the NDIS Quality and Safeguards Commission to ensure that the burden of regulatory compliance, and legal liability, is not offloaded by platforms such as Mable, nor by the National Disability Insurance Agency or NDIS Quality and Safeguards Commission, to NDIS participants and care workers.
- 5.184 Governments must move to rectify this issue by clarifying the relative and appropriate roles and responsibilities of platforms, and that of care recipients, *before* a tragic incident brings the issue to the fore.
- 5.185 The committee also notes that addressing the issue of safety for platform workers is connected to addressing the broader rights, standards and protections applying to these workers.
- 5.186 Chapter 6 of this report considers Australia's industrial relations system more broadly, and considers options for reform.

Workers' compensation for platform workers

- 5.187 In relation to workers' compensation, the committee agrees that independent contractor status should not be an impediment to accessing state-based workers' compensation schemes.
- 5.188 State governments must modernise their legislation to extend workers' compensation coverage to platform workers and require intermediary businesses to pay premiums. The Commonwealth can support this process through the National Cabinet and other intergovernmental forums.

¹⁷² Ms Samantha Taylor PSM, Registrar, NDIS Quality and Safeguards Commission, Community Affairs Legislation Committee, *Proof Committee Hansard*, p. 71.

Recommendation 4

5.189 The committee recommends that, as a matter of priority, Safe Work Australia develops meaningful, high-level guidelines on the application of the model Work Health and Safety Laws to the on-demand platform (or 'gig') sector. The guidance should be aimed at addressing practices that *incentivise* unsafe behaviour, as well as enforcing compliance with safety rules and obligations. The guidance should not seek to unreasonably circumvent the obligations of on-demand companies through novel interpretations of workers as being a 'person conducting a business or undertaking' (PCBU), particularly when such workers in the on-demand sector are engaged in highly dependent or low-leverage work arrangements.

Recommendation 5

5.190 The committee recommends that the Australian Government urgently clarifies, by way of regulation, which persons or entities owe a duty of care as a person conducting a business or undertaking (PCBU) under the Model Work Health and Safety laws in relation to individual support workers engaged through on-demand platforms like Mable. The law should dictate that:

- a platform that engages individual workers to provide support work under the NDIS or similar schemes, and makes money from the arrangement, is a PCBU and owes a duty of care to that worker, regardless of that worker's work status (employee or contractor), or their visa status; and that
- individual care recipients, such as NDIS participants, are not a PCBU in relation to that worker.

Recommendation 6

5.191 The committee recommends that the Australian Government works with state and territory governments to lead the reform of state-based workers' compensation schemes so that they extend to platform workers, regardless of their visa or work status, and require platform companies to pay workers' compensation premiums for these workers.

Chapter 6

Options for regulatory reform

- 6.1 Some Australian states have indicated they are looking at options for reforming regulation relating to on-demand platform work. However, state governments, including the Victorian government, have acknowledged the Commonwealth's jurisdiction in a number of key areas, and have recommended a national approach, led by the Commonwealth.¹
- 6.2 The Victorian government observed that the Commonwealth 'controls many of the levers to change laws that are relevant to on-demand work'. Relevant Commonwealth legislation includes:
- the *Fair Work Act 2009* (Fair Work Act);
 - the *Independent Contractors Act 2006* (Independent Contractors Act);
 - the *Competition and Consumer Act 2010*, Schedule 3 (Australian Consumer Laws);
 - the *Income Tax Assessment Act 1997*; and
 - the *Superannuation Guarantee (Administration) Act 1992*.²
- 6.3 States maintain primary responsibility for occupational health and safety, workers' compensation and other 'State-specific regulatory functions, such as child employment and long service leave'.³ However, a nationally-coordinated approach to regulation in these areas is also warranted, and changes could be coordinated through the National Cabinet.
- 6.4 Participants in the inquiry proposed a number of options regulating on-demand platform work. The debate among inquiry participants centred around the question of whether platform workers should simply be reclassified as employees and brought under the umbrella of existing industrial relations (IR) protections. Or if the problem lies with regulators 'trying to shoehorn new forms of work into regulations that were designed for old forms of work'.⁴
- 6.5 This chapter considers what changes *may* be required to Australia's legal and regulatory frameworks to better accommodate on-demand platform work for

¹ Victorian Government Department of Premier and Cabinet, *Report of the Inquiry into the Victorian On-Demand Workforce*, June 2020 (Victorian on-demand workforce report), p. 189, <https://engage.vic.gov.au/inquiry-on-demand-workforce> (accessed 13 June 2021).

² Victorian Government, *Response to Victorian On-Demand Workforce Report* (VIC Government response to the on-demand workforce review), 13 May 2021, p. 3, <https://engage.vic.gov.au/inquiry-on-demand-workforce> (accessed 12 June 2021).

³ VIC Government response to the on-demand workforce review, p. 3.

⁴ Mr Ed McManus, Chief Executive Officer, Deliveroo Australia, *Proof Committee Hansard*, 12 April 2021, p. 30.

the future. Proposals from inquiry participants are discussed in detail, including:

- maintaining the status quo;
- expanding the definition of 'employment' and employees' in the Fair Work Act;
- reclassifying platform workers as employees;
- 'third way' proposals, including:
 - a portable benefits fund scheme; or
 - a legislated 'third category' of worker.
- extending rights and minimum standards to contractors, and providing an oversight body; and
- options for sector-specific regulation in the rideshare and disability care sectors.

6.6 The chapter presents the committee's views and a proposed pathway for reform, then ends by briefly considering the issue of government procurement and platform work—a subject the committee intends to explore more fully later on in its inquiry.

Options considered by the committee

Maintain the status quo

6.7 Some inquiry participants argued that the current regulatory arrangements are fit for purpose and should not be changed.

6.8 Ai Group argued that the existing framework 'should not be disturbed', because:

The vast majority of employment and contracting relationships rely on Australia's current workplace relations framework, including the flexibility afforded by the common law tests in determining whether a worker is an employee or an independent contractor. Overly prescriptive laws would stifle innovation to the detriment of businesses, workers and the whole community.⁵

6.9 Ai Group further argued that regulatory reforms that restricted self-employment 'would destroy jobs', as self-employment 'is a popular "aspirational" career choice among many Australians, rather than an insecure or sub-optimal form of work'.⁶

6.10 While claiming that platform work accounts for a tiny percentage of the Australian workforce (0.5 per cent of adult Australians (2015 data from a Grattan Institute paper)), Ai Group contended that platform businesses provide huge economic benefits to Australian industry:

⁵ Ai Group, *Submission 77*, p. 3.

⁶ Ai Group, *Submission 77*, p. 9.

In respect of direct economic benefit, a recent AlphaBeta report identified that food delivery apps from restaurants bring \$2.6 billion of trade to the Australian restaurant industry, of which 70% is incremental.⁷

- 6.11 Ai Group highlighted its role in developing the Independent Contractors Act and said that it 'strongly supports the retention of the common law approach to defining an independent contractor':

The common law is best placed to deal with the distinction between an employee and an independent contractor due to the adaptability of the common law tests, and their ability to deal with a multitude of work and business arrangements.⁸

- 6.12 Ai Group, along with the National Retail Association,⁹ also claimed that 'current sham contracting provisions in the [Fair Work] Act are fair and balanced in protecting employees'.¹⁰
- 6.13 While Ai Group and some other industry bodies argued that the current protections for independent contractors are sufficient, evidence from contractors and their representatives suggested this is not the case.
- 6.14 For instance, the Rideshare Drivers Association of Australia submitted that the Independent Contractors Act 'does not accommodate for the actual "Gig Economy Worker"'.¹¹
- 6.15 The Australian Retailers Association (ARA) contended that it is not 'the role of Government to deliver the functions of an experienced insurance company'. During the pandemic 'the gig economy offered a skills transferable solution to many who were left without jobs', allowing them to 'pivot through engaging in a flexible, on-demand work solution'.¹²
- 6.16 The ARA argued that regulating the gig economy, such as through extending the powers of the Fair Work Commission, 'would have unintended consequences on the retail sector, the opportunity for on-demand work and the broader economy'. The ARA said this would 'deter organisations from offering the same level of flexibility and would no longer afford on-demand workers the same level of autonomy'.¹³

Codify 'employment' and employees' in the Fair Work Act

⁷ Ai Group, *Submission 77*, pp. 10–11.

⁸ Ai Group, *Submission 77*, pp. 13–18.

⁹ National Retail Association, *Submission 29*, p. 8.

¹⁰ Ai Group, *Submission 77*, p. 18.

¹¹ Rideshare Drivers Association of Australia, *Submission 74*, [p. 2].

¹² Australian Retailers Association, *Submission 25*, [p. 2].

¹³ Australian Retailers Association, *Submission 25*, [p. 1].

- 6.17 A number of submitters recommended codifying employment and employees in the Fair Work Act so that courts and tribunals no longer had to rely exclusively on the common law definition.
- 6.18 The Queensland Government recommended that the Australian Government reform the Fair Work Act to 'more adequately accommodate emerging forms of non-traditional employment', by 'broadening the definition of worker and providing broader access to the benefits of collective bargaining, minimum standards of pay and conditions, and access to the Fair Work Commission'.¹⁴
- 6.19 The ARC Gig Cities Research Team submitted that regulation founded on establishing that workers are employees according to the common law test 'will not successfully address precarious work' because this regulation 'can, relatively easily, be avoided'. They suggested that a 'more broad-based test to confer an entitlement to labour rights is necessary if we are serious about mitigating the effects of precarious work'.¹⁵
- 6.20 Maurice Blackburn Lawyers submitted that 'the definition of employee needs to be extended by legislation to be broader than the present definition at common law' and suggested that Australia can look to 'international experience' to 'help inform this process'.¹⁶
- 6.21 The Australian Small Business and Family Enterprise Ombudsman supported this approach, saying:
- Giving legal clarity to the status of those who engage in work through the on-demand economy as either employees or independent contractors is of critical importance in discussions of the on-demand economy. When clarity exists, all parties can understand and work through their rights and responsibilities.¹⁷
- 6.22 The Victorian inquiry ultimately recommended the Fair Work Act be amended to codify work status 'on the face of relevant legislation', rather than relying on common law understandings, including by adopting an 'entrepreneurial worker' category. It also recommended governments encourage platform businesses with significant non-employee, on-demand workforces to seek a work status determination, and suggested those who would not do so voluntarily, be required to; and that regulators proactively intervene to resolve cases of 'borderline' work status.¹⁸
- 6.23 In its response, the Victorian government said it will 'advocate for reforms to the national workplace system, including by encouraging the Commonwealth to

¹⁴ Queensland Government, *Submission 104*, p. 2.

¹⁵ ARC Gig Cities Research Team, *Submission 5*, p. 40.

¹⁶ Maurice Blackburn Lawyers, *Submission 17*, p. 19.

¹⁷ Australian Small Business and Family Enterprise Ombudsman, *Submission 65*, [p. 2].

¹⁸ Victorian on-demand workforce report, pp. 189–206.

amend the Fair Work Act and the Independent Contractors Act to clarify and codify work status. The Victorian Government noted that a possible starting point would be to clarify the work status test, which could potentially be achieved by adopting the 'entrepreneurial worker approach'.¹⁹

- 6.24 This would require 'reviewing and aligning' state laws relating to entitlements, obligations and protections based on work status (such as payroll tax, workplace health and safety and insurance for work injuries) 'to ensure that on-demand workers are consistently and appropriately covered and protected by these laws'.²⁰

Make platform workers 'employees'

- 6.25 A number of inquiry participants argued that low-leveraged platform workers, such as food delivery couriers and disability support workers, should be reclassified as employees, and covered by award wages.

- 6.26 For instance, the Centre for Future Work at the Australia Institute submitted:

As the definition of 'employee' is expanded and clarified, employees, regardless of their employment status (but as distinct from genuine contractors with their own businesses), should be given access to annual leave and sick leave as standard entitlements. As part of this, governments must enable platform (or 'gig') workers to access the same rights, entitlements and income and safety protections as permanent, conventionally employed workers – in other words, clarifying that workers in productive activities which are managed and effectively controlled by a lead business are, in effect, employees of that business.²¹

- 6.27 Most platform providers who use an independent contractor model defended the use of that employment relationship, saying they were keen to work with government to provide better conditions for workers, but did not want to lose the flexibility offered by the current arrangements.²²

- 6.28 These platforms argued that the arrangements they have with their workers are not like an employment relationship, because workers have complete freedom and flexibility. The committee heard contradictory evidence from workers in relation to these claims.

- 6.29 Platform delivery worker, Mr Ashley Moorland said:

... the contract changes are very much unilateral. The company will advise you of an upcoming contract change, but you have no opportunity or

¹⁹ VIC Government response to the on-demand workforce review, p. 8.

²⁰ VIC Government response to the on-demand workforce review, p. 9.

²¹ Australia Institute, Centre for Future Work (Centre for Future Work), *Submission 41*, p. 18.

²² See for instance: Deliveroo, Answers to written questions taken on notice, 29 April 2021 (received 28 May 2021), [p. 6].

recourse to discuss the terms of what that might be. If you don't agree to it then you simply can't work on the platform.²³

6.30 Similarly, delivery driver Mr Estaban Salazar said:

They say that we are subcontractors, but we need to follow all their guidelines in the work. We need to go to the places that they want us to go, at the time that we want us to go, with the food that they give us. All the guidelines are based on their standards, and we are paid by the companies and we are still not called employees. I don't understand why.²⁴

6.31 The Centre for Future Work analysed Uber's Accenture report, which presents detailed findings from a survey of Uber Eats 'delivery partners', and concluded that the 'flexibility' reportedly valued by workers is a kind of 'consolation prize':

Uber Eats relies on a desperate, marginalised workforce that has little access to alternative employment opportunities. That desperation fundamentally shapes these workers' attitude toward the purported 'flexibility' which these jobs provide.²⁵

6.32 Managing Director of Menulog, Mr Morten Belling, stated that he intended to move Menulog in Australia towards an employment model:

We [Menulog] have a different management structure today than we had back in 2018. We have a different strategic vision. We have different philosophies and different values. On the back of that, we have decided to work in the direction of an employment model. This is something we have done in Europe for many, many years already, so we have taken a lot of learnings from Europe for our strategy in Australia.²⁶

6.33 Menulog's parent company, Just Eat Takeaway.com (JET) 'operates either an employment or worker model for couriers' in European markets, where food delivery couriers are either 'employees' (such as in the Netherlands, Germany, Poland, Belgium, France, Italy, Portugal, Israel, Switzerland, Austria, Bulgaria, and Roumania), or 'workers', such as in the United Kingdom:

Regardless of whether they are employed directly or via a third party organisation, all couriers through this model receive a contract, with an appropriate hourly salary, employment insurance, social security (in line with the local legislation) and free to use equipment.²⁷

6.34 Although signalling his firm's intent to become an employer in Australia, and announcing plans to undertake a trial within Sydney's central business district in 2021, Mr Belling submitted that the domestic industrial awards system provides insufficient flexibility, and is one of the main obstacles the sector faces

²³ Mr Ashley Moreland, Private capacity, *Proof Committee Hansard*, 12 April 2021, p. 60.

²⁴ Mr Estaban Salazar, Private capacity, *Proof Committee Hansard*, 12 April 2021, p. 61.

²⁵ Australia Institute, Centre for Future Work (Centre for Future Work), *Submission 41.1*, p. 23.

²⁶ Mr Morten Belling, Managing Director, Menulog, *Proof Committee Hansard*, 12 April 2021, p. 54.

²⁷ Menulog Australia, Answer to question taken on notice, Sydney, 12 April 2021 (received 27 April 2021), [p. 1].

in moving towards employing its workforce. He argued that, given delivery demand can be difficult to predict, the certain 'shift engagement commitments' required under the existing award are problematic.²⁸

6.35 Notwithstanding these obstacles, Mr Belling stated that it was a 'moral' issue, and articulated the importance of transitioning to an employment model for the benefit of Menulog's workers. Specifically he stated that:

... [Menulog] want to go for what we believe is the highest moral standard, which is employment. That is going to give not only fair pay but also the entitlements and the security that the workers out there deserve.²⁹

We hope that in a few years' time all of the workers that are working on the Menulog platform will be employed.³⁰

6.36 Mr Belling said Menulog would work with industry stakeholders, the FWC and the Transport Workers Union (TWU) with the aim of developing an industry award more applicable to the platform food delivery sector. A new award should be more flexible, and may not include requirements for set numbers of hours per week or minimum shift lengths, which are currently set at two to four hours, depending on the award.³¹

6.37 In the meantime, Menulog is working towards 'hiring couriers as part-time employees to start, under the Miscellaneous Award' for the purposes of the Sydney trial.³²

6.38 In contrast to Menulog, Mr Denman from Uber Eats argued that classifying drivers and delivery partners as employees would reduce opportunities in the employment marketplace. Mr Denman cited a move to reclassify Uber Eats delivery partners as employees in Geneva, saying this led to:

... an over 70 per cent reduction in the number of delivery partners who could access that earnings opportunity. We saw the quality of the service and the cost to the end consumer go up as well.³³

6.39 Uber argued that its workers want to be independent contractors, but evidence from workers was contradictory to this position. Mr Salazar said he wanted firstly for workers:

... to be to categorise[d] ... as something better than subcontracting which would give us more rights, at least the basic ones, so that, if we get injured on the roads, we can go to the doctor and have our expenses covered. Also,

²⁸ Mr Belling, Menulog, *Proof Committee Hansard*, 12 April 2021, p. 54

²⁹ Mr Belling, Menulog, *Proof Committee Hansard*, 12 April 2021, p. 56.

³⁰ Mr Belling, Menulog, *Proof Committee Hansard*, 12 April 2021, p. 54.

³¹ Mr Belling, Menulog, *Proof Committee Hansard*, 12 April 2021, pp. 54–56.

³² Menulog Australia, Answers to written questions taken on notice, 29 April 2021 (received 20 May 2021), [p. 10].

³³ Mr Denman, Uber Eats, *Proof Committee Hansard*, 12 April 2021, p. 27.

if we wait in the street for seven hours, we will get reasonable pay and not just the deliveries we do in a day.³⁴

Multiapping

- 6.40 Mr McManus said Deliveroo's riders *want* to remain as independent contractors, because they value the flexibility it provides them, especially the ability to work for multiple platforms.³⁵ Ola said it would not support any policy decision that took away the flexibility offered by the current contractual arrangement it has with its drivers.³⁶
- 6.41 A number of platforms argued that if their workers were classified as employees they would no longer be able to work for multiple platforms.³⁷ Ms Tan added that the ability for drivers to multiapp helps smaller players in the industry.³⁸
- 6.42 The committee heard contrary evidence on whether platforms genuinely support multiapping, with some workers saying they have been directly told not to do it, and reporting that many use multiple mobile phones to avoid platform providers knowing that they are multiapping.³⁹
- 6.43 Hireup disputed the idea that workers must be independent contractors to access work through multiple apps, saying that Hireup workers are employees, engaged under an Award, and these workers are free to sign up to other platforms and access work through those platforms.⁴⁰
- 6.44 The FWC confirmed that employees would not be limited to one app. In its decision on Deliveroo rider, Mr Diego Franco, the FWC said:

Although the traditional arrangements for the performance of work would not have envisaged simultaneous employment for two or more employers, and in many instances the physical performance of work would continue to prevent simultaneous employment occurring, traditional notions regarding the exclusivity necessary for the establishment of an employment relationship require reconsideration. The expressed permission provided by Deliveroo for riders to work for its competitors and to engage in the multi-apping as Mr Franco did, is a factor which points against the existence of an employment relationship. However, in the context of the modern, rapidly

³⁴ Mr Salazar, *Proof Committee Hansard*, 12 April 2021, p. 61.

³⁵ Mr McManus, Deliveroo, *Proof Committee Hansard*, 12 April 2021, p. 29.

³⁶ Ms Ann Tan, Ola Australia, *Proof Committee Hansard*, 12 April 2021, p. 14.

³⁷ Ms Ann Tan, Director and Head of Business Excellence and Legal, Ola Australia, *Proof Committee Hansard*, 12 April 2021, p. 17.

³⁸ Ms Tan, Ola Australia, *Proof Committee Hansard*, 12 April 2021, p. 15.

³⁹ See for instance: Mr Assad Manzoor, Private capacity, *Proof Committee Hansard*, 12 April 2021, p. 65; and Mr Ashley Moreland, *Proof Committee Hansard*, 12 April 2021, p. 61.

⁴⁰ Mr O'Reilly, Hireup, *Proof Committee Hansard*, 12 April 2021, p. 40.

changing workplace, it could not represent a factor that should be construed as preventing the existence of an employment relationship.⁴¹

6.45 Professor Joellen Riley Munton, from the University of Technology Sydney agreed with this view point, providing the example of retail workers who now currently work for two or more retailers, but still enjoy minimum standards and rates of pay.⁴²

6.46 Asked to comment on multiapping, Mr Belling said that Menulog would prefer workers to be 'working exclusively for Menulog' when signed on (once they are employees). Mr Belling said he believed people were only multiapping because they were not making enough money otherwise, and that paying an hourly rate would 'eliminate the need for couriers to be multiapping to the extent you see today'.⁴³ Mr Steven Teoh, Director of Delivery at Menulog, added that in Europe, where couriers are engaged on hourly rates, they do not engage in mutiapping.⁴⁴

6.47 Workers who spoke to the committee supported this assertion, saying:

If we are making enough from one platform, what's the need for us to go anywhere else? The thing is that, by working at one, we cannot make enough weekly earnings. That's why we divide our things, collectively working, with everyone doing alcohol delivery and food delivery and flower delivery. Combined as a whole, we make enough money out of it.⁴⁵

6.48 Mr Manzoor also noted that multiapping tended to leave workers vulnerable, as it meant that individual platforms could argue that their specific platform did not owe any protections to the worker:

Recently, Deliveroo did their scheme where they were giving riders some supplement [due to COVID-19]; they did a whole promotional campaign. Because of that aspect, I applied for relief somewhere, and they said, 'You don't qualify because you are not a regular worker.' Because of my need to fulfil and because they can't provide enough work, I'm going somewhere else, and because of that I am dividing everything up, so sadly, I'm not a full-time worker anywhere anymore, and that goes further against me.⁴⁶

'Third way' proposals

6.49 Various proposals exist relating to a 'third way', or third category of worker. Some involve legislating to create a new category within Australian IR legislation, and others suggest retaining the independent contractor

⁴¹ [2021] FWC 2818, para 118.

⁴² Professor Joellen Riley Munton, Faculty of Law, University of Technology Sydney, *Proof Committee Hansard*, 12 April 2021, p. 51.

⁴³ Mr Belling, Menulog, *Proof Committee Hansard*, 12 April 2021, p. 55.

⁴⁴ Mr Steven Teoh, Director of Delivery, Menulog, *Proof Committee Hansard*, 12 April 2021, p. 55.

⁴⁵ Mr Manzoor, *Proof Committee Hansard*, 12 April 2021, p. 65.

⁴⁶ Mr Manzoor, *Proof Committee Hansard*, 12 April 2021, p. 65.

classification, but providing portable benefits for platform workers. The latter type is generally favoured by gig platforms.

Portable benefits fund

6.50 Uber and other gig economy companies have been advocating for governments who want to regulate to adopt a 'third way' approach to regulation, rather than trying to have contractors reclassified as employees. CEO of Uber Technologies Inc., Uber Australia's parent company, Mr Dara Khosrowshahi, wrote an opinion piece for the *New York Times*, in August 2020, in which he said:

Our current employment system is outdated and unfair. It forces every worker to choose between being an employee with more benefits but less flexibility, or an independent contractor with more flexibility but almost no safety net. ... There has to be a 'third way' for gig workers, but we need to get specific, because we need more than new ideas—we need new laws. Our current system is binary, meaning that each time a company provides additional benefits to independent workers, the less independent they become. That creates more uncertainty and risk for the company, which is a main reason why we need new laws and can't act entirely on our own.⁴⁷

6.51 Mr Khosrowshahi's proposition would see companies put money into a fund from which workers would take 'cash that they can use for the benefits they want, like health insurance or paid time off'. A worker's entitlements in the fund could be transferable between gig companies:

Had this been the law in all 50 states, Uber would have contributed \$655 million to benefits funds last year alone. Taking one example, we estimate that a driver in Colorado averaging over 35 hours per week would have accrued approximately \$1350 in benefits funds in 2019. That's enough to cover two weeks of paid time off, or the median annual premium payment for subsidized health insurance available through an existing Uber partnership.⁴⁸

6.52 Mr Dominic Taylor, General Manager of Uber Australia, was asked if Uber Australia supported this proposition for Australia. Mr Taylor replied that Uber is keen to 'work with government' but doesn't believe flexibility should be traded off for worker protection:

We want to enhance the protections in the gig economy. That's why we're very clear that we are keen to sit down. The portable benefits that have been suggested are one option. There are many options on the table, and we're really excited to work with the committee and, most importantly, to listen to drivers to understand what the right benefits are here in Australia to

⁴⁷ Dara Khosrowshahi, 'Opinion: I Am the C.E.O. of Uber. Gig Workers Deserve Better.' (Gig workers deserve better), *The New York Times*, 10 August 2020, www.nytimes.com/2020/08/10/opinion/uber-ceo-dara-khosrowshahi-gig-workers-deserve-better.html (accessed 13 June 2021).

⁴⁸ Dara Khosrowshahi, Gig workers deserve better, *The New York Times*, 10 August 2020.

improve the quality of work in the gig economy whilst retaining that flexibility.⁴⁹

6.53 Mr Taylor said Uber supported the idea of a portable benefits scheme, as long as the benefits were 'proportional to the work being done' and allowed workers to 'retain flexibility'.⁵⁰

6.54 As previously discussed, a number of platforms provide selected 'employee-like' benefits to their contractors. However, as these are provided voluntarily by platforms, they can be withdrawn at any time, as seen when Ola stopped providing accident coverage for drivers in June 2020 for financial reasons.⁵¹

6.55 Asked if Ola would support a legislated benefits fund for drivers in the gig economy, which would provide portable sick leave benefits, compensation, and insurances, Ms Tan replied:

We haven't considered any of that at this stage for Australia. We made a conscious decision when coming into this country to take a lower commission from our drivers. That enabled the take-home pay of our drivers to be more. That provided more income to the drivers in terms of making sure that they could fund their own entitlements.⁵²

6.56 Mr Belling said that while Menulog conducts a trial with a view to engaging workers as employees, it will also work with its current pool of contractors to provide better conditions and entitlements; 'to see how we can bridge the gap between the contractor model and the employee model'.⁵³

Legislated third category of worker

6.57 Others have suggested the 'third way' approach should be like that adopted in Spain and Canada, where the category of 'dependent contractor' provides some labour law protections, but less than those enjoyed by 'employees':

Under this concept, when workers earn a certain portion of their income from a single company—75% in Spain and as high as 80% in Canada—and meet certain other criteria, they are provided intermediate protections and benefits such as notice of termination, collective bargaining and minimum rest periods that stop short of what employees are entitled to. Companies

⁴⁹ Mr Dominic Timothy Taylor, General Manager, Uber Australia, *Proof Committee Hansard*, 12 April 2021, p. 16.

⁵⁰ Mr Taylor, Uber, *Proof Committee Hansard*, 12 April 2021, p. 16.

⁵¹ Ms Tan, Ola Australia, *Proof Committee Hansard*, 12 April 2021, p. 9.

⁵² Ms Tan, Ola Australia, *Proof Committee Hansard*, 12 April 2021, p. 10.

⁵³ Mr Belling, Menulog, *Proof Committee Hansard*, 12 April 2021, p. 54.

aren't required to pay benefits for someone who works only sporadically to supplement other income.⁵⁴

6.58 Mr James Farrar, from the UK-based App Drivers and Couriers Union, argued that 'a "third way" already exists in the UK', but Uber have fought against it in courts. Mr Farrer described Uber's promotion of a 'third way' in the United States as 'disingenuous', when it has spent five years and millions of dollars fighting to avoid having its drivers classified as 'workers' in the UK—a third category between 'independent contractor', and 'employee', which provides some labour protections, but not others.⁵⁵

6.59 Deliveroo was in favour of a third category, 'a third way, employee-like'. Mr McManus said that Deliveroo is promoting the idea of a 'Future Work Act', which would establish:

... a new form of classification, a reform of the industrial relations laws— what might be called a [future] work act, but that's just an umbrella term— that would allow us to maintain the flexibility, the ability for riders to work for multiple platforms, which is what they want, but that would also allow us, which would not be straightforward, to think about benefits such as sick leave, annual leave et cetera.⁵⁶

6.60 Asked if she supported the idea of a 'third category' of employment, Ms Tan said that Ola would 'welcome any policy positions that would result in a better outcome for our drivers and at the same time maintain a level playing field for the industry'. However, Ms Tan emphasised Ola's view that drivers want flexibility and value the ability to work across multiple platforms simultaneously.⁵⁷

6.61 Asked if the TWU believed a 'new category of worker' was required in Australian industrial relations law, National Secretary, Mr Michael Kaine said:

We are against a new category. We think that establishing a new category by reference to what's occurred overseas simply provides a roadmap for avoidance. ... We say that there needs to be a more flexible system, a system that is attuned to the flexibility that the system requires—that is, delivery on demand and rideshare on demand—but is attuned to the level of dependency that still exists in that relationship.⁵⁸

⁵⁴ Steve Westly, 'Westley: A third way for Uber drivers', *The Press Democrat*, 2 December 2019, <https://infoweb.newsbank.com/apps/news/document-view?p=AWNB&docref=news/17799B1ECE4AA160&f=basic> (accessed 12 June 2021).

⁵⁵ Tim Smith, 'The Europeans rethinking the gig economy model', *sifted*, 21 January 2021, <https://sifted.eu/articles/rethinking-the-gig-economy/> (accessed 13 June 2021).

⁵⁶ Mr McManus, Deliveroo, *Proof Committee Hansard*, 12 April 2021, pp. 29–31.

⁵⁷ Ms Tan, Ola Australia, *Proof Committee Hansard*, 12 April 2021, p. 10.

⁵⁸ Mr Michael Kaine, National Secretary, Transport Workers Union (TWU), *Proof Committee Hansard*, 12 April 2021, pp. 2–3.

- 6.62 Professor Riley Munton noted that some opponents argue any 'third way' proposal would fail to provide sufficient protections for workers. However, Professor Riley said it is important that all workers have legally protected fundamental rights and safeguards, including minimum safety standards and that they are 'paid properly for their work'.⁵⁹
- 6.63 The TWU cautioned against the introduction of a separate third category of worker, saying it would 'invite corporations to devise new arrangements and platforms of work that fall outside that classification', and could also 'result in employees who are currently correctly classified' being 'reclassified into an inferior class of workers'. Instead, the TWU proposed establishing a tribunal 'to determine forms of work based on varying degrees of dependency'.⁶⁰

Extending rights and minimum standards to contractors

- 6.64 The TWU argued that 'workers in "employment-like" contracting relationships' should not 'denied access to any rights and entitlements'. This is not only unfair, but leads to outcomes such the current 'concerning trends among dependent workers in the transport sector'.⁶¹
- 6.65 The TWU explained that it has worked with government industry since its establishment to design 'innovative, effective and flexible regulatory frameworks for workers in dependent contracting arrangements' and recommended that this approach be applied in the platform sector:
- This approach, which centres around the extension of minimum rights, entitlements and protections to workers across the spectrum of work, currently exists for parts of the transport industry in NSW (through Chapter 6 of the *Industrial Relations Act 1996* (NSW)) and has enjoyed bipartisan support for decades.⁶²
- 6.66 The Institute of Employment Rights suggested extending employment rights to all workers, saying that Australia's current work health and safety laws 'provide a good example and demonstrate an effort to extend protection beyond the confines of the employment relationship'.⁶³
- 6.67 One model, recommended by the TWU, is the establishment of a national tribunal to assess and oversee non-standard employment relationships, such as those employed by Uber and other platform providers. Mr Kaine said a tribunal would assess 'the level of dependency between workers and those who engage them'. It would then assign the 'rights and protections that are appropriate for

⁵⁹ Professor Riley Munton, UTS, *Proof Committee Hansard*, 12 April 2021, p. 51.

⁶⁰ TWU, *Submission 39*, p. 47

⁶¹ TWU, *Submission 39*, p. 35.

⁶² TWU, *Submission 39*, p. 7.

⁶³ Institute of Employment Rights, *Submission 6*, p. 40.

the Australian context'. Mr Kaine said this model is currently working in New South Wales in 'the stable owner driver market'.⁶⁴

- 6.68 According to the TWU, Chapter 6 of the NSW Industrial Relations Act 'moves beyond the failed binary employment divide to extend rights and entitlements to Owner Drivers'. It does this using Contract Determinations, which are like industry awards, and Contract Agreements, which are like collective agreements. Chapter 6 also provides dispute resolution, 'including the ability to challenge the unfair termination of a contract', and the right to be represented, along with an enforcement regime through the NSW Industrial Relations Commission:

Often the simple knowledge that an independent body has the power to arbitrate a dispute, make a contract determination or remedy an unfair dismissal prevents disputes from occurring in the first place.⁶⁵

- 6.69 The TWU noted that this model has some failings—from lack of enforcement mechanism, to definitional issues—but that these could be avoided in new models.⁶⁶
- 6.70 Mr Kaine said a national tribunal could 'get to the heart of the causes that lead to the safety consequences' by looking at the pressures faced by riders and drivers in the food delivery and rideshare sectors. The tribunal would assess the appropriate classification, 'rights, protections and obligations' to be applied to the relationship, based on the level of dependency.⁶⁷

Portable entitlements for contractors

- 6.71 Another option floated was extending portable entitlements schemes to contractors. The McKell Institute Victoria argued for:

... the expansion of portable entitlement schemes via industries and leave types, administered in a way similar to our successful superannuation system and existing approved workers entitlement funds. ... Portable entitlements follow the employee, ensuring an ongoing safety net for more workers. This benefit could also be extended via a portable entitlements scheme to contractors who currently don't have access to the rights of employees, including paid leave.⁶⁸

- 6.72 The model proposed by the McKell Institute Victoria would be regulated and require employers to pay 'an amount (or credit) into a central fund ... equivalent to designated leave accumulated by workers over the period', generally 'on a pro-rata basis, at regular intervals'. Workers would then be able to 'draw down'

⁶⁴ Mr Kaine, TWU, *Proof Committee Hansard*, 12 April 2021, p. 3.

⁶⁵ TWU, *Submission 39*, pp. 37–38.

⁶⁶ TWU, *Submission 39*, pp. 38–39.

⁶⁷ Mr Kaine, TWU, *Proof Committee Hansard*, 12 April 2021, p. 7.

⁶⁸ McKell Institute Victoria, *Submission 86*, p. 5.

on their account balances to take leave, as well as being entitled to appropriate severance benefits.⁶⁹

Greater role for the Fair Work Commission

6.73 Some participants suggested that this kind of 'tribunal role' could be fulfilled by the FWC. Professor Riley Munton said the FWC's role should be extended to allow it to adjudicate in matters relating to 'all kinds of work', not just formal 'employee' relationships. Professor Riley Munton said on-demand platforms are increasingly making it 'very difficult' to determine who fits into the traditional employee model, and suggested:

... rather than continue to agonise over who fits within that test and who doesn't and leave those who don't in an unregulated wilderness, we ought to look at work that's performed and we ought to provide oversight of work and oversight of workplace disputes by an appropriate body. We have that body already in the Fair Work Commission, and I would like to see the Fair Work Commission's brief extended to include all kinds of work.⁷⁰

6.74 The current role of the FWC includes 'setting modern award wages and conditions, including those for part-time and casual employees'. Employees, employers and registered organisations, including unions, 'can apply to the FWC to vary terms of a modern award'.⁷¹ However, the FWC is currently unable to make orders in relation to arrangements that are not employment relationships.

6.75 The Australian Small Business and Family Enterprise Ombudsman (Ombudsman) submitted that, as well as issues to do with a lack of clarity around legal status, there is 'a need for more effective internal dispute resolution processes within the on-demand economy'. The Ombudsman reported that its assistance team 'regularly deals with disputes between platforms and their small business 'partners'', with the most common disputes relating to 'a small business partner being issued with a temporary or permanent ban from the platform for a breach of guidelines or conditions'. These issues are compounded by, a 'lack of transparency around reasons for a ban', and 'a lack of right to appeal or effective dispute resolution services'. The Ombudsman recommended:

These employees and/or small businesses would benefit greatly from more structured and accessible dispute resolution service and avenues of communication with the relevant platforms to quickly resolve their issues.

⁶⁹ McKell Institute Victoria, *Submission 86*, p. 6.

⁷⁰ Professor Riley Munton, UTS, *Proof Committee Hansard*, 12 April 2021, p. 49.

⁷¹ Attorney-General's Department, Department of Education, Skills and Employment and Department of Industry, Science, Energy and Resources (Joint Federal Government submission), *Submission 75*, p. 22.

This would allow them to get back to work quicker, or entirely avoid unnecessary interruptions to work.⁷²

- 6.76 Professor Paula McDonald, from the Queensland University of Technology Business School, said that 'decades of research' demonstrates that single workers acting alone are rarely able to secure good outcomes, and are often left without adequate protections:

There are still occupational groups that enjoy protections from having a high degree of collective representation, and there are other cohorts and occupations that do not enjoy such benefits. If we think about young people, for example, in tourism, hospitality, retail et cetera, there are really low rates of unionisation and hence problematic opportunities for them to exercise [their] voice in a way that doesn't personally disadvantage them in the workplace or such that no punitive consequences come as a response.⁷³

- 6.77 Several submissions suggested multi-company, sector, or industry-wide collective bargaining arrangements with a robust mediator (such as the FWC) as one way to better conditions for workers, while ensuring a level playing field for platform providers.⁷⁴

- 6.78 Professor Riley Munton said the Australian IR system has a successful history 'of conciliation and arbitration of industrial disputes going back 100 years', and that Australia is 'expert at setting up a tripartite tribunals ... to find appropriate solutions to the particular patterns of work that are done'. A 'fresh division' of the FWC could oversight work that is mediated through on-demand platforms, including work that 'does not fall within the employment category but nevertheless is work that needs that level of oversight'.⁷⁵

- 6.79 Professor McDonald was 'not sure that it would be feasible to put all of these responsibilities in the Fair Work Commission':

I mean, there are layers of government and institutions which sit alongside but not directly in relation to the labour market. I don't think there's a one-size-fits-all or a one-stop shop to address these multiple and competing challenges that are causing greater precarity and insecurity in work. We need all of the players to come together and work together towards innovative solutions.⁷⁶

⁷² Australian Small Business and Family Enterprise Ombudsman, *Submission 65*, [p. 2].

⁷³ Professor Paula McDonald, Professor of Work and Organisation, Queensland University of Technology Business School (QUT), *Proof Committee Hansard*, 10 June 2021, p. 12.

⁷⁴ Dr James Stanford, Economist and Director, Centre for Future Work, Australia Institute, *Proof Committee Hansard*, 20 April 2021, p. 49; Mr Ben Redford, Director, Strategic Power, United Workers' Union, *Proof Committee Hansard*, 20 April 2021, pp. 55–57; Ms Julie Toth, Chief Economist, Australian Industry Group, *Proof Committee Hansard*, 21 April 2021, p. 28; Centre for Future Work, *Submission 41*, p. 21; TEACHO Ltd, *Submission 52*, p. 39.

⁷⁵ Professor Riley Munton, UTS, *Proof Committee Hansard*, 12 April 2021, p. 52.

⁷⁶ Professor McDonald, QUT, *Proof Committee Hansard*, 10 June 2021, p. 11.

Sector specific regulation for rideshare

- 6.80 Witnesses raised options for adopting sector-specific regulation in the rideshare sector, which has traditionally been associated with independent contractor models.⁷⁷
- 6.81 The TWU said the majority of workers in the platform sector are 'being forced to risk their lives or livelihoods to get by', and are engaged 'in some of the most exploitative arrangements today'.⁷⁸ However, this situation can be addressed through innovative regulatory agreements.
- 6.82 While drivers in the rideshare sector may be ambivalent about whether or not they would want to be employees or independent contractors, with the TWU survey finding just under half wanted to be employees, the majority wanted better conditions. According to the TWU's survey, 72.3 per cent of drivers surveyed wanted penalty rates for nights, weekends and public holidays; 64 per cent wanted 'access to a minimum wage'; 64 per cent wanted workers compensation insurance; and 80 per cent of drivers believed they 'should be able to form a union to collectively represent their interests'.⁷⁹
- 6.83 Mr Kaine explained that, while many taxi drivers are independent contractors, they have traditionally had *some* protections. Mr Kaine said that a key feature of the taxi market has always been that it is a 'limited market', with 'a limited number of licences available', which provides an opportunity for workers 'to maximise earnings'. Mr Kaine said that Uber and the other apps operate differently, with an 'actual intention ... to flood as many people onto the app as possible so that there's always someone doing the work at the lowest possible price'.⁸⁰
- 6.84 Mr Kaine said that New York has restricted the number of drivers that are allowed to register with Uber, and combined this with 'a minimum payments system', which has 'gone a reasonable way to making some positive reform in that market'.⁸¹
- 6.85 The committee heard evidence about the New York model from Dr Michael Reich, Chair of the Centre on Wage and Employment Dynamics at the

⁷⁷ The TWU submitted: 'Approximately 50% of the road transport industry is made up of selfemployed 'owner drivers', transport workers who own their own vehicle and perform work in precarious and often highly dependent contracting arrangements'. TWU, *Submission 39*, p. 4.

⁷⁸ TWU, *Submission 39*, p. 7.

⁷⁹ TWU, *Submission 39*, p. 16.

⁸⁰ Mr Kaine, TWU, *Proof Committee Hansard*, 12 April 2021, p. 2.

⁸¹ Mr Kaine, TWU, *Proof Committee Hansard*, 12 April 2021, p. 2.

University of California, Berkeley, and Mr Rodney Stiles, former assistant commissioner at the New York City Taxi and Limousine Commission (TLC).⁸²

- 6.86 Dr Reich explained that he and another academic were hired by the New York TLC to conduct research using data from rideshare companies, and create 'a pay standard that not only set a certain level of pay but also created an incentive for the companies to not put so many drivers on the road and to better utilise the drivers'. The policy was put into effect in February 2019, and its outcomes recently reviewed.⁸³
- 6.87 The policy involved setting a minimum pay rate 'per mile', which was designed to cover their driving expenses, and 'a certain amount per minute', designed to 'earn them a minimum wage above those expenses that they have to pay out of pocket'. At the same time, a cap was introduced on the number of vehicles allowed in the market, because, Mr Stiles said; 'if the companies aren't required to make minimum payments, they are incentivised to oversupply the market'.⁸⁴
- 6.88 Mr Stiles said that during the first year that the policy was in place, 'driver pay increased by hundreds of millions of dollars', and, while passenger fares increased, this was 'not out of line with national trends'. Mr Stiles added that; 'passenger wait times actually decreased, which goes against what they had predicted. Passenger service was actually better despite the driver pay increase'.⁸⁵
- 6.89 Dr Reich confirmed that his research demonstrated a modest fare increase between 5 and 10 per cent after the introduction of the pay standard, but said this was in line with increases seen in other cities which had not introduced regulation over the same period.⁸⁶
- 6.90 Drivers in the TWU's driver survey commented on the issue of drivers flooding the market, with one driver saying; 'Uber should not be allowed to keep registering drivers when the drivers they already have can't make a living'.⁸⁷
- 6.91 Asked if Uber would support a minimum pay standard in Australia, Mr Taylor said that Uber may support a standard that applied to 'engaged time'—the time between accepting and completing a trip—but would *not* support 'putting

⁸² *Proof Committee Hansard*, 20 April 2021, p. 1.

⁸³ Dr Michael Reich, Private capacity, *Proof Committee Hansard*, 20 April 2021, p. 1.

⁸⁴ Mr Rodney Stiles, Private capacity, *Proof Committee Hansard*, 20 April 2021, pp. 2–4.

⁸⁵ Mr Stiles, *Proof Committee Hansard*, 20 April 2021, p. 2.

⁸⁶ Dr Reich, *Proof Committee Hansard*, 20 April 2021, p. 4.

⁸⁷ TWU, *Submission 39*, p. 16.

minimum rates in place that includes wait time', because that would require Uber to roster drivers on 'fixed shifts in fixed places'.⁸⁸

6.92 Deliveroo was not in favour of regulated minimum rates. Mr McManus said this is not what drivers want, as 'drivers see regulated rates as maximum rates'.⁸⁹ However, unlike Uber, Deliveroo reported that it already limits the number of riders it onboards 'based on customer demand', as a way of protecting earnings for riders.⁹⁰

6.93 One argument advanced against a minimum pay standard is that it would prevent drivers from multiapping. Mr Stiles explained that New York TLC model was designed to allow for multiapping:

We wanted to make sure that our policy could address that, and we knew that one of the criticisms, if we targeted it to logged-on hours, is that drivers would be double-paid for time they were logged into, say, both Uber and Lyft. So what we did is we looked at the log-on time and we counted the amount of time where drivers were logged into both Uber and Lyft and basically deduplicated that. If you had spent an hour logged into Uber while logged into Lyft and you counted it separately, it'd be two hours, but we made sure it was just one hour and then looked at overall utilisation, so that ratio of trip time to log-on time, after we had done that. We calculate the per-trip rate per company, reflecting the dual-apping that happened, so they get the benefit of the increased utilisation of drivers when you look at them holistically, including the time they spent on other apps. So that was a key part of how we actually defined the policy.⁹¹

6.94 Uber advocated for retaining the independent contractor model in rideshare, but introducing minimum standards for safety. This would be done through regulation, developed in consultation with industry.⁹²

6.95 The TWU said that, if 'done right', the flexible work arrangements offered by contractor models in the rideshare sector 'can present many benefits to Australian workers and the broader economy':

TWU represents 20,000 owner drivers today, many of who enjoy flexible arrangements along with sustainable and safe standards of work which are set through collective agreements or through state-based industrial instruments designed to confer minimum rights, entitlements and protections.⁹³

⁸⁸ Mr Taylor, Uber, *Proof Committee Hansard*, 12 April 2021, p. 20.

⁸⁹ Mr McManus, Deliveroo, *Proof Committee Hansard*, 12 April 2021, p. 31.

⁹⁰ Ms Julia Duck, Head of Operations, Strategy and Performance, Deliveroo Australia, *Proof Committee Hansard*, 12 April 2021, p. 32.

⁹¹ Mr Stiles, *Proof Committee Hansard*, 20 April 2021, p. 5.

⁹² Mr Taylor, Uber, *Proof Committee Hansard*, 12 April 2021, pp. 17–18.

⁹³ TWU, *Submission 39*, p. 7.

Committee view

The on-demand platform sector

- 6.96 Information technology platforms provide many benefits for businesses and consumers, and have the potential to facilitate positive working relationships. However, many of the potential benefits of these emerging forms of work are being offset by negative impacts caused by unsafe practices and exploitative arrangements.
- 6.97 The image of the independent, entrepreneurial sole trader using the platforms to his or her advantage, enjoying the opportunities, freedom and flexibility they provide, must be seen against the real-life experience of the sector for many of its participants. In reality, the gig economy is made-up of thousands of low paid workers, many from vulnerable backgrounds, juggling gigs through multiple apps to scrape together a meagre living.
- 6.98 What is most concerning is that these workers do not have the rights, benefits and protections afforded to other workers in Australia. This is not just unfair to those individuals, it has broader social and economic implications, that impact all Australians.
- 6.99 Australia is a country with a proud history of providing fair and reasonable rights and conditions at work. Governments, industry, workers and their representatives have worked together to ensure minimum standards of safety, fair pay, and reasonable conditions for workers, and to promote the creation of secure jobs.
- 6.100 This is not simply the right and fair thing to do, it is good for the economy and good for society as a whole. As noted by the Centre for Future Work, government policy should be designed 'to support a sustained recovery in quality, reliable jobs: an economy and society which Australians can rely on to build stable lives'.⁹⁴
- 6.101 Australia's industrial relations (IR) regime, captured in the *Fair Work Act 2009* and our system of industrial awards, may not be perfect, but it provides a safety net, lays out expectations and offers dignity to all employees in Australia. However, it only applies to 'employees'. Australia's other main category of workers—independent contractors—do not enjoy its protections.
- 6.102 The on-demand platform sector—known as the 'gig economy'—has laid bare a legal and moral 'grey area' that already existed in Australia's binary IR system. Workers in the sector are difficult to classify, as evidenced by the number and variety of cases that have come before the Fair Work Commission, Fair Work Ombudsman and Australian courts, and their outcomes—some of which have seemed contradictory.

⁹⁴ Centre for Future Work, *Submission 41*, p. 21.

6.103 Moreover, the sector is characterised by questionable practices and arrangements. Evidence to this inquiry, and a number of previous inquiries, shows unacceptable outcomes for platform workers and their families in terms of safety, security, fair treatment and reasonable remuneration.

The need to regulate

6.104 Platform companies have drafted increasingly complex legal and contractual agreements, jumped through legal and regulatory hoops, and invested heavily in defending cases and paying settlements. They have done this to maintain the position that their workers are independent contractors, despite significant evidence demonstrating a high level of dependence and control in many parts of the sector.

6.105 Governments cannot continue to rely on courts and tribunals to resolve the current issues in on-demand platform work. Neither is it acceptable to leave states and territories to 'go it alone', putting together a patchwork of regulation that adds further complexity around the nation.

6.106 Those who argue against national regulation generally say it will stifle the sector, on the one hand, and that the gig economy is insignificant, on the other.

6.107 The committee is not convinced by either argument. Gig work is not simply an insignificant part of the economy, characterised by people earning a few dollars in their spare time. Reliable evidence shows that a significant number of people rely on this income, and this cohort is expanding.

6.108 While reliable data is difficult to obtain, it is clear that the sector is growing. Platforms that facilitate on-demand work are now delivering everything from alcohol to flowers, and are moving into new sectors, such as parcel delivery. There are suggestions that large multinationals will seek to expand the model into freight and trucking very soon.

6.109 The potential for this model to become more widespread in the disability and care sectors is also of concern to the committee. This is especially significant due to the size of the workforce, the fact that it is already low paid and female-dominated, the complexity and risks associated with care work, and the importance of this workforce to Australian society and the economy.

6.110 The Commonwealth must move to regulate in order to protect secure, high quality jobs for the future.

Problems with the current regime

6.111 The current binary divide in Australia's regulatory system means that workers who are not classified as employees essentially 'fall off a cliff', into an unregulated wilderness where they can be exposed to exploitative contract conditions and work practices, and have little recourse or right of appeal.

- 6.112 Australia's small business and contractor regulations provide little-to-no protections for these workers; they are inaccessible, inappropriate and not fit-for-purpose. The idea that a delivery driver, working 15 hours per week on the Uber Eats platform, and 10 hours per week for Deliveroo, is going to have the resources to lodge a case against unfair contract provisions under the *Independent Contractors Act 2006* is inconceivable.
- 6.113 The Independent Contractors Act is not designed to protect contractors, but to prevent state governments acting unilaterally to extend rights and protections to independent contractors.
- 6.114 Like the Independent Contractors Act, current small business remedies provide insufficient and inappropriate support for platform workers. These remedies require platform workers to *individually* fight for better contract conditions, and impose no penalties on platforms for including unfair conditions in their contracts. What's more, evidence clearly shows that gig workers are not accessing these remedies.
- 6.115 The committee does not support legislation designed to prevent workers who are contractors from being granted fair rights and protections. However, the committee *does* support a coordinated national approach to regulation in the on-demand platform sectors.
- 6.116 Platform workers need accessible avenues for dispute resolution, a place where they can have their arrangements and work status (where applicable) reviewed, and avenues to collectively negotiate for better pay and conditions.

A pathway to reform

- 6.117 The committee believes all workers in Australia have a fundamental right to enjoy safe and fair working conditions and to be fairly remunerated for their labour. In addition, superannuation and workers' compensation must be extended to workers in gig economy.
- 6.118 It should not matter what manner of company engages a worker, or if the workers is classified as an employee, or independent contractor, all workers should have access to minimum standards of safety, fair pay and conditions. This includes workers' compensation and minimum rates.
- 6.119 There are a variety of work arrangements in the Australian economy—a spectrum with varying degrees of dependency. The committee suggests that the level of 'dependency' provides a useful metric for understanding working arrangements, and determining the rights and obligations applicable to the relationship.
- 6.120 Noting that this is the committee's interim report, and more evidence will emerge during the course of the inquiry, the committee makes a number of preliminary recommendations for reform.

6.121 These recommendations propose that the Commonwealth Government move to:

- provide greater clarity to courts and tribunals in determining work status;
- create a pathway to collect critical information from platform companies about their arrangements;
- establish an arbiter to adjudicate in disputes around work status and make work status determinations;
- expand the remit of the Fair Work Commission so that it may resolve disputes and make orders for minimum standards and conditions in relation to all forms of work; and
- establish an accessible low-cost national tribunal to oversee non-standard employment relationships involving low-leveraged independent contractors.

6.122 The committee will continue to speak with stakeholders around Australia as the inquiry progresses may add to or refine these recommendations in its final report.

Recommendation 7

6.123 **The committee recommends that the Australian Government expands the definitions of 'employment' and 'employee' in the *Fair Work Act 2009* to capture new and evolving forms of work. In addition to an expanded definition of 'employment' and 'employee' under the Fair Work Act, there should be a mechanism by which the Fair Work Commission can extend coverage of those rights when necessary to workers falling outside the expanded definition of employment, including low-leveraged and highly dependent workers so they can be provided with standards and protections under the Act.**

Recommendation 8

6.124 **The Committee recommends that the Australian Government investigates options for a Federal regulator to be empowered to request data from platforms that employ and contract workers, including:**

- **pay rates;**
- **hours worked;**
- **other conditions governing that work; and**
- **other relevant information needed to appropriately monitor safety, competition and labour rights.**

Recommendation 9

6.125 **The committee recommends that the Australian Government gives the Fair Work Commission (FWC) broad powers to resolve disputes and make orders**

for minimum standards and conditions in relation to all forms of work. The expanded remit of the FWC would include:

- adjudicating in cases where there is a dispute in relation to the appropriate status of workers;
- setting binding minimum standards and conditions in relation to non-standard forms of work, regardless of employment status; and
- the capacity to resolve disputes (including where necessary through binding decisions) in a low-cost and effective manner.

The FWC should be empowered to make determinations and orders for groups and categories of workers, not just individuals.

Recommendation 10

6.126 The committee recommends that the Australian Government empowers the Fair Work Commission (FWC) to provide pathways to permanency via arbitrations for casual conversion. Any disputes with regards to work status, contractual arrangements, or casual conversion should be able to be arbitrated via a low-cost, accessible process, whether via the FWC or another body, to ensure workers are able to practically enforce their rights, and both workers and employers can have matters adjudicated quickly.

Recommendation 11

6.127 The committee recommends that the Australian Government provide greater protections for independent contractors who are sole traders by establishing an accessible low-cost national tribunal to advise on, oversee, and make rulings relating to employment relationships involving low-leveraged independent contractors, such as those in the rideshare and other platform sectors.

Sector specific regulation for NDIS-funded workers

6.128 In relation to the NDIS, witnesses acknowledged that there is a place for *genuine* independent contractors in the disability care sector. Examples provided included specialists, like a physiotherapist running their own business and providing specialised care under the NDIS.⁹⁵

6.129 However, Hireup's Chief Executive Officer, Mr Jordan O'Reilly said that he believes 'disability support workers typically are working as employees', as opposed to running their own businesses. The problem arises because there is a lack of clarity around who is genuinely in business for themselves, and who is essentially working as an employee without benefits and protections:

... we need a clear definition of whether support workers are genuinely running their own small businesses the majority of the time or whether

⁹⁵ Mr Peter Scutt, Chief Executive Officer, Mable, *Proof Committee Hansard*, 12 April 2021, p. 43.

they're working as employees. There should be simple mechanisms to determine whether people are employees or not.⁹⁶

6.130 A 2019 Department of Social Services' report on growing the NDIS market supports Mr O'Reilly's belief, saying approximately 71 per cent of 'newly created jobs [in the sector] are expected to be [low-skilled] support worker roles'.⁹⁷

6.131 Mr O'Reilly cautioned that if the government does not move to regulate in this area, 'that's where the future will go—more and more independent contractors working in the disability sector', and the loss of stable, permanent jobs.⁹⁸

6.132 Participants were asked whether the disability and aged care sector is *appropriate* for a gig worker model. Professor McDonald said she believes it not:

No, I don't think it is. I think there are a range of really fundamental problems there. There's the issue of time and pay, which I just talked about. There's the issue of a lack of regulation around worker health and safety. ... That's, of course, around psychological safety as well as physical safety. So it's cowboy territory in my mind. We're talking about the care of the most vulnerable people in our society, and that demands a framework of protections for both workers and the people who are being cared for.⁹⁹

6.133 Ms Natalie Lang, Secretary of the Australian Services Union (ASU) suggested that the 'solution' in relation to regulating platform work in the disability care sector is 'quite simple'—the government should 'regulate the market to require that money is spent accordingly':

It really is quite fraudulent to take funds from the Australian taxpayer for the provision of services at a particular level with an expectation of how the work is performed, the skills and attributes of those workers and the pay and conditions of those workers and then not pass it on accordingly to the workforce.¹⁰⁰

6.134 Ms Lang said this could be achieved by regulating to provide that all workers engaged to provide support services using NDIS funding are covered by the Social, Community, Home Care and Disability Services Industry Award.¹⁰¹

6.135 Many NDIS workers are engaged in insecure work, across multiple sites and employers. Ms Lang suggested that the NDIS should be viewed as 'an entire

⁹⁶ Mr Jordan O'Reilly, Chief Executive Officer and co-Founder, Hireup, *Proof Committee Hansard*, 12 April 2021, pp. 39–40.

⁹⁷ Department of Social Services, *Growing the NDIS Market and Workforce*, 2019, p. 15.

⁹⁸ Mr O'Reilly, Hireup, *Proof Committee Hansard*, 12 April 2021, p. 40.

⁹⁹ Professor McDonald, QUT, *Proof Committee Hansard*, 10 June 2021, p. 13.

¹⁰⁰ Ms Natalie Lang, Secretary, Australian Services Union (ASU), *Proof Committee Hansard*, 12 April 2021, p. 3.

¹⁰¹ Ms Lang, ASU, *Proof Committee Hansard*, 12 April 2021, p. 4.

scheme'¹⁰² and presents an opportunity for the government to 'pilot what portable entitlements, such as portable long service leave, could look like at a national level'. Noting that portable long service leave entitlements schemes are in place in smaller jurisdictions, such as in the Australian Capital Territory, Queensland and Victoria,¹⁰³ Ms Lang said these schemes have 'proven to be very successful in attracting and retaining those workers'.¹⁰⁴

6.136 Witnesses contended that regulating to ensure fair pay and conditions for platform workers engaged under the NDIS would have broader social and economic benefits, as well as benefits for workers. Mr O'Reilly said the success of Hireup's employment model demonstrates that the idea that the workforce has to be engaged as independent contractors 'to access the benefits of technology and the flexibility that comes with platforms', is 'rubbish'.¹⁰⁵ Many workers engaged on Hireup also work for traditional employers, and Hireup is currently 'developing a permanent employment model'.¹⁰⁶

Committee view

6.137 The NDIS is funded by taxpayers. With over \$16 billion spent in 2019–20,¹⁰⁷ the disability care sector is a major investment in Australia's economy, and a significant employer, with the workforce predicted to grow to 190 000 by 2024.¹⁰⁸

6.138 The Productivity Commission has estimated that the disability care workforce 'will need to approximately double from the 2014–15 level to meet the demand created by the NDIS', meaning 'one in five jobs created in Australia over the transition period will need to be disability care jobs'.¹⁰⁹

6.139 The majority of these jobs are technically low-skilled (notwithstanding the complexity and capabilities required for the work), relatively low-paid,

¹⁰² Ms Lang, ASU, *Proof Committee Hansard*, 12 April 2021, p. 6.

¹⁰³ See: *Long Service Leave (Portable Schemes) Act 2009* (ACT); Russell Postle, 'Article: Portable Long Service Leave extension in Queensland – community services', *BDO Australia*, 9 November 2020, www.bdo.com.au/en-au/insights/not-for-profit/articles/portable-long-service-leave-extension-in-queensland-community-services (accessed 4 June 2021); Meredith Kennedy, 'Long service portability in the Community Services Sector – an update', *Maddocks*, 24 February 2021, www.maddocks.com.au/insights/long-service-portability-in-the-community-services-sector-an-update (accessed 4 June 2021). Many of these schemes include workers delivering services under the NDIS.

¹⁰⁴ Ms Lang, ASU, *Proof Committee Hansard*, 12 April 2021, p. 4.

¹⁰⁵ Mr O'Reilly, Hireup, *Proof Committee Hansard*, 12 April 2021, p. 36.

¹⁰⁶ Mr O'Reilly, Hireup, *Proof Committee Hansard*, 12 April 2021, p. 40; Ms Jessica Timmins, Senior Director of Service, Hireup, *Proof Committee Hansard*, 12 April 2021, p. 39.

¹⁰⁷ NDIA Annual Report 2019–20, p. 20.

¹⁰⁸ Department of Social Services, *Growing the NDIS Market and Workforce*, 2019, p. 4.

¹⁰⁹ Department of Social Services, *Growing the NDIS Market and Workforce*, 2019, p. 15.

repetitive, and paid by the hour. They fall under a complex regulatory regime of quality standards and protections for vulnerable clients and the workers themselves.

- 6.140 The committee contends that this work is more suited to an employment model than an independent contractor model. We also note the immense challenges in building the workforce and securing the number of workers required to fill these roles, but submit that reducing the quality and security of jobs in the sector is not a sustainable solution.
- 6.141 The committee is not opposed to the idea that platforms may be used to connect workers to clients, and sees the merit in this model for providing greater choice and flexibility, if the model is applied in right way.
- 6.142 Certainly there are genuine independent contractors and small businesses delivering services under the NDIS, but these tend to be specialised, high-skill, high-value services. The committee sees value in an online marketplace to facilitate these arrangements, and to bring new workers into the workforce.
- 6.143 However, the majority of workers registered on platforms such as Mable are sole traders and the main services booked through the platforms are basic support services. Yes, the end user—NDIS participant—pays a bit less per hour, and thus may be able to afford more hours of care, but at what cost?
- 6.144 Platforms are increasingly engaging support workers as individual contractors, charging unregulated rates, and failing to provide basic protections and reasonable conditions for these workers; there is considerable confusion around who is ultimately responsible for occupational health and safety (as discussed in the previous chapter); and workers engaged in this way may have no superannuation or access to workers' compensation if injured and unable to work.
- 6.145 Considering the massive public investment in the NDIS, and the predicted growth in the disability care workforce over the next few years, it is in the interests of *all* Australians to ensure that these jobs are protected for the future.
- 6.146 The committee notes that the Joint Standing Committee on the National Disability Insurance Scheme (NDIS committee) is currently conducting an inquiry into the NDIS Workforce, and that Term of Reference c) requires the committee to consider:

[T]he role of Commonwealth Government policy in influencing the remuneration, conditions, working environment (including Workplace Health and Safety), career mobility and training needs of the NDIS workforce.¹¹⁰

¹¹⁰ Joint Standing Committee on the National Disability Insurance Scheme, *NDIS Workforce Inquiry*, www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/workforce (accessed 9 June 2021).

- 6.147 The NDIS committee has published an interim report, which touches on what it calls the "Uberisation" of the disability workforce'.¹¹¹ However, the report does not consider this issue in detail and makes no relevant recommendations. The NDIS committee is continuing its inquiry throughout 2021 and plans to present a final report at some time during the year.¹¹²
- 6.148 Given that there may be specific disability-related concerns impacting the nature of platform-raised work in the disability sector, this committee considers that the Joint Standing Committee on the NDIS would be well-placed to consider these matters in greater detail in their existing inquiry into the NDIS Workforce.
- 6.149 The committee is recommending the NDIS committee look into this issue as a matter of priority, so that it may make recommendations designed to better protect these critical jobs, while taking into account the full complexity of the regulatory regime, and balancing the competing priorities of the NDIS.
- 6.150 The committee notes that the NDIS committee has previously recommended, in its September 2018 report, *Market readiness for provision of services under the NDIS*, that 'the NDIS Quality and Safeguards Commission review options on how to ensure disability workers under the NDIS can access funded training, including considering the introduction of a portable training entitlement system'.¹¹³
- 6.151 A model for implementing this portable training entitlement system in the NDIS has previously been developed by the Australia Institute's Centre for Future Work, and is captured in the Australian Services Union's submission to this inquiry.¹¹⁴

Recommendation 12

- 6.152 The committee recommends that the Joint Standing Committee on the National Disability Insurance Scheme give specific consideration to the following matters related to platform-based work in the disability sector as part of its current inquiry into the NDIS Workforce and its ongoing examination of the operation and performance of the NDIS:**

¹¹¹ Joint Standing Committee on the National Disability Insurance Scheme, *NDIS Workforce Inquiry interim report*, December 2020, p. 41.

¹¹² Joint Standing Committee on the National Disability Insurance Scheme, *NDIS Workforce Inquiry interim report*, December 2020, p. xix.

¹¹³ Joint Standing Committee on the National Disability Insurance Scheme, *Market readiness for provision of services under the NDIS*, September 2018, p. 46.

¹¹⁴ Australian Services Union, *Submission 33*, p. 19. Referencing: Rose Ryan and Jim Stanford, *A Portable Entitlement Training System for the Disability Support Services Sector*, the Australia Institute, Centre for Future Work, April 2018, <https://australiainstitute.org.au/report/a-portable-training-entitlement-system-for-the-disability-support-services-sector/> (accessed 17 June 2021).

- the prevalence of platform-based work in the sector, and the growing and evolving nature of this business model;
- the prevalence of independent contracting through platforms;
- the characteristics of independent contractors providing support work through platforms like Mable;
- the extent to which workers rely on this income, or have other sources of income;
- the typical earnings, insurance coverage, superannuation and access to leave and other entitlements available to these workers;
- the adequacy of training and support provided to workers;
- issues associated with safety, risk, and liability under Work Health and Safety laws; and
- issues relating to the potential for NDIS recipients to be classified as persons conducting a business or undertaking (PCBUs) under existing Work Health and Safety laws.

Recommendation 13

6.153 Taking into account the findings of any relevant inquiries, the committee recommends that the Australian Government considers regulatory options that would ensure support workers engaged to provide services funded through the National Disability Insurance Scheme are provided with fair pay and conditions, including those engaged through on-demand platforms.

Recommendation 14

6.154 The committee recommends that the Australian Government considers working with states and territories to design a national scheme that connects and extends the current state and territory schemes to provide portable long service leave, sick leave and other leave entitlements, and portable training entitlements, to all workers delivering services under the National Disability Insurance Scheme.

Government procurement and platform work

6.155 The committee heard evidence that the federal and some state governments are increasingly including platform companies in their procurements. The most obvious example is in relation to NDIS providers, already discussed. However, another example is a recent pilot in New South Wales where the Opal public transport card will now be able to be used to pay for Ubers.

6.156 Mr Taylor explained that the pilot includes only 10 000 Opal digital cards at this stage; that the Opal card will be accepted to pay for rides on the platform, similar

to a credit card; and that the state government did not set any standards for driver payment, or any other standards.¹¹⁵

6.157 Mr Taylor was asked if, in its agreement with Uber, the state government required Uber to meet any minimum standards of pay, provide workers compensation or insurance for drivers, provide protection against unfair dismissal, or ensure the right for drivers to negotiate fair pay. Mr Taylor confirmed that it did not, saying 'there is no difference with respect to rides that happen in relation to the Opal card', and Uber's regular service.¹¹⁶

6.158 Ola was approached by the state government regarding providing its services in a similar way, after the agreement with Uber was announced. Ola confirmed that, in initial discussions, the state government has discussed providing any specific conditions for its drivers, outside of Ola's standard conditions.¹¹⁷

6.159 The Health Services Union (HSU) submitted that, the Commonwealth Government contracted Mable in April 2020 'to provide surge workforce to the aged care sector for a four-week period' during COVID-19 outbreaks in aged care. The HSU submitted that the contract with Mable 'was worth nearly \$5.8 million and was awarded in a limited tender process'.¹¹⁸

6.160 While the HSU reported that take up of the service was 'low' due to Mable not having many workers registered in regional areas, the HSU maintained:

The decision by the Federal Government to contract and promote at this time Mable directly contradicts their own public health advice to limit movements and interaction with more people than necessary. It demonstrates the lack of understanding and absence of appetite to provide a workforce that is stable, sufficient in size and adequately supported through decent wages and conditions.¹¹⁹

6.161 The Centre for Future Work submitted:

Governments are especially large and influential economic actors and should preferentially procure from Australian firms that demonstrate adherence to norms of secure employment, including permanency and adequate working hours to support a living wage. Governments should make a clear policy statement that they commit to use their economic resources and spending power to reinforce rising wages and stronger labour standards across Australia's economy.¹²⁰

Committee view

¹¹⁵ Mr Taylor, Uber, *Proof Committee Hansard*, 12 April 2021, pp. 25–26.

¹¹⁶ Mr Taylor, Uber, *Proof Committee Hansard*, 12 April 2021, p. 26.

¹¹⁷ Ms Tan, Ola Australia, *Proof Committee Hansard*, 12 April 2021, p. 12.

¹¹⁸ Health Services Union (HSU), *Submission 84*, p. 10.

¹¹⁹ HSU, *Submission 84*, p. 10.

¹²⁰ Centre for Future Work, *Submission 41*, p. 19.

- 6.162 The committee is concerned that governments at the Federal and state and territory levels have entered into contractual agreements with platform operators, using tax payer money, despite the significant unresolved issues raised in this report.
- 6.163 Alongside concerns about unfair remuneration rates, unsafe work practices, and a lack of protection for workers, there is also the risk that NDIS care recipients could be considered liable if platform workers are injured in their homes under current legislation.
- 6.164 It is concerning to the committee that the Commonwealth Government would invest in such an untested and risky model, especially during the height of the COVID-19 pandemic.
- 6.165 As part of its inquiry the committee has written to Commonwealth departments and agencies seeking to better understand their use of contractors, labour hire and other non-standard forms of work.
- 6.166 Government procurement has the capacity to impact the standard and quality of jobs in the economy *now*, and set the standards and expectations for jobs in other sectors.
- 6.167 Governments must be model employers, and must require companies with which they partner to comply with the law and provide secure, high quality employment.
- 6.168 The committee will have more to say as the inquiry progresses in relation to the key role governments play as both employers and investors in the Australian economy.

Recommendation 15

6.169 The committee recommends that the Australian Government works through the Council on Federal Financial Relations to achieve an intergovernmental agreement that government procurements must require companies engaged by the Federal and state and territory governments to provide minimum standards of pay, safety and insurance, workers' compensation and basic protections for workers.

A handwritten signature in black ink, appearing to read 'Tony Sheldon', written in a cursive style.

**Senator Tony Sheldon
Chair
Labor Senator for New South Wales**

Dissenting Report by Liberal and National Senators

- 1.1 The technological disruption of industry sectors through the emergence of the gig economy is both well-known and a challenge to certain long-established norms of Australian workplace relations. This Senate inquiry was an opportunity to examine options for further reform, with a view to increasing opportunities for Australians to be rewarded for effort and to experience the dignity of work. Instead, the process leading to this interim report has been a political farce—a blatant attempt by Labor and Greens Senators to discredit the success of the Morrison Government's broad management of workplace relations and to campaign for big government control of Australians in the workplace.
- 1.2 Such deeply partisan politicking is obvious through the entirety of the committee's interim report, and highlights that these parties remain a real risk to business and future opportunities for Australians.
- 1.3 Calls in this interim report calling for a national tribunal to oversee employment relationships are deeply reminiscent of the now-thoroughly discredited Road Safety Remuneration Tribunal, whilst calls for a national portable leave scheme would be a tax on jobs that would expand the rorting seen in state-based schemes to an unimaginable extent. As if this wasn't enough to demonstrate the partisan nature of this inquiry, no fewer than four unions have appeared on more than one occasion (namely the Transport Workers Union, Australian Services Union, United Workers Union and the Shop, Distributive and Allied Employees Association).
- 1.4 Other witnesses whose testimony is relied on to support many of the claims in the interim report are similarly biased. The Australia Institute's Centre for Future Work is mischaracterised as an independent think tank body, but it is entirely biased in the way it rails against the on-demand economy and gig platforms. Its Advisory Committee and Associates includes the former Chief of Staff of the Leader of the Australian Greens and multiple union organisers and members. When challenged on this, the organisation declined to disclose the level of union support it receives:

Senator SMALL: What percentage, roughly, of the Australia Institute's funding comes from the union movement?

Dr Stanford: The Australia Institute gets funding from a wide range of different organisations, including foundations, philanthropists, individual donors and contract research for different projects and papers, and some comes from trade unions. It's a very small share that comes from trade unions in total.

Senator SMALL: Would you care to give me a percentage?

Dr Stanford: No; I don't have the financial statements in front of me.

Senator SMALL: I noticed that you guys have a lot to say about donations politically for the mining industry, the gun lobby, pay for access and all that sort of thing. So I was just curious as your website was less than clear to me.¹

- 1.5 The blatant cherry-picking in the selection of evidence to present in the report totally discredits its contents as partisan stunt. Unanimously and without exception, all rideshare and food delivery platforms that appeared before the committee (Uber and Uber Eats, Ola, Deliveroo and Menulog) stated unequivocally that they permitted workers to use multiple apps simultaneously. The interim report portrays this as a "claim" called into question by "evidence" from one single worker who appeared in a private capacity, such is the level of bias in its compilation.
- 1.6 Further, the question of whether gig economy workers are using their income 'to put food on the table' or are using it as an adjunct to other earnings is an area of contention and uncertainty. It suits the narrative of those who advocate for greater regulation and the imposition of employment conditions on all workers to suggest that participation in the gig economy is 'work of last resort', which is why the interim report cites both the Centre for Future Work and Shop, Distributive and Allied Employees submissions to this effect.
- 1.7 Conveniently, the report completely ignores Queensland University of Technology's Professor Paula McDonald and her testimony that only 2.7 per cent of digital platform workers are deriving their total income from gig work, which aligns with the evidence of the gig platforms.² Professor McDonald was quoted, however, in her remarks that service providers using Mable to connect to clients were 'not paid to keep their profile up to date or respond to potential jobs'³—an attempt to demonstrate exploitation by Mable but which would seemingly underscore the validity of the point that those persons are independent contractors. Again, this selective presentation of evidence completely destroys any credibility of the interim report whatsoever.
- 1.8 The committee Chair is on the public record describing the gig economy as a system that promotes the 'exploitation of workers' in a 'plague and pandemic of insecure work'.⁴ Stunningly, University of Sydney academic Professor Joellen Riley Munton appeared in front of the Senate's job security inquiry and went as far as to say:

¹ Dr James Stanford, Economist and Director, Centre for Future Work, Australia Institute, *Proof Committee Hansard*, 20 April 2021, p. 53.

² Professor Paula McDonald, Professor of Work and Organisation, Queensland University of Technology Business School (QUT), *Proof Committee Hansard*, 10 June 2021, p. 9.

³ See page 25 of the report.

⁴ See: www.australianageingagenda.com.au/clinical/senate-looks-into-aged-care-job-security/

I suspect the same arguments were made a couple of centuries ago in the deep south in the cotton plantations.⁵

- 1.9 This type of emotive invocation seeks to unfairly distract from the legitimacy of argument against an enforced minimum income by using unreasonable and baseless rhetoric, and demonstrates that this inquiry has been hijacked for political purposes.
- 1.10 The term 'insecure work' is used mostly by unions and the Labor movement to encapsulate any form of work that is not ongoing or permanent, in a highly pejorative way. However, there is no universally accepted definition of 'insecure work' in Australia or globally. The Australian labour market provides many different forms of work for people in different circumstances or with different needs, and the exponential growth of the on-demand economy is clear evidence of favour among hundreds of thousands of Australians, predominantly as an adjunct to other forms of income.
- 1.11 The interim report attempts to frame the Transport Workers Union (TWU) assertion of \$10.42 earned per hour as being representative of average Australian food delivery driver earnings. This once again is a dishonest representation, being based on a self-selected survey of only 209 respondents.
- 1.12 In stark contrast to these claims by the TWU, the data provided by Uber's submission (who are best placed to provide data on earnings) places the average hourly income for gig workers at well over \$20 per hour from that platform alone, notwithstanding earnings on other platforms:
- ... people have an average take-home earnings of \$20.47 per hour if they drive a car, \$21.97 per hour on a motorcycle and \$21.92 per hour on a bicycle.⁶
- 1.13 This committee has heard repeated evidence that individuals can engage in work that without doing a job interview; work that doesn't require a uniform; work that doesn't require you to show up for shifts or apply for leave, and doesn't require you to work for only one business at a time. Indeed, the committee has repeatedly heard evidence that individuals are not even obligated to accept a task when online. Most Australians would think that it hardly sounded like a job at all—and that's because it isn't. Individuals are empowered with unparalleled flexibility, and that seems to be what has made the gig economy Public Enemy Number One for the Union movement. TWU Secretary Michael Kaine even remarked: 'Because those individuals have no

⁵ Professor Joellen Riley Munton, Faculty of Law, University of Technology, Sydney, *Proof Committee Hansard*, 12 April 2021, p. 50.

⁶ Uber, *Submission 19*, p. 6.

capacity to determine what the value of their work is and what they should be paid'.⁷

- 1.14 The fact that the TWU's most senior representative believes that individuals cannot determine their own worth, make decisions for themselves or exercises their own prerogative to work, earn and live as they wish is shocking. Flexibility and autonomy also happens to be one of the most desirable aspects of gig work, in the eyes of those who actually do it. Uber's submission to the inquiry notes:

78% of driver-partners signed up to Uber because of its flexible opportunities—and 3 in 5 would not work at all without the flexibility the app provides. More than 4 out of 5 (83%) of delivery people tell us the same thing: they would no longer work on the Uber Eats app if they are required to deliver during set shifts.

The flexibility of Uber Eats also allowed delivery people to engage in other activities such as studying or other work. Four in five delivery people indicated they were working at least one other job ...

Uber's own recent survey with over 16 000 drivers and delivery people across Australia, found that flexibility and independence offered by the Uber app was the top area of satisfaction.⁸

- 1.15 Frighteningly, some of the changes that Labor and Greens Senators seek to impose have already been implemented in other countries to devastating effect. Geneva mandated that food delivery drivers be classified as employees in a traditional sense, rather than independent contractors. The immediate effect of this change was to put 77 per cent of couriers, or 1 000 people, out of work. Over the three months before September, around 1 300 couriers worked on Uber Eats in Geneva. Under the new operating model, couriers needed to formally apply for a position with the delivery company. The delivery company has only extended employment offers to 300 couriers and all others have lost the ability to earn money with Uber Eats.

- 1.16 The concept of portable leave was considered by the committee, and despite serious concerns being presented to witnesses who were unable to articulate any satisfactory response to the concerns with schemes that were being promoted as examples, the interim report blindly proposes an NDIS-linked scheme. Those serious concerns include the employment of union-linked persons, significant donations of money to unions and so-called entitlements only being paid out at the discretion of a trustee, rather than by any entitlement at law, subject to merits and legal review in the case of a dispute.

Mr Batchelor: We drew on the examples and the experience that we've seen here in Victoria in the construction industry but also more recently in expansion of portable entitlements, particularly in relation to long service

⁷ Mr Michael Kaine, National Secretary, Transport Workers Union (TWU), *Proof Committee Hansard*, 12 April 2021, p. 7.

⁸ Uber, *Submission 19*, p. 4.

leave, in security, cleaning and other parts of community services... The report that we put out says that, based on the successful models we've seen in construction and community services, we think that could be rolled out in other industries.

Senator SMALL: You point to the construction sector as an example where this has been established, so I want to flesh that out a little bit.

Mr Batchelor: In Victoria, in the construction industry, there's a trust fund that exists to oversee and manage those entitlements. It has a long name, but the trading name of the organisation is Incolink.

Senator SMALL: The reason I ask this series of questions is that I have grave concerns with the model that you point to as a viable option for dealing with this. For instance, in 2015–16, \$8.5 million was donated to the CFMEU, \$742,000 to the AWU and \$493,000 to the CFMEU by Incolink. You're pointing to a model that is supposed to address a very noble cause, and that's dealing with pandemic illness. I guess my concern is that nine per cent of private sector employees choose union membership and yet an organisation that effectively covers 100 per cent under the model that you're proposing shovels money their way.

Mr Batchelor: I'm not here to speak up behalf of Incolink. I'm not aware of the circumstances.⁹

- 1.17 This exchange highlights the partisan agenda at play. In the face of such serious concern going to the heart of existing schemes, it defies any rational belief that the interim report could countenance such a scheme being rolled out on a national scale.
- 1.18 The interim report does acknowledge the lack of evidentiary data on which policy proposals can be formed. Government Senators support Recommendations One and Two, and further note that efforts have been made by the government to improve data collection in the labour market (which includes statistics specifically for on-demand workers, casual workers and workers relying on the Awards system) by committing \$2.8 million of new funding over four years to the Australian Bureau of Statistics.
- 1.19 Government Senators support workplace legislation and reform that promotes increased flexibility for all parties involved, driving better economic outcomes for both business and workers of all classifications. The gig economy does challenge certain aspects of traditional workplace relations frameworks, and is therefore worthy of genuine inquiry as additional disruption takes place across an increasing spectrum of industry sectors. This interim report, however, has been exposed as anything but—it is partisan propaganda of the worst kind.

⁹ Mr Ryan Bachelor, Executive Director, McKell Institute Victoria, *Proof Committee Hansard*, 19 April 2021, pp. 54–55.

A handwritten signature in blue ink, appearing to read 'm Canavan', with a long horizontal stroke extending to the right.

Senator the Hon Matthew Canavan
Deputy Chair
Nationals Senator for Queensland

A handwritten signature in blue ink, appearing to read 'Ben Small', with a long horizontal stroke extending to the right.

Senator Ben Small
Member
Liberal Senator for Western Australia

Appendix 1

Submissions and additional information

Submissions (as at 21 June 2021)

- 1 La Trobe Casuals Network
- 2 Professor Michael Quinlan & Professor Elsa Underhill
- 3 Professor Joellen Riley & Dr Michael Rawlings
- 4 EveryAGE Counts
- 5 ARC Gig Cities Research Team
- 6 Australian Institute of Employment Rights
- 7 Law Society of New South Wales
- 8 Australian Association of Social Workers
- 9 Restaurant and Catering Australia
- 10 Dr Caleb Goods, Dr Tom Barratt, Dr Brett Smith, Mr Rick Sullivan and Dr Alex Veen
- 11 National Foundation for Australian Women
- 12 WEstjustice
- 13 Victorian Council of Social Service (VCOSS)
- 14 Treating Families Fairly
- 15 Queensland Nurses and Midwives' Union (QNMU)
- 16 Victorian Government
- 17 Maurice Blackburn Lawyers
- 18 Professor Rae Cooper
- 19 Uber
- 20 Deliveroo
- 21 Department of Social Services
- 22 Safe Work Australia
- 23 Hireup
- 24 Mable
- 25 Australian Retailers Association
- 26 Migrant Workers Centre
- 27 Australian Nursing and Midwifery Federation
- 28 Fair Work Ombudsman
- 29 National Retail Association
- 30 Per Capita
- 31 Victorian Trades Hall Council (VTHC)
- 32 National Youth Commission Australia
- 33 Australian Services Union
- 34 Housing Industry Association Ltd
- 35 Associate Professor Angela Knox & Associate Professor Susan Ainsworth
- 36 Australian Medical Association

- 37 Mr George Stribling, Lauren Kavanagh, Shirisha Nampalli, Quyen Nguyen, Joshua Paveley and Maddy Yates
- 38 Associate Professor Alysia Blackham
- 39 Transport Workers' Union of Australia
- 40 St Vincent de Paul Society National Council
- 41 Australia Institute, Centre for Future Work
- 42 Carers Australia
- 43 Dr Troy Henderson
- 44 DoorDash Inc
- 45 The Salvation Army
- 46 Australasian Centre for Corporate Responsibility
- 47 National Tertiary Education Union (NTEU)
- 48 The Australian Council of Learned Academies (ACOLA)
- 49 ACT Government
- 50 Youth Action NSW
- 51 Carers NSW
- 52 TEACHO Limited
- 53 Direct Selling Australia
- 54 United Workers Union (UWU)
- 55 Dr Veronica Sheen
- 56 Springvale Monash Legal Service
- 57 Green Institute
- 58 Franklin Women
- 59 The University of Sydney Casuals Network
- 60 Minerals Council of Australia
- 61 Science & Technology Australia
- 62 National Association for the Visual Arts Ltd
- 63 The National and State Youth Peaks
- 64 Council of Australian Postgraduate Association (CAPA)
- 65 Australian Small Business and Family Enterprise Ombudsman
- 66 Multicultural Youth Advocacy Network (MYAN)
- 67 Centre for Multicultural Youth
- 68 Children and Young People with Disability Australia
- 69 NSW Labor Lawyers
- 70 Queensland Law Society
- 71 Australian Chamber of Commerce and Industry (ACCI)
- 72 Liberty Victoria
- 73 Recruitment, Consulting and Staffing Association (RCSA)
- 74 Rideshare Drivers Association of Australia
- 75 Attorney-General's Department, Department of Education, Skills and Employment and Department of Industry, Science, Energy and Resources
- 76 Victorian Multicultural Commission
- 77 The Australian Industry Group

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- 78 Unions NSW
- 79 Construction & General Division of the Construction, Forestry, Maritime, Mining and Energy Union (CFMEU)
- 80 MATES in Construction
- 81 Mr Tony LaMontagne, Dr Tania King and Ms Yamna Taouk
- 82 South Coast Labour Council
- 83 National Farmers' Federation (NFF)
- 84 Health Services Union (HSU)
- 85 Young Workers Centre
- 86 McKell Institute Victoria
- 87 *Confidential*
- 88 Professor Emeritus David Peetz FASSA
- 89 Distinguished Professor Sara Charlesworth
- 90 Retail and Fast Food Workers Union
- 91 Jesuit Social Services
- 92 Kingsford Legal Centre and Redfern Legal Centre
- 93 Centre for International Corporate Tax Accountability and Research (CICTAR)
- 94 Anglicare Australia
- 95 Job Watch Inc.
- 96 Unions ACT
- 97 COTA Australia
- 98 Australian Council of Trade Unions (ACTU)
- 99 Young Workers Centre
- 100 Western Australian Government
- 101 Queensland Teachers' Union
- 102 Community and Public Sector Union (CPSU)
- 103 Airtasker Limited
- 104 Queensland Government
- 105 *Name Withheld*
- 106 *Confidential*
- 107 *Name Withheld*
- 108 *Confidential*
- 109 *Name Withheld*
- 110 *Name Withheld*
- 111 *Name Withheld*
- 113 Construction, Forestry, Maritime, Mining & Energy Union (CFMEU)
- 114 Amazon Australia
- 116 Rail, Tram and Bus Union
- 117 Queensland Council of Unions
- 118 Western Australian Council of Social Service Inc.
- 119 UnionsWA
- 120 *Name Withheld*
- 121 *Name Withheld*

122 Australian Manufacturing Workers' Union*Additional Information*

- 1 Additional information received from Ryan Batchelor, Executive Director, McKell Institute Victoria – Blue Harvest report hearing 19 April 2021 (received 26 April 2021)
- 2 International Transport Workers' Federation, Submission to the Select Committee on the impact of technological and other change on the future of work and workers in New South Wales – Revised 10 June 2021 (received 11 June 2021)
- 3 International Lawyers Assisting Workers network, Taken for a ride: Litigating the Digital Platform Model 2021 (received from International Transport Workers' Federation 11 June 2021)
- 4 Additional information – Correction to evidence from Sarah Costello of Safe Work Australia at public hearing 10 June 2021 (received 16 June 2021)
- 5 TWU Submission to the Safe Work NSW and Transport NSW Taskforce into Food Delivery Worker Deaths 2020 (received 17 June 2021)
- 6 Richard Johnstone, comments on Draft Guide to Managing Work Health and Safety in the Food Delivery Industry 2021 (received from the TWU 17 June 2021)
- 7 Michael Quinlan, comments on Draft Guide to Managing Work Health and Safety in the Food Delivery Industry 2021 (received from the TWU 17 June 2021)
- 8 TWU Submission to the Safe Work NSW and Transport NSW Taskforce into Food Delivery Worker Deaths 2021 (received 17 June 2021)
- 9 TWU Submission to the Consultation – Personal injury insurance arrangements for food delivery riders 2021 (received 17 June 2021)

Answer to Questions on Notice

- 1 Fair Work Ombudsman – Answer to question taken on notice, Uber Australia investigation finalised, Melbourne 21 April 2021 (received 22 April 2021)
- 2 Mable – Answer to question taken on notice Media release, Sydney 12 April 2021 (received 27 April 2021)
- 3 Menulog Australia - Answer to question taken on notice Europe Employment Market, Sydney 12 April 2021 (received 27 April 2021)
- 4 Ola – Answers to questions taken on notice, Sydney 12 April 2021 (received 27 April 2021)
- 5 Hireup – Answers to questions taken on notice, Sydney 12 April 2021 (received 27 April 2021)
- 6 Aged and Community Services Australia - Answers to questions taken on notice, Melbourne 19 April 2021 (received 4 May 2021)
- 7 Uber – Answer to question taken on notice, public hearing, Sydney 12 April 2021 (received 7 May 2021)

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- 8 Fair Work Ombudsman – Answers to questions taken on notice, Melbourne 21 April 2021 (received 7 May 2021)
 - 9 Ai Group – Answer to question taken on notice, Melbourne 21 April 2021 (received 7 May 2021)
 - 10 Ola – Answers to additional written questions taken on notice, Senator Sheldon 29 April 2021 (received 14 May 2021)
 - 11 Hireup – Answers to additional written questions taken on notice, Senator Sheldon 29 April 2021 (received 13 May 2021)
 - 12 Ai Group – Answers to additional written questions taken on notice, Senator Sheldon 3 May 2021 (received 18 May 2021)
 - 13 Aged and Community Services Australia – Answers to additional written questions taken on notice, Senator Sheldon 3 May 2021 (received 18 May 2021)
 - 14 Australian Unemployed Workers' Union – Answers to questions taken on notice, Melbourne 20 April 2021 (received 7 May 2021)
 - 15 Menulog Australia – Answers to written questions taken on notice, 29 April 2021 (received 20 May 2021)
 - 16 Uber – Answers to written questions taken on notice, 29 April 2021 (received 16 May 2021)
 - 17 Australian Higher Education Industrial Association – Answers to additional written questions taken on notice, Senator Sheldon 3 May 2021 (received 17 May 2021)
 - 18 National Indigenous Australians Agency – Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
 - 19 Department of Agriculture, Water and the Environment – Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
 - 20 Department of Defence – Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
 - 21 CSIRO – Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
 - 22 Defence Housing Australia – Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
 - 23 Department of Home Affairs – Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
 - 24 Department of Industry, Science, Energy and Resources – Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
 - 25 Department of Veterans' Affairs – Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
 - 26 Department of Social Services, Services Australia, National Disability Insurance Agency and National Disability Insurance Scheme Quality and Safeguards Commission – Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
 - 27 Department of Health – Answers to written questions taken on notice, 31 March 2021 (received 7 May 2021)

- 28 Department of Education, Skills and Employment – Answers to written questions taken on notice, 31 March 2021 (received 11 May 2021)
- 29 NBN Co Limited – Answers to written questions taken on notice, 31 March 2021 (received 14 May 2021)
- 30 Attorney General's Department – Answers to written questions taken on notice, 31 March 2021 (received 20 May 2021)
- 31 Department of Finance – Answers to written questions taken on notice, 31 March 2021 (received 13 May 2021)
- 32 Aged Care Industry Association – Answers to written questions taken on notice from Senator Sheldon, 3 May 2021 (received 28 May 2021)
- 33 Department of Foreign Affairs and Trade – Answers to written questions taken on notice, 31 March 2021 (received 28 May 2021)
- 34 Deliveroo – Answers to written questions taken on notice, 29 April 2021 (received 28 May 2021)
- 35 Australia Post – Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 36 Department of Infrastructure, Transport, Regional Development and Communications – Answers to written questions taken on notice, 31 March 2021 (received 4 June 2021)
- 37 Mable – Answers to written questions taken on notice, 29 April 2021 (received 10 June 2021)
- 38 Mr Lawrence Ben, Retail, Wholesale and Department Store Union – Answers to written questions taken on notice, Canberra 10 June 2021 (received 16 June 2021)
- 39 Safe Work Australia – Answers to questions taken on notice, Canberra 10 June 2021 (received 16 June 2021)
- 40 Amazon Australia – Answers to written questions on notice from Senator Sheldon (questions numbered 43-65 and 76-83), sent 10 June 2021 (received 18 June 2021).

Media Releases

- 1 Senate Select Committee on Job Security – Media release 21 December 2020

Tabled Documents

- 1 Transport Workers Union – Amazon Flex Briefing Note (tabled at public hearing in Sydney on 12 April 2021)
- 2 Transport Workers Union – Food Delivery Survey (tabled at public hearing in Sydney on 12 April 2021)
- 3 Transport Workers Union – Rideshare Survey (tabled at public hearing in Sydney on 12 April 2021)
- 4 Professor Catherine Bennett, Chair in Epidemiology, Deakin University, COVID-19 and the Casual Employment (tabled at the public hearing held in Melbourne on 19 April 2021)

- 5 Australian Unemployed Workers Union, Member statement (tabled at public hearing in Melbourne on 20 April 2021)

Appendix 2

Public Hearings

Monday, 12 April 2021

The Wilarra room, Level 1

The Grace Hotel

77 York Street

Sydney

Transport Workers Union

- Mr Michael Kaine, National Secretary
- Mr Jack Boutros, Strategic Campaigner

Australian Services Union

- Ms Natalie Lang, Branch Secretary, Australian Services Union

Ola Australia

- Ms Ann Tan, Director and Head of Business Excellence and Legal

Uber

- Mr Dominic Taylor, General Manager

Uber Eats

- Mr Matthew Denman, General Manager

Deliveroo

- Mr Ed McManus, Chief Executive Officer
- Ms Julia Duck, Head of Operations, Strategy and Performance

HireUp

- Mr Jordan O'Reilly, Chief Executive Officer and Co-Founder
- Ms Jessica Timmins, Senior Director of Service

Mable

- Mr Peter Scutt, Chief Executive Officer

Professor Joellen Riley Munton, Professor of Law, University of Technology Sydney (Private capacity)

Dr Sandra Peter, Director of Sydney Business Insights, Business School, University of Sydney (Private capacity)

Menulog

- Mr Morten Belling, Managing Director

- Mr Steven Teoh, Director of Delivery

Statements by delivery driver/rider workers

- Mr Assad Manzoor, Private capacity
- Mr Ashley Moorland, Private capacity
- Mr Esteban Salazar, Private capacity

Tuesday, 13 April 2021
The Wilarra room, Level 1
The Grace Hotel
77 York Street
Sydney

Shop, Distributive and Allied Employees' Association

- Mr Gerard Dwyer, National Secretary-Treasurer

Health Services Union

- Mr Lloyd Williams, National Secretary

Australian Retailers Association

- Mr Paul Zahra, Chief Executive Officer

Migrant Workers Centre

- Mr Matt Kunkel, Director
- Dr Hyeseon Jeong, Research and Policy Officer

National Tertiary Education Union (NTEU)

- Dr Alison Barnes, National President
- Dr Terri MacDonald, Director, Policy and Research
- Dr Elizabeth Adamczyk, Member
- Mr Paul Morris, Member

Casualised, Unemployed, and Precarious University Workers (CUPUW)

- Dr Yaegan Doran, Member, CUPUW
- Mx Morgan Jones, Member, CUPUW
- Mx Dani Cotton, Member, University of Sydney Casuals Network

Ms Donna Tolhurst (Private capacity)

Wednesday, 14 April 2021

The Vue Room, The Nineteenth
Wollongong Golf Club
151-161 Corrimal Street
Wollongong

Shoalhaven City Council

- Councillor Amanda Findley, Mayor

South Coast Labour Council

- Mr Arthur Rorris, Secretary

Business Illawarra

- Mr Evan Marginson, Policy Manager
- Mr Adam Zarth, Executive Director

United Workers Union

- Ms Jo Briskey, Official
- Ms Tracy Cartan, Member
- Mr Ken Brown, Member
- Ms Kathy Dryden, Member

Statements by workers

- Mr Rob Long, Tafe Organiser – New South Wales Teachers Federation
- Mr Jim Scardanas, Private capacity
- Mr Brad Cowie, Delegate – Public Service Association
- Mr Mark Rogers, Member – National Tertiary Education Union

Statements by small business owners

- Mr Gary McCarthy, Private capacity

Monday, 19 April 2021

The Ballroom

The Victorian Hotel

215 Little Collins Street

Melbourne

Australian Nursing and Midwifery Federation

- Ms Annie Butler, Federal Secretary
- Ms Lori-Anne Sharp, Assistant Federal Secretary

Health Services Union (HSU)

- Mr Raymond Collins, Industrial Organiser

United Workers Union – Aged Care

- Ms Ffion Evans, Coordinator – Member Power
- Ms Anu Singh, Member
- Ms Tracy Colbert, Member

Per Capita

- Ms Emma Dawson, Executive Director
- Mr Matthew Lloyd-Cape, Research Economist

Distinguished Professor Sara Charlesworth, Work, Gender and Regulation, School of Management, and Director, Centre for people, Organisation and Work, College of Business – RMIT University(Private capacity)

Aged and Community Services Australia

- Ms Patricia Sparrow, Chief Executive Officer
- Mr Malcolm Larsen, Executive Director - Government and Public Affairs

Australian Health Services Research Institute

- Professor Kathy M Eagar, Director

Professor Catherine Bennett, Chair in Epidemiology - Deakin University (Private capacity)

McKell Institute Victoria

- Mr Ryan Batchelor, Executive Director

Tuesday, 20 April 2021

The Ballroom

The Victorian Hotel

215 Little Collins Street

Melbourne

Dr Michael Reich (Private capacity)

Mr Rodney Stiles, Former Assistant Commissioner at NYC Taxi and Limousine Commission/Freelance Mobility and Labour Consultant (Private capacity)

Victorian Council of Social Services

- Ms Emma King, Chief Executive Officer
- Ms Deborah Fewster, Manager - Advocacy
- Ms Charlotte Newbold, Policy Advisor

Hospo Voice

- Mr Tim Petterson, Organiser
- Mr Darcy Moran, Member

Young Workers Centre

- Ms Mairead Lesman, Acting Director
- Ms Jorja Hickey

Brotherhood of St Laurence

- Ms Emma Cull, Senior Manager Service Development and Strategy
- Dr Joseph Borlagdan, Principal Research Fellow

Australian Unemployed Workers Union

- Mr Peter Littlejohn, National Operations Co-Coordinator
- Ms Kristin O'Connell, Communications Coordinator

Victorian Trades Hall Council (VTHC)

- Dr Carina Garland, Assistant Secretary

Australia Institute, Centre for Future Work

- Dr James Stanford, Economics and Director
- Mr Dan Nahum, Economist

United Workers Union

- Mr Ben Redford, Director

Australian Services Union

- Ms Lisa Darmanin, Branch Secretary - Victorian and Tasmanian Branch
- Mr Leon Wiegard, Assistant Branch Secretary - Victorian and Tasmanian Branch

- Mr Andy Sinclair, Member - Victorian and Tasmanian Branch

Maurice Blackburn Lawyers

- Mr Kamal Farouque, Principal Lawyer

Australian Higher Education Industrial Association

- Mr Stuart Andrews, Executive Director

Wednesday, 21 April 2021

The Ballroom

The Victorian Hotel

215 Little Collins Street

Melbourne

Fair Work Ombudsman

- Mr Jeremy O'Sullivan, Chief Counsel
- Mr Steven Ronson, Executive Director – Enforcement

Aged Care Industry Association

- Mr Luke Westenberg, Chief Executive Officer

Australian Chamber of Commerce and Industry

- Mr Scott Barklamb, Director - Workplace Relations
- Ms Tamsin Lawrence, Deputy Director - Workplace Relations

Australian Industry Group

- Mr Stephen Smith, Head of National Workplace Relations Policy
- Ms Julie Toth, Chief Economist

Thursday, 10 June 2021

Committee room 2S3

Parliament House

Canberra

Retail, Wholesale and Department Store Union

- Mr Lawrence Ben, Political Coordinator

Professor Paula McDonald, Professor of Work and Organisation – Queensland University of Technology Business School (Private capacity)

Amazon Commercial Services Pty Ltd (Amazon Australia)

- Mr Michael Cooley, Director - Public Policy Australia and New Zealand
- Mr Ryan Smith, Manager - Public Policy

Transport Workers' Union of Australia

- Mr Micheal Kaine, National Secretary

International Transport Federation

- Mr Scott McDine, Head - Sydney ITF Office

Shop, Distributive and Allied Employees Association

- Mr Bernie Smith, Branch Secretary-Treasurer

Safe Work Australia

- Ms Rebecca Newton, Branch Manager - Chemicals, Occupational Hygiene Policy and High Risk Work Policy
- Ms Meredith Bryant, Branch Manager
- Ms Sarah Costelloe, Branch Manager

Appendix 3

Selected developments in other jurisdictions

This appendix provides a brief summary of some of the key developments in international jurisdictions that have moved to apply increased regulation to employment models in the on-demand platform sector.

California

AB-5

California enacted legislation designed to provide gig economy workers with more rights. California's AB-5 legislation first passed the Senate Committee on Labor, Public Employment, and Retirement, and was enacted in September 2020. The purpose of the bill was to:

... provide that for purposes of the provisions of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business, and the person is customarily engaged in an independently established trade, occupation, or business.¹

The bill sought to codify a California Supreme Court decision known as 'Dynamex', by requiring businesses to apply an 'ABC test' to figure out whether an employee is an employee on a contractor. To categorise a worker an independent contractor, businesses must prove that the worker:

- 'A': is free from the company's control;
- 'B': is doing work that isn't central to the company's business; and
- 'C': has an independent business in that industry.

If workers don't meet all three conditions, then they have to be classified as employees.²

After the law was passed, three of the major employers of gig workers—Uber, Lyft, and DoorDash—resisted reclassifying their workers, leading to a court case, the

¹ California Legislative Information, 'AB-5 Worker status: employees and independent contractors' (AB-5 worker status), 19 September 2019, https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB5 (accessed 9 March 2021).

² California Legislative Information, AB-5 worker status.

result of which was that the Californian Superior Court ordered the companies on 10 August 2020 to comply with the legislation. This would have meant that the companies 'would become responsible for providing the same benefits traditional employees are entitled to, including workers' compensation, unemployment insurance, family leave, and more'.³

On August 10, 2020, the Superior Court of San Francisco ruled that Uber and Lyft were violating AB 5 and misclassifying their workers as contractors. Attorney General Xavier Becerra said: 'The court has weighed in and agreed: Uber and Lyft need to put a stop to unlawful misclassification of their drivers while our litigation continues.' The companies threatened to suspend operations in California. On October 22, on appeal, Uber and Lyft were given 30 days to implement changes 'unless Proposition 22 is approved'.⁴

Proposition 22

In the wake of the passage of AB-5, DoorDash, Lyft, and Uber initiated a 'ballot initiative campaign',⁵ Proposition 22, aimed at preventing their workers being categorised as employees. Uber contributed \$59.5 million, DoorDash contributed \$52.1 million, Lyft provided \$49.0 million, InstaCart provided \$31.6 million, and Postmates provided \$13.3 million, making it a total spend of over US \$205 million to finance the 'Yes' campaign. The 'No' campaign, funded by unions and others, received US \$18.88 million. The ballot passed on 3 November 2020 with 68.63 per cent of the vote.⁶

The ballot measure 'overrode' AB-5 on the question of whether app-based drivers are employees or independent contractors. The ballot initiative defined app-based drivers as workers who:

- (a) provide delivery services on an on-demand basis through a business's online-enabled application or platform; or
- (b) use a personal vehicle to provide prearranged transportation services for compensation via a business's online-enabled application or platform.

³ Nasdaq, 'Prop 22 Explained: What This Means for the Gig Economy's Future', *Latest News*, 29 October 2020, www.nasdaq.com/articles/prop-22-explained%3A-what-this-means-for-the-gig-economys-future-2020-10-29 (accessed 9 March 2021).

⁴ Ballotpedia, 'California Proposition 22, App-Based Drivers as Contractors and Labor Policies Initiative (2020)' (Proposition 22), [https://ballotpedia.org/California_Proposition_22_App-Based_Drivers_as_Contractors_and_Labor_Policies_Initiative_\(2020\)](https://ballotpedia.org/California_Proposition_22_App-Based_Drivers_as_Contractors_and_Labor_Policies_Initiative_(2020)) (accessed 9 March 2021).

⁵ Citizens of California may initiate legislation as either a state statute or a constitutional amendment. Ballotpedia, 'Laws governing the initiative process in California', https://ballotpedia.org/Laws_governing_the_initiative_process_in_California (accessed 9 March 2021).

⁶ Ballotpedia, Proposition 22.

Then, in relation to those workers, Proposition 22 'enacted labor and wage policies that are specific to app-based drivers and companies, including':

- payments for the difference between a worker's net earnings, excluding tips, and a net earnings floor based on 120% of the minimum wage applied to a driver's engaged time and 30 cents, adjusted for inflation after 2021, per engaged mile;
- limiting app-based drivers from working more than 12 hours during a 24-hour period, unless the driver has been logged off for an uninterrupted 6 hours;
- for drivers who average at least 25 hours per week of engaged time during a calendar quarter, require companies to provide healthcare subsidies equal to 82% the average California Covered (CC) premium for each month;
- for drivers who average between 15 and 25 hours per week of engaged time during a calendar quarter, require companies to provide healthcare subsidies equal to 41% the average CC premium for each month;
- require companies to provide or make available occupational accident insurance to cover at least \$1 million in medical expenses and lost income resulting from injuries suffered while a driver was online (defined as when the driver is using the app and can receive service requests) but not engaged in personal activities;
- require the occupational accident insurance to provide disability payments of 66 percent of a driver's average weekly earnings during the previous four weeks before the injuries suffered (while the driver was online but not engaged in personal activities) for upwards of 104 weeks (about 2 years);
- require companies to provide or make available accidental death insurance for the benefit of a driver's spouse, children, or other dependents when the driver dies while using the app.

In addition, Proposition 22 required companies to develop anti-discrimination and sexual harassment policies, traffic and accident avoidance training programs, drug and alcohol policies and criminal background checks for drivers. It also defined drivers' 'engaged time' as 'the time between accepting a service request and completing the request'.⁷

Some have criticised Proposition 22, saying drivers will be disadvantaged. A study by the University of California Berkeley Labor Center found that drivers 'will earn as little as \$5.64 per hour under Prop 22'. However, other studies have found different results, including one by Thornberg, which estimates drivers 'are more likely to earn between \$25 and \$27 an hour, after accounting for driver expenses and wait time'.⁸

⁷ Ballotpedia, Proposition 22.

⁸ Kristen Wong, 'Score One for the Gig Economy' (Score one for the gig economy), *Newsweek* (Periscope), November 2020, p. 14, www.newsweek.com/california-voters-saved-gig-economy-workers-may-pay-heavy-price-1544863 (accessed 9 June 2021).

According to *Newsweek's* Kristen Wong, a 'potential problem' with Proposition 22 is that:

The measure also make it nearly impossible for lawmakers to amend it in the future ... Changes in any of its provisions need to be approved by a super majority of seventh-eighths of the state legislature to pass.⁹

Commentators have suggested that Proposition 22 is 'expected to reverberate beyond California', impacting on the legal and political battles in other jurisdictions in relation to gig work. This is particularly true as many gig companies, including Uber, Lyft and Intacart are headquartered in California.¹⁰

Norton Rose Fullbright reported that legislation passed at the federal level in the United States 'could limit the impact of Proposition 22'. The President, Joe Biden and Vice President, Kamala Harris, opposed Proposition 22, with Biden promising 'to create a federal version of California's AB 5, implementing the same ABC test'.

Norton Rose Fullbright wrote:

Rideshare companies have also been pushing states and the federal government to add a third classification, a hybrid between independent contractor and employee that would afford some, but not all of the benefits enjoyed by employees. The coming years will show the widespread effect that AB 5 and Proposition 22 in its wake will have on the country.¹¹

The continuing operation of AB-5

Shortly after it was enacted, a number of sectors were excluded from AB-5.

Ms Wong said the state of California continued 'handing out exemptions in every direction', exempting truck drivers in January 2020:

And in September, California Governor Gavin Newsom signed an emergency measure to modify AB5 and loosen requirements for writers, photographers, musicians and other creative professionals. Now with Prop 22 passed, ride-sharing drivers will also be exempt.¹²

Ms Wong observed that the exemptions to AB-5 mean that 'widespread changes to the gig economy that were anticipated ... haven't materialized'. She also noted that similar legislation in other states 'has stalled'.¹³

⁹ Kristen Wong, Score one for the gig economy, p. 14.

¹⁰ Ballotpedia, Proposition 22.

¹¹ Norton Rose Fullbright, *Doing business in the gig economy: A global guide for employers* (Doing business in the gig economy), December 2020, www.nortonrosefulbright.com/en/knowledge/publications/87afaec5/doing-business-in-the-gig-economy-a-global-guide-for-employers (accessed 5 March 2021).

¹² Kristen Wong, Score one for the gig economy, p. 11.

¹³ Kristen Wong, Score one for the gig economy, p. 13.

New York

Freelance Isn't Free Act

New York has the *Freelance Isn't Free Act*, enacted in 2017.¹⁴ According to the Freelancers Union, the Act:

This groundbreaking law protecting freelancers from nonpayment was a victory for Freelancers Union members in New York City and serves as a blueprint for other cities and states.¹⁵

Taxi and Limousine Commission Driver Income Rules

In August 2018, the New York City Council passed an ordinance¹⁶ enabling the Taxi and Limousine Commission to set minimum payments for 'for-hire vehicle drivers for trips dispatched by high volume for-hire services'. Accordingly, the Taxi and Limousine Commission's (TLC) Driver Income Rules, issued on 4 December 2018, sets minimum per-trip payment. While not constituting a 'minimum wage', these rules do regulate the minimum amount for-hire vehicle service providers must pay their drivers.¹⁷ The New York City Taxi Commission website makes it clear that these rules apply to Uber and other rideshare drivers:

TLC's driver pay rules apply to any driver working for a High-Volume For-Hire Service (Uber, Lyft, Via). For more information visit High-Volume For-Hire Service. These rules establish a minimum per-trip payment to drivers; **they do not establish a minimum wage** or set the exact driver payment or passenger fare.¹⁸

The committee heard evidence around the operation of these rules at a public hearing on 20 April 2021. This evidence is discussed in Chapter 6 of this report and the transcript for the hearing is available on the committee's website.

¹⁴ See: www.freelancersunion.org/community/freelance-isnt-free/

¹⁵ Freelancers Union, 'The Freelance Isn't Free Law', www.freelancersunion.org/community/freelance-isnt-free/ (accessed 9 March 2021).

¹⁶ See: <https://legistar.council.nyc.gov/LegislationDetail.aspx?From=RSS&ID=3487613&GUID=E47BF280-2CAC-45AE-800F-ED5BE846EFF4>

¹⁷ New York City Taxi and Limousine Commission, 'Driver Pay', www1.nyc.gov/site/tlc/about/driver-pay.page (accessed 9 March 2021).

¹⁸ New York City Taxi and Limousine Commission, 'Driver Pay for Drivers', [www1.nyc.gov/site/tlc/about/driver-pay-drivers.page#:~:text=TLC's%20driver%20pay%20rules%20apply,Uber%2C%20Lyft%2C%20Via\).&text=These%20rules%20establish%20a%20minimum,driver%20payment%20or%20passenger%20fare](http://www1.nyc.gov/site/tlc/about/driver-pay-drivers.page#:~:text=TLC's%20driver%20pay%20rules%20apply,Uber%2C%20Lyft%2C%20Via).&text=These%20rules%20establish%20a%20minimum,driver%20payment%20or%20passenger%20fare) (accessed 9 March 2021). Emphasis added.

Dependent Worker Act

In 2019, lawmakers in New York attempted to secure passage of the Dependent Worker Act;¹⁹ legislation designed to provide gig workers with the right to unionise and bargain collectively and to pursue claims against 'wage theft', among other matters. The Act 'aimed to define a new class of worker'—the 'Dependent Worker'—who would be defined as:

... an individual who provides personal services to a consumer of such personal services through a private sector third-party that: establishes the amounts charged to the consumer; collects payment from the consumer; pays the individual; or any combination of the preceding.²⁰

The bill, which provided some protections to these workers, but not all protections enjoyed by employees, ultimately failed and a New York gig economy taskforce project stalled, as dealing with COVID-19 became the priority for the Governor in early 2020.²¹

Media reports from early 2021 indicated that New York lawmakers have taken note of events in California and are seeking to find alternative ways of providing protections to gig workers, without necessarily classifying them as 'employees':

As Albany mulls various proposals to grant its own gig workers more benefits, labor experts said that story is a warning to some in the labor movement that similar efforts to reclassify gig workers as employees in New York will face an uphill battle.²²

Seattle

During the COVID pandemic, the Seattle City Council has passed two ordinances—the 'Gig Worker Premium Pay Ordinance' and the 'Gig Worker Paid Sick and Safe Time Ordinance'. These ordinances temporarily impose increased requirements on transportation network and food delivery network companies, in relation to workers, as below.

¹⁹ See: <https://www.fisherphillips.com/gig-employer/new-york-considering-gig-worker-protection-law>

²⁰ Seth Kaufman, 'New York Considering Gig Worker Protection Law', *Gig Employer Blog*, 20 June 2020, <https://www.fisherphillips.com/gig-employer/new-york-considering-gig-worker-protection-law> (accessed 9 March 2021).

²¹ Seth Kaufman and Michael Marra, 'Gig Economy Changes In New York Placed on Hold by COVID-19 Crisis', *Gig Employer Blog*, 31 March 2020, www.fisherphillips.com/gig-employer/gig-economy-changes-in-new-york-placed (accessed 9 March 2021).

²² Annie McDonough, 'After Prop 22, New York is still split on gig worker reforms', *City and State New York*, 15 January 2021, www.cityandstateny.com/articles/policy/labor/after-prop-22-new-york-still-split-gig-worker-reforms.html (accessed 9 March 2021).

The Gig Worker Premium Pay Ordinance

The Gig Worker Premium Pay Ordinance²³ went into effect on 26 June 2020. It is designed to compensate gig workers for 'the hazards of working with significant exposure to an infectious disease'. Under the ordinance, food delivery network companies are required to pay delivery drivers at least \$2.50 in 'premium pay' for any delivery made with a pick-up or drop-off location in Seattle, 'for the duration of the coronavirus civil emergency'. Remittance advice must itemise the premium pay, and companies must provide drivers with a written copy of 'their rights under the law'.²⁴

According to the International Lawyers Network:

The ordinance also prohibits food delivery network companies from retaliating against drivers for exercising their rights under the law, and from: (i) reducing or modifying service areas in Seattle, (ii) reducing drivers' compensation, (iii) limiting drivers' earning capacity, including by restricting drivers' access to online orders, and (iv) charging customers additional fees for grocery deliveries, if the ordinance is a 'motivating factor' in the decision.²⁵

The Gig Worker Premium Pay Ordinance *does not apply* to ridesharing services like Uber and Lyft. This is because Seattle city council members proposed separate regulations to 'establish a minimum wage and other protections for drivers' (discussed below).²⁶

The Gig Worker Paid Sick and Safe Time Ordinance

The Gig Worker Paid Sick and Safe Time Ordinance went into effect in July 2020, covering transportation network and food delivery network companies. It imposed a temporary obligation upon these companies 'to provide paid sick and safe time benefits to ride-share and food delivery drivers, notwithstanding the drivers' independent contractor status'. Drivers earn one day of paid leave for every 30 calendar days they work, dating back to 1 October 2019, when they were engaged.

²³ See:

www.seattle.gov/Documents/Departments/LaborStandards/LEG%20Premium%20Pay%20for%20Gig%20Workers%20ORD_D5_clean.pdf

²⁴ Kevin R. Vozzo, 'Seattle Mandates Temporary Premium Pay and Other Benefits for Certain Gig Economy Workers During Pandemic' (Seattle mandates temporary premium pay), *International Lawyers Network*, 1st July 2020, www.iltoday.com/2020/07/seattle-mandates-temporary-premium-pay-and-other-benefits-for-certain-gig-economy-workers-during-pandemic-continue-reading/ (accessed 10 March 2021).

²⁵ Kevin Vozzo, Seattle mandates temporary premium pay.

²⁶ Michelle Cheng, 'Hazard pay for gig workers is a choice—but in Seattle it's about to become law', *Quartz*, 18 June 2020, <https://qz.com/1869290/seattle-is-the-first-us-city-to-set-hazard-pay-for-gig-workers/> (accessed 10 March 2021).

The ordinance continues 'through 180 days after certain civil emergency orders relating to the coronavirus pandemic have been terminated'.²⁷

Covered businesses must provide drivers with information on their rights, and are 'prohibited from retaliating against drivers for exercising their rights under the law', or be subject to 'various penalties and fines'.²⁸

The International Lawyers Network noted that, although the ordinances are temporary, they may have lasting effects, and 'state and local governments in other jurisdictions may ultimately adopt legislation with similar objectives'.²⁹

Minimum pay rate for rideshare drivers

From January 2021, rideshare companies in Seattle have been obliged to provide a minimum pay rate of \$16.39 per hour (*after expenses*; equivalent to the minimum wage in Seattle for companies with more than 500 employees) to their drivers, under law passed by the Seattle City Council in September 2020. The laws also provide other protections, including the right to bargain collectively.³⁰

Reuters reported that city officials argued the regulation was aimed at preventing Uber and Lyft from 'oversaturating the market at drivers' expense', leaving drivers to 'cruise' around, unpaid for hours on end. Reuters referred to research from the University of California and the New School, which 'found drivers net only about \$9.70 an hour, with a third of all drivers working more than 32 hours per week'.³¹

The Netherlands

In 2018 the government established the Committee on Regulation of Work 'to advise the government on the future of the regulation of the labour market'. It presented its final report on 23 January 2020. The committee argued for a simplification of employment contracts into three clear types:

- (a) an employment contract (fixed-term or permanent);
- (b) a temporary agency contract; and
- (c) a contract for the provision of services in case of genuine self-employment/entrepreneurship.

²⁷ Kevin Vozzo, Seattle mandates temporary premium pay.

²⁸ Kevin Vozzo, Seattle mandates temporary premium pay.

²⁹ Kevin Vozzo, Seattle mandates temporary premium pay.

³⁰ Reuters, *Seattle approves minimum pay rate for Uber and Lyft drivers* (Seattle approved minimum pay rate), 30 September 2020, <https://www.reuters.com/article/uber-seattle-pay/seattle-approves-minimum-pay-rate-for-uber-and-lyft-drivers-idINL4N2GR0ZJ?edition-redirect=in> (accessed 10 March 2021).

³¹ Reuters, Seattle approved minimum pay rate.

Under the model proposed, the 'classification of employees and self-employed persons should be clear and needs to be enforced'.³²

As at January 2020, the government was considering the report. In December 2020, Norton Rose Fullbright reported that government:

- intends to begin considering 'a presumption of an employment relationship for gig economy workers';
- has launched a six-month pilot of a web-based module, which 'allows contracting parties to determine whether a person should be categorised as self-employed or as an employee according to the criteria applied by the tax authorities'; and
- is intending to facilitate 'a broad social discussion about the way work is carried out and to what extent certain working methods are desirable'.³³

The United Kingdom

In a number of countries, including New Zealand, Canada and the United States, on-demand platform workers tend to be categorised in a similar manner to Australia — as independent contractors. However, the United Kingdom (UK) uses a different categorisation, where the category of 'worker' exists between employees and independent contractors.³⁴

Norton Rose Fullbright reported in December 2020 that there were 'around five million' people working in the gig economy in the UK in 2019, and that figure 'is expected to have increased in 2020 as unemployment has risen and more people turn to flexible work'.³⁵

The UK is distinct from many countries in that it has three categories of employment status—employees, workers and self-employed. All employees and workers are entitled to minimum wage, minimum paid national holidays, rest breaks, protection against discrimination, whistle-blower protections and protections against wage theft. However, employees have 'extra employment rights and responsibilities' that don't apply to workers, including:

- Statutory Sick Pay;

³² The European Centre of Expertise, 'The Netherlands', *Flash Reports on Labour Law January 2020: Summary and country reports* (Flash reports on labour law), pp. 72–73, <https://ec.europa.eu/social/BlobServlet?docId=22425&langId=en> (accessed 5 March 2021).

³³ Norton Rose Fullbright, *Doing business in the gig economy*.

³⁴ Igor Dosen and Michael Graham, Victorian Department of Parliamentary Services, *Labour rights in the gig economy: an explainer: Research Note No. 7*, June 2018, p. 1, www.parliament.vic.gov.au/publications/research-papers/summary/36-research-papers/13869-labour-rights-in-the-gig-economy-an-explainer (accessed 3 March 2021).

³⁵ Norton Rose Fullbright, *Doing business in the gig economy*.

- statutory maternity, paternity, adoption and shared parental leave and pay (workers only get pay, not leave);
- minimum notice periods if their employment will be ending, for example if an employer is dismissing them;
- protection against unfair dismissal;
- the right to request flexible working;
- time off for emergencies; and
- Statutory Redundancy Pay.³⁶

Those who are self-employed 'run their business for themselves and take responsibility for its success or failure'.³⁷ They do not have the employment rights and responsibilities of employees. A person is generally classed as a worker, rather than self-employed, if:

- they have a contract or other arrangement to do work or services personally for a reward (your contract doesn't have to be written);
- their reward is for money or a benefit in kind, for example the promise of a contract or future work;
- they only have a limited right to send someone else to do the work (subcontract);
- they have to turn up for work even if they don't want to;
- their employer has to have work for them to do as long as the contract or arrangement lasts; and
- they aren't doing the work as part of their own limited company in an arrangement where the 'employer' is actually a customer or client.³⁸

The category of 'worker' has similarities to the Australian category of 'casual employee'.³⁹

Norton Rose Fullbright reported a recent trend in cases related to workers in the gig economy, where judges have found that 'the individuals are workers rather than self-employed':

The decisions have considered the degree of control that the business has over how the individual carries out the task, and that many of the individuals appear to be integrated into the business wearing a uniform and company branding. A couple of cases have indicated that the individuals are self-employed, looking at the fact that the individual in particular is able

³⁶ Gov.UK, 'Employment status: employee', www.gov.uk/employment-status/employee (accessed 9 March 2021).

³⁷ Gov.UK, 'Employment status: Self-employed and contractor', www.gov.uk/employment-status/selfemployed-contractor (accessed 9 March 2021).

³⁸ Gov.UK, 'Employment status: worker', www.gov.uk/employment-status/worker (accessed 9 March 2021).

³⁹ See: Gov.UK, 'Employment status: worker'.

to provide a substitute and that the substitution clause is unfettered and genuine.⁴⁰

UK Supreme Court ruling on Uber drivers

This approach culminated in a unanimous decision on 19 February 2021 (*Uber BV and others v Aslam and others*)⁴¹ by the Justices of the UK Supreme Court that Uber drivers are not independent contractors, but are in fact 'workers', with rights to 'a minimum wage and other worker protections, including a right to receive pay while deadheading (or driving without passengers between rides)'. The Justices' decision was based on their assessment that the tasks undertaken by drivers are 'very tightly defined and controlled by Uber', requiring the designation of worker.⁴²

Commentators have suggested the case has ramifications for the way in which rideshare and food delivery driver platform workers are classified around the world. One of the claimants, Mr James Farrar from the App Drivers & Couriers Union, said: 'This ruling will fundamentally re-order the gig economy and bring an end to rife exploitation of workers by means of algorithmic and contract trickery'.⁴³

Uber released a counter-statement in relation to the ruling, saying it applied only to those workers from 2016, and was not relevant to current workers:

Over the last few years we have made significant changes to our business and have been guided by drivers every step of the way. Many of the examples called out in the judgement are no longer relevant. For example, drivers now have full transparency over the price and destination of their trip, and since 2017 there has been no repercussion for rejecting multiple consecutive trips. ... We've made a lot of progress in recent years, but we know there is more to do. We will now launch a nationwide consultation to seek the views of all active drivers who use our app in the UK. We want to understand what drivers value about Uber and—crucially—where things could improve.⁴⁴

In March 2021, Uber announced that its drivers in the UK would now be classed as 'workers':

⁴⁰ Norton Rose Fullbright, *Doing business in the gig economy*.

⁴¹ See: www.supremecourt.uk/cases/docs/uksc-2019-0029-judgment.pdf

⁴² Chris Teale, 'What UK's Uber ruling could mean for the global gig economy' (What UK's Uber ruling could mean), *Smart Cities Dive*, 23 February 2021, www.smartcitiesdive.com/news/what-uks-uber-ruling-could-mean-for-the-global-gig-economy/595468/ (accessed 10 March 2021); Andrew Woodman, 'Uber's UK ruling could have implications for gig economy startups', *PitchBook*, 19 February 2021, <https://pitchbook.com/news/articles/ubers-uk-ruling-could-have-implications-for-gig-economy-startups> (accessed 10 March 2021).

⁴³ Chris Teale, *What UK's Uber ruling could mean*.

⁴⁴ Uber, 'An update on today's Supreme Court verdict', *Uber Blog* (United Kingdom), www.uber.com/en-GB/blog/supreme-court-verdict (accessed 10 March 2021).

From tomorrow, more than 70,000 drivers in the UK will be treated as workers, earning at least the National Living Wage when driving with Uber; this is a floor and not a ceiling, with drivers able to earn more, as they usually do. They will also be paid for holiday time and all those eligible will be automatically enrolled into a pension plan.⁴⁵

Policy and legislative reform

In the policy arena, a 2017 UK government report, *Good Work: The Taylor Review of Modern Working Practices*,⁴⁶ (the 'Taylor Review') made 53 recommendations aimed at improving the labour market in the UK. Recommendations included that the three-tier approach to employment status remain in place, with the 'worker' category renamed as 'dependent contractor', and a new test for determining work status adopted. In its 2018 response, the UK government *noted* the Review's recommendations, and stated that it was 'committed to taking action in this area', and was commencing consultation.⁴⁷

In 2018, the government held consultations on a number of matters including employment status, specifically:

- codifying the common law employment status tests;
- creating new 'objective' statutory employment status tests;
- redefining the 'worker' employment status;
- defining 'self-employed' and 'employer' in legislation; and
- aligning the frameworks for determining employment status for employment rights and tax.⁴⁸

In February 2021, the *Guardian Australia* reported that new legislation around the gig economy and zero-hour contracts had been delayed.⁴⁹

⁴⁵ Uber Technologies, Inc., Report to the United States Securities and Exchanges Commission, 16 March 2021, <https://sec.report/Document/0001552781-21-000124/> (accessed 17 June 2021).

⁴⁶ See: www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices

⁴⁷ HM Government, *A response to the Taylor Review of Modern Working Practices*, February 2018, p. 31, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679767/180206_BEIS_Good_Work_Report_Accessible_A4_.pdf (accessed 10 March 2021).

⁴⁸ The Law Society, 'Good Work Plan and the Taylor Review', 1 July 2020, www.lawsociety.org.uk/en/topics/employment/good-work-plan-and-the-taylor-review (accessed 10 March 2021).

⁴⁹ Richard Partington, 'Deafening silence': UK government blasted over delays to employment reforms', *The Guardian Australia*, 19 February 2021, www.theguardian.com/business/2021/feb/18/deafening-silence-uk-government-delays-covid-employment-reforms-legislation (accessed 10 March 2021).

Canada

Workers in Canada are generally categorised as 'employees' or 'independent contractors', with employees defined as those subject to significant organisational control, and independent contractors defined as those with more freedom. A third category is the 'dependent contractor', who may have a different levels of 'economic dependence, vulnerability, bargaining power, exclusivity and permanence' than independent contractors.⁵⁰

While case law in Canada 'provides no clear consensus on the status of gig workers', Norton Rose Fullbright notes a 'a growing attractiveness in the case law towards finding gig workers to be dependent contractors', who have the right to unionise, and 'may also be owed certain entitlements upon termination without cause in some jurisdictions'.⁵¹

In February 2019, the Canadian federal government established the Expert Panel on Modern Federal Labour Standards,⁵² which examined 'protections for non-standard workers, including gig workers'. The panel's Report⁵³ addressed working conditions of gig workers and 'the expressed need for and potential advantages of securing stronger protections and benefits for those working in the gig economy'. However, with 'no new or amended legislation ... expected any time soon', Norton Rose Fullbright caution that litigation in this area is likely to continue, especially considering the 'substantial' and growing 'contribution of gig workers to the Canadian economy'.⁵⁴

France

In France gig workers are traditionally classed as self-employed. A law was passed in 2017 which granted 'some minimal rights' to individuals who worked providing services through digital platforms, including:

... the obligation for the company to pay for work-related accident insurance cover, some sparse obligations to cover the financial cost of professional training and the right to strike and to constitute a trade union.

The legislation stopped short of clarifying the 'status of such individuals', leaving it up to the courts to determine each relationship 'based on the facts of the case'.⁵⁵

⁵⁰ Norton Rose Fullbright, Doing business in the gig economy.

⁵¹ Norton Rose Fullbright, Doing business in the gig economy.

⁵² See: www.canada.ca/en/employment-social-development/campaigns/expert-panel-labour-standards.html

⁵³ See: www.canada.ca/en/employment-social-development/services/labour-standards/reports/expert-panel-final.html

⁵⁴ Norton Rose Fullbright, Doing business in the gig economy.

⁵⁵ Norton Rose Fullbright, Doing business in the gig economy.

In 2019, legislation that would 'allow platforms to set up their own social policy or charter determining the individuals' rights and obligations' was struck down as 'invalid' by the Constitutional Court, 'on the basis that the courts should have the power to qualify the individual as an employee'. In 2020, a Decree was published which provides the authorisation of these kinds of charters by government administration. However, it did 'not introduce any new rules on determining the status of the individuals'.⁵⁶

The Supreme Court has decided in at least two cases (2018 and 2020) that gig economy riders/drivers were in fact employees, because they could be sanctioned for not accepting work, and could not set the price of their services. Norton Rose Fullbright reported that:

In light of the recent Supreme Court decisions and of the EU Directive on transparent and predictable working conditions (Directive 2019/1152)⁵⁷, which Member States have until August 1, 2022 to transpose into national law, the government is working on a law, the timing and content of which remain uncertain.⁵⁸

European Union gig economy consultation

On 24 February 2021, the European Commission launched a consultation to address 'working conditions for digital platform workers in the gig economy'. The consultation will ask trade unions, employers and other stakeholders for their views on the following questions:

- Do you consider that the European Commission has correctly and sufficiently identified the issues and the possible areas for EU action?
- Do you consider that EU action is needed to effectively address the identified issues and achieve the objectives presented?
- If so, should the action cover all people working in platforms, whether workers or self-employed? Should it focus on specific types of digital labour platforms, and if yes which ones?
- If EU action is deemed necessary, what rights and obligations should be included in that action? Do the objectives presented in this document present a comprehensive overview of actions needed?
- Would you consider initiating a dialogue under Article 155 TFEU on any of the issues identified in this consultation? (Article 155 of the Treaty on the Functioning of the European Union provides for dialogue between employers and labour unions or representatives).⁵⁹

According to *Mondaq*:

⁵⁶ Norton Rose Fullbright, Doing business in the gig economy.

⁵⁷ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1152&from=EN>

⁵⁸ Norton Rose Fullbright, Doing business in the gig economy.

⁵⁹ Ius Laboris, 'EU Launches Gig Economy Consultation', Mondaq, 2 March 2021, www.mondaq.com/employee-rights-labour-relations/1041092/eu-launches-gig-economy-consultation (accessed 17 June 2021).

The consultation comes as the COVID-19 crisis has accelerated the digital transformation of the European economy and the expansion of the platform model: 11% of the EU workforce say they have already provided services through a platform. It will tackle particular areas of concern around health and safety and limited access to social protection and benefits for platform workers.⁶⁰

The consultation is intended to be run over two stages, with results feeding into the European Union's promised 'legislative initiative on platform work', scheduled for the end of 2021.⁶¹ The consultation document is available here.

The European Commission has released a first phase *Consultation Document* to guide submitters.⁶²

India

Motor Vehicle Aggregator Guidelines

In 2020, the Indian Ministry for Road Transport and Highways issued regulations designed to 'govern how ridesharing operators such as Uber and Ola operate within the country'.⁶³

The regulations include:

- minimum base rates for fares (between 25 and 30 rupees);
- set 'maximum surge prices' (1.5 times the original fare);
- control how long drivers may be logged into the app on one day; and
- set a maximum '20 per cent commission on rides, with the remaining 80 per cent of the fare going to the driver'.⁶⁴

⁶⁰ Ius Laboris, 'EU Launches Gig Economy Consultation', Mondaq, 2 March 2021.

⁶¹ Ius Laboris, 'EU Launches Gig Economy Consultation', Mondaq, 2 March 2021.

⁶² European Commission, *Consultation Document: First phase consultation of social partners under Article 154 TFEU on possible action addressing the challenges related to working conditions in platform work*, 24 February 2021, <http://ec.europa.eu/social/BlobServlet?docId=23655&langId=en> (accessed 17 June 2021).

⁶³ Joshua Minchin, 'Ola and Uber face new regulations in India', *Intelligent Transport*, 30 November 2020, www.intelligenttransport.com/transport-news/112231/ola-and-uber-face-new-regulations-in-india/ (accessed 17 June 2021).

⁶⁴ Joshua Minchin, 'Ola and Uber face new regulations in India', *Intelligent Transport*, 30 November 2020.

Appendix 4

Worldwide judicial decisions on gig work

Please note, this digest does include the most recent Australian case: Diego Franco v Deliveroo Australia Pty Ltd [2021] FWC 2818, available here: <https://www.fwc.gov.au/documents/decisionssigned/html/2021fwc2818.htm> (accessed 17 June 2021).

Digest of judicial decisions

Source: International Lawyers Assisting Workers Network, *Issues Brief: Taken for Ride: litigating the digital platform model*, March 2021, pp. 3–4, www.ilawnetwork.com/wp-content/uploads/2021/03/Issue-Brief-TAKEN-FOR-A-RIDE-English.pdf (accessed 16 June 2021).

(For details, refer to the corresponding page in the issues brief.)

Employee, Independent Contractor or Third Way?

Australia

Gupta v Portier Pacific Pty Ltd; Uber Australia Pty Ltd t/a Uber Eats [2020] FWCFB 1698, p. 39.

Rajab Suliman v Rasier Pacific Pty Ltd [2019] FWC 4807 (12 July 2019), p. 40.

Klooger v Foodora Australia Pty Ltd [2018] FWC 6836, p. 41.

Pallage v. Rasier Pacific Pty Ltd [2018] FWC 2579, p. 43.

Kaseris v. Rasier Pacific V.O.F. [2017] FWC 6610, p. 43.

Belgium

Dossier n°: 187 – FR – 20200707, p. 44.

Brazil

Marcio Vieira Jacob v. Uber do Brasil Tecnologia Ltda, RR - 1000123-99.2017.5.02.0038, p. 46.

ADPF 449 / DF, p. 47.

Conflito de Competência N° 164.544 - MG (2019/0079952-0), p. 48.

Canada

Canadian Union of Postal Workers (CUPW) v. Foodora Inc. (2020) OLRB Case No: 1346-19-R (“Foodora”), p. 49.

Chile

Alvaro Felipe Arredondo Montoya and Pedidos Ya Chile SPA, p. 51.

France

Mr X v. Uber France and Uber BV Ruling No. 374, p. 53.

Mr B. v. Take Eat Easy (Judgment N 1737), p. 54.

Germany

Case No. 9 AZR 102/20, p. 55.

Italy

Cass. n. 1663/2020 (Foodora), p. 57

Yiftalem Parigi v. Just Eat Italy, p. 58.

European Union

B v. Yodel Delivery Network, p. 59.

Netherlands

Deliveroo v. Federation of the Dutch Trade Movement (FNV), p. 60.

New Zealand

Atapattu Arachchige v. Rasier New Zealand Limited & Uber B.V, p. 62.

South Africa

Uber South Africa Technology Services (PTY) Ltd v National Union of Public Service and Allied Workers (NUPSAW) (2018), p. 64.

Uber South Africa Technology Services (PTY) Ltd v National Union of Public Service and Allied Workers (NUPSAW) (2017), p. 64.

South Korea

Do-Hyun Kwak v SoCar et al, p. 66.

Spain

Rider v. Glovo App 23, S.L, p. 68.

Switzerland

Cour d'appel civile du Canton de Vaud. Ruling no. P317.026539-190917/380 of 23 April 2020, p. 69.

Décision du 29 mai 2020 n°ATA/535/2020, p. 70.

United Kingdom

Uber BV v. Aslam, [2021] UKSC 5, p. 72.

Independent Workers' Union of Great Britain (IWGB) v. RooFoods Ltd. T/A

Deliveroo

[2018] EWHC 3342, p. 73.

Addison Lee Ltd v Lange & Ors UKEAT/0037/18/BA, p. 74.

Addison Lee Ltd v Gascoigne UKEAT/0289/17/LA, p. 74.

United States of America

Matter of Lowry (Uber Tech., Inc—Commissioner of Labor) 2020 NY Slip Op 07645, p. 75.

Islam, et al v. Cuomo, et al, No. 1:20-cv-02328, 2020 WL 4336393 (E.D.N.Y. July 28, 2020), p. 75.

Razak v. Uber Techs., Inc. 951 F.3d 137 (3rd Cir. 2020), p. 76.

Dynamex Operations W., Inc. v. Superior Court (2018) 4 Cal. 5th 903, p. 76.

Lawson v. Grubhub, Inc., 302 F. Supp. 3d 1071 (N.D. Cal. 2018), p. 78.

Uruguay

Esteban Queimada v. Uber BV, p. 79.

Noteworthy Digital Platform Cases Not Determining the Existence of an Employment Relationship, p. 81.

Enforceability of Arbitration Clauses

Uber Technologies Inc v Heller, 2020 SCC 16, p. 82.

O'Connor v Uber Techs., 904 F.3d 1087 (9th Cir. 2018), p. 83

Wallace v. Grubhub Holdings, Inc., 970 F.3d 798 (7th Cir. 2020), p. 83.

Waithaka v. Amazon.com, Inc., 966 F.3d 10, 13 (1st Cir. 2020), p. 84.

Competition Law

Samir Agrawal v. Competition Commission of India & Ors, p. 85.

Uber Singapore Technology et. al v. Competition and Consumer Commission of Singapore, p. 85.

Chamber of Commerce v City of Seattle, 890 F.3d 769 (9th Cir. 2018), p. 86.

Social Protection

The Independent Workers' Union of Great Britain (IWGB) v. Secretary of State for Work and Pensions, et al. [2020] EWHC 3050 (Admin), p. 88

Ahmed Adiatu & Independent Workers Union of Great Britain (IWGB) v HM Treasury [2020] EWHC 1554, p. 89.

Transportation v. Information Services

Star Taxi App SRL v. Unitatea Administrativ Teritoiala et. al, p. 90.

Asociación Profesional Élite Taxi v Uber Systems Spain SL, p. 90.