# Submission to the "Select Committee on Job Security"

*5th April 2021*

**The Transport Workers' Union of Australia**

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## About the TWU

The Transport Workers' Union of Australia (**TWU**) represents tens of thousands of men and women in Australia's aviation, oil, waste management, gas, road transport, passenger vehicles and freight logistics industries.

The TWU represents 70,000 transport workers in Australia today, including 20,000 owner drivers. With over one hundred years' experience in conducting Australia's passenger and freight task, the TWU has been proactive in establishing industry standards that improve the lives and safety of transport workers, their families and the community. This work has included a long history of establishing innovative regulatory systems which have, among many things, helped to ensure that owner drivers, classified as contractors, and all other transport workers have access to fair rights and entitlements.

The TWU is the union which also represents workers in the transport sector of the emerging 'gig-economy' which include rideshare, food delivery and more recently, parcel delivery workers. Since 2018, the TWU has been leading a campaign to ensure that transport workers in the gig-economy are provided access to safe, fair and ethical work standards.

## Section 1 - Executive Summary

1. The TWU welcomes the opportunity to contribute to the '*Select Committee on Job Security'*. It is the hope that this submission can contribute to building a fairer, sustainable and vibrant Australia by addressing some of the most pernicious issues in our modern economy and emerging challenges in the future of work.
2. The transport industry is experiencing an exponential rise in insecure and precarious forms of work with worrying implications for the lives and livelihoods of the 650,000 workers engaged in the sector.[1] This submission will discuss the growth of insecure work in the transport industry, including in both the traditional transport sector and the emerging 'on-demand' or 'gig' economy, while discussing the worrying implications insecure work is having on the working conditions and safety of workers and the broader Australian public.

*Precarious work in the 'traditional transport' industry*

3. The transport industry has long been affected by various forms of insecure and precarious work which predate the emergence of the so-called 'gig economy'. The growth of the gig economy has to a large extent, been an extension of these pre-existing forms of precarious work which has, under the guise of technological innovation, taken the worrying implications for workers to new extremes.
4. Approximately 50% of the road transport industry is made up of self-employed 'owner drivers', transport workers who own their own vehicle and perform work in precarious and often highly dependent contracting arrangements.[2] These owner drivers, which today include self-employed truck drivers, couriers and taxi drivers, have been a feature of the TWU since its establishment 115 years ago and have continued to face serious work and safety issues, owing to the insecure and precarious nature of their contracting and work arrangements.
5. Owner drivers like these are often entirely dependent on a few principal contractors for work and have little bargaining power to set their own rates, terms and conditions. Australia's industrial relations laws provides rights and entitlements to employees, however in many instances provide highly dependent owner drivers with no safety net to ensure that their contracted

[1] The total workforce numbers are based on those engaged in the Transport, Postal and Warehousing Industry. It includes both workers engaged as 'sole-traders' and 'employees'. A breakdown of these figures will be provided subsequently in Section 3.1 of this submission.
[2] Harper, J. (2017) The Other Half: Self-employment in Transport & Logistics in Australia: A Scoping Study for TALC, *Employment Research Australia*, accessed 2nd April https://silo.tips/download/the-other-half-self-employment-in-transport-logistics-in-australia-a-scoping-stu

work arrangements are sustainable, safe or that they can receive cost recovery.

6. This regulatory gap has long created a dangerous trend in the sector, where highly competitive contracting practices have driven down rates, terms and conditions to unsustainable levels, increasing pressure on owner drivers and leading to dangerous and often deadly trends in the industry. Road transport workers remain the most likely to be killed at work, with a fatality rate 9.4 times higher than the average across all industries.[3] A Safe Work Australia study found that owner drivers have a fatality rate almost 27% higher yet.[4]

*Emergence of the Gig Economy – Compounding Crises in the Transport Sector*

7. In recent years, the amount of transport workers in dependent 'owner driver-like' arrangements have increased exponentially with the emergence of the on-demand or gig economy. Since the establishment of Uber and other transport companies from 2011, the transport industry has seen close to 100,000 workers classified as contractors enter the industry.[5] The 'gig transport sector' has drastically intensified precarious contracting arrangements, taking what were otherwise worrying trends in the transport industry to new extremes. This submission will focus particularly on these new emergent trends and their tragic consequences.

8. The transport industry has been hardest hit by the growth of these hyper-precarious forms of work, with three distinct waves of the gig economy, each bringing with it tens of thousands of transport workers into low-paid, insecure and dangerous arrangements. These three waves are marked by the emergence of:

    - 'Rideshare' in 2011 – with companies like Uber, Ola and Didi today providing passenger transport services throughout Australia.
    - 'Food delivery' in 2015 – with companies like Deliveroo, Uber Eats, Menulog, EASI, Hungry Panda and Doordash today providing food delivery services throughout Australia.
    - 'Parcel delivery' in 2020 – with companies like Amazon Flex now providing parcel delivery services across several major Australian cities.

9. Gig transport workers in these sectors are some of the most exploited workers in Australia today. This submission will provide data collected by the

[3] Safe Work Australia (2019) Work-related Traumatic Injury Fatalities, Australia
[4] Safe Work Australia (2013) *Work-Related Traumatic Injury Fatalities Australia 2013*. Accessed on 1st April at https://www.safeworkaustralia.gov.au/system/files/documents/1702/traumatic-injury-fatalities-report-2013.pdf
[5] https://www.abs.gov.au/statistics/economy/business-indicators/counts-australian-businesses-including-entries-and-exits/latest-release

TWU which will demonstrate how gig economy companies are driving working standards to all-time new lows, with workers systematically paid below minimum wage. At the same time, these gig transport workers are engaged in highly dependent arrangements, with new forms of algorithmic control and management being imposed in new ways to undermine job security, conceal control and intensify already unsustainable work pressures in the industry.

10. The extent of this modern deprivation is nothing short of appalling. As the survey results in *Section 2* of this submission will show, gig transport workers in the food delivery and rideshare sectors today are paid on average $10 and $12 per hour respectively[6]. They are provided no access to unfair dismissal and have their livelihoods routinely destroyed at the whim of an algorithm. 54% of rideshare drivers and 77% of food delivery workers are struggling to support themselves, with these unsustainable pressures exacerbating already dangerous work practices. These appalling conditions have intensified what was already a pre-existing safety crisis in the transport industry.

11. Poor safety outcomes for transport workers are nothing new, with governments having long failed to deal with the economic pressures put on owner drivers by unsustainable working and contracting practices. However, the emergence of the gig economy has compounded this crisis further by increasing these pressures to new extremes. A Centre for WHS study found that earnings and time pressures were the two most important factors compounding safety in the food delivery industry.[7] 70% of food delivery workers are now worried about being seriously hurt or killed at work. The tragic reality of this situation has become all too apparent following the deaths of five food delivery workers in just two months last year.[8]

*Moving Beyond Crisis – Fairness, Safety and Sustainability in the Transport Industry*

12. The issues facing owner drivers and gig transport workers alike have occurred as a result of Australia's outdated industrial relations system which is in urgent need of reform. The current approach to affording rights and protections to workers in Australia is founded on an outdated binary-distinction between workers as either 'independent contractors' or 'employees'. 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

[6] Full TWU survey results will be presented in *Section 2* of this submission.
[7] Centre for WHS, 2020, *Work health and safety of food delivery workers in the gig economy*, (Sydney: NSW Government, 2020), Work-health-and-safety-of-food-delivery-workers-in-the-gig-economy..pdf (nsw.gov.au) p.26.

workers in a highly competitive, low margin, almost no barrier to entry transport sector

13. Meanwhile, largely multi-national corporations continue to profit from this suffering, while undercutting sustainable transport companies, evading payroll and income tax obligations and placing taxpayer funded social safety systems under greater strain to support the workers which they have come to systematically impoverish.

14. Flexible work, when done right, can present many benefits to Australian workers and the broader economy, providing people with autonomy and a sense of entrepreneurship which can drive work-satisfaction, productivity and growth. The 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. Sadly, as the worrying evidence presented in this submission will testify to, the overwhelming majority of workers in the emerging gig economy are being forced to risk their lives or livelihoods to get by in some of the most exploitative arrangements today.[9]

15. Recognising these issues as they have existed in the past for owner drivers, the TWU has been designing innovative, effective and flexible regulatory frameworks for workers in dependent contracting arrangements since its establishment. 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)* and has enjoyed bi-partisan support for decades. Faced with the trends presented by insecure and precarious work and the strong similarities between owner drivers and gig transport workers, it is incumbent on the Australian Government to introduce a national regulatory system, based on these tried and tested principles, to promote sustainability and decent work practices well into the future.

16. The TWU calls on the Australian Government to urgently act to ensure that the industrial relations system is overhauled so that rights and entitlements are conferred to workers on the basis of dependency and not arbitrary and outdated employment labels. The submission will conclude with a discussion of urgent reform needed to address these issues through by ensuring:

[9] https://www.abc.net.au/news/2021-02-09/exclusive-uber-eats-dede-fredy-riders-deaths-families-speak-out/13118130

- **Recommendation 1**: Establishment of a national tribunal with powers to create and enforce safe and sustainable rights and entitlements for all workers regardless of employment classification.
- **Recommendation 2**. Enforcing obligations for companies under existing WHS Laws by providing trade unions a greater role in enforcement and clarifying obligations for gig economy companies.
- **Recommendation 3**. Ensuring all workers in the transport sector and other high risk-industries are provided access to workers compensation.

17. The TWU notes that there are other important sources of precarious and insecure work in the transport industry which, while not the focus of this submission, must be recognised and addressed. In recent decades there has been a strong trend toward casual and labour-hire arrangements affecting those classified as 'employees' in the transport industry. In 2019, approximately 29% of all workers in the road transport industry found themselves in casual employment, 5% higher than the national average.[10] In 2020, the occupation with the highest proportion of employees paid by a labour hire firm was 'Machine Operators and Drivers' at 4% of the total workforce.[11] Employees in these arrangements are finding themselves a permanent state of insecurity and this trend must be addressed. The TWU endorses the submission of the Australian Council of Trade Unions and all the recommendations it has made to address the issues facing casual and labour hire employment.

[10] https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1920/StatisticalSnapshotCasualWorkersAustralia
[11] https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/working-arrangements/latest-release

## Section 2 – Gig Economy Surveys

18. In 2020, the TWU, with the Delivery Riders Alliance (DRA)[12] and Rideshare Drivers Network (RDN)[13], conducted two separate surveys of the rideshare and food delivery sectors. The results from these surveys are presented below and throughout this submission.
19. The surveys provide the latest indicators of pay, safety and working conditions in the food delivery and rideshare sectors. The results demonstrate the continued diminution of pay and standards in the transport sector, which will be discussed in greater detail later in this submission.

*Food Delivery Survey*

| | |
|---|---|
| **Food delivery companies worked for:** | 67.46% UBEREATS<br>49.28% DELIVEROO<br>31.58% MENULOG<br>31.58% DOORDASH<br>*Note: respondents worked for multiple companies at the same time.* |
| **Vehicle Type** | 39.23% Scooter / Motorcycle<br>38.28% Car<br>22.49% Bicycle |
| **Income** | Gross weekly earnings = $555 per week<br>Average gross hourly rate = $17.11 per hour<br>**Actual hourly rate after costs = $10.42***<br><br>88.72% of workers "have noticed delivery payments have reduced over time"<br>74.02% of workers "struggle to pay bills and buy groceries" |

[12] The Delivery Riders Alliance (DRA) is a group established by workers and the TWU in order to help advocate represent the interests of food delivery workers in the gig economy.
[13] The Rideshare Drivers Network (RDN) is a self-organised group of rideshare drivers seeking to advocate and represent the interests of drivers, which has work closely with the TWU in recent years.

*"We hardly making 10$ per hour. Please help us."*

*"They keep decreasing the fee amount of the delivery even now that is corona and they earn more! Also Deliveroo Insurance they decrease some things as well! And Uber insurance is really bad!!!"*

| | |
|---|---|
| **Hours worked** | 34 hours per week on average |
| **Dependency on food delivery work as a main source of income** | 86.12% of respondents are dependent on food delivery work as a main source of income |
| **Safety** | 33.65% have been hurt or injured at work<br>30.77% know someone who has been hurt or injured<br>82.99% of those injured received no support from the food delivery company they worked for<br>70.1% of workers said they "worry about being seriously hurt or killed while at work" |
| **COVID Safety** | During COVID:<br>65.38% delivery workers were not provided any safety training<br>49.04% delivery workers were not provided sufficient & free protective equipment (masks, sanitisers, gloves)<br>78.37% delivery workers were not provided any paid leave or financial assistance when needing to isolate after being affected by the COVID.<br>59.62% of delivery workers said that the company they worked for promoted full contact-free delivery |

1/5 delivery workers said the food delivery company they worked for took no measures to respond to COVID

*"Just send a message before starting the job and send some emails but didn't do nothing effective"*

*"Promotes contact free delivery but will not answer my questions on how to approach this when their procedure is not a possibility."*

*"we need Covid tests for free so that we might not be carriers of the virus. And give home isolation pay for staying at home until results are declared."*

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**Key issues for food delivery workers**

*"The new pay structure is worse then our previous agreement. Now we are getting about 40 to 50% less pay for each job"*

*"Insurance system does not include people injured."*

*"Paternity leave or any help (I became father few weeks ago, I asked for any help, but the was not positive answer) Payment for waiting time"*

*"They keep on hiring individuals when there are not enough jobs for the people who are already working. Below minimum wage per delivery like they have 50% of the wages in the past year or so. Extremely Unsafe in tough weather conditions like rain, windy."*

*"Not knowing how the algorithm works at an accurate and detailed enough level to give me confidence when doing the job. e.g. Order priority based on distance from restaurant or delivery speed history or both?"*

*Mi problema es que las compañías bajan los pagos por viaje a su gusto y nadie puede hacer nada (My problem is that companies lower travel payments to their liking and nobody can do anything)*

*"Oversupply of riders and not enough work."*

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**Harsh or unfair treatment/ terminations**

61.27% of workers said they have "been unfairly treated by a company without being able to defend myself"

*"Uber eats me eliminó la cuenta sin dejarme defender" (Uber eats deleted my account without allowing me to defend myself)*

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**What rights food delivery workers want**

71.92% of workers think they "should be an employee and not an independent contractor"

86.93% of workers said "Delivery workers should have access to rights like superannuation, sick leave, penalty rates and a minimum wage"

90.15% of workers said "Delivery workers should be able to form a union to collectively represent their interest"

*"Guaranteed minimum income to cover if there are few orders available"*

*"Better pay, safety at work, better support from the companies, clarity."*

*"Rider consultation. Paid Sick leave"*

*"Must have minimum wages applied on drivers, weekend penalities and job security must be applied."*

*"Sick leaves and annual leaves"*

*"The election of safety representatives. Deliveries paid more"*

**Demographics**

AGE:

18 to 24 – 13.94%

25 to 34 – 61.21%

35 to 44 – 18.18%

45+ - 6.67%

GENDER:

Female – 5.45%

Male – 94.55%

RESIDENCY STATUS

Australian Citizen – 16.36%

| | |
|---|---|
| | Permanent Resident – 4.24% |
| | Visa Holder – 79.39% |

N=209

**Costs have been estimated and deducted from the survey results. A breakdown of these costs can be found in Section 3.2 Table 1.1 of this submission.*

*Rideshare Drivers Survey*

| | |
|---|---|
| **Rideshare companies Worked For** | 94.29% Uber<br>62.38% Didi<br>53.33% Ola<br>9.52% Shebah<br>10.95% Other<br>*Note: respondents worked for multiple companies at the same time. .* |
| **Income** | Gross weekly earnings 874<br>(Average hourly rate $23 before deductions)<br>**Actual hourly rate after costs = $12.85***<br><br>84.28% of drivers "have noticed that my earnings have reduced over time"<br>35.61% of drivers ineligible for job keeper and job seeker. |
| **Hours Worked** | 38 hours |
| **Drivers who own, rent or finance their vehicle** | 55.57% Own their vehicle outright<br>29.05% are financing & 15.24% are renting |
| **Dependency on rideshare work as a main source of income** | 77.62% of drivers are dependent on rideshare as a main source of income |
| **Safety** | 34.29% involved in a car accident while at work<br>66.31% of drivers have been subject to some form of harassment.<br>17.14% have been physically assaulted |

Almost half (44.4%) of female drivers reported experiencing sexual harassment

40.29% of drivers experienced racial abuse while driving.

*"Once we arrived at his home he refused to get out of my car and insisted I was his date. I was physically assaulted and sexually attacked"*

*"Drunk male getting his junk out in the back"*

*"Multiple threats with a knife, multiple grabbing & punching"*

*"Been called a black c@#$ by passengers while working in QLD even though I told them that I was from Sydney and Australian and the rest shouldn't matter."*

*"People say me all the time migrants, cunts go back to your country."*

**COVID Safety**

During COVID:

53.81% rideshare drivers were not provided any safety training

48.57% rideshare drivers were not provided sufficient & free protective equipment (masks, sanitisers, gloves)

74.76% rideshare drivers were not provided any paid leave or financial assistance when needing to isolate after being affected by the COVID.

1/5 rideshare drivers said the rideshare drivers company they worked for took no measures to respond to COVID

*"Uber and Didi do provide some protective gear that last 1-2 weeks. After that no more and we drivers got to purchase our own."*

*"Some companies promised help but delivered nothing"*

**Harsh or unfair treatment/ terminations**

87.38% have been left negative feedback for something beyond their control (i.e. road conditions, pick-up restrictions)

18.45 % have been suspended without pay and 9.22% have been terminated as a result of a false allegation

56.25% said they've "been unfairly treated by a company without being able to defend" themselves

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**Key issues for rideshare drivers**

*"Biggest issue is that all the companies are developing different ways of squeezing every single cent from drivers pocket and competing in a race to bottom. I want to see fare treatment for drivers and some regulations or some government body looking over them, what they are doing to drivers.*

*"Driver cut increased. Take out by Uber too high. Same drop off and driving rules as taxis."*

*"Compensation for damage, sick leave and holidays"*

*"Increase in pay. Too many drivers means it is difficult to make a full time living"*

*"Improved wages, being treated as an employee with at least super being paid"*

*"Less commission taken as we cop all of the costs, transparent rides - distance suburb Street and how much we expect to make before accepting the trip"*

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**What rights rideshare drivers want**

1. Dispute resolution (83.01)
2. Penalty Rates for nights, weekends and public holidays (72.33%)
3. Access to a minimum Wage (64.08%)
4. Workers Compensation Insurance 64.08%)

80.13% of drivers think they "should be able to form a union to collectively represent their interest"

*"Improved wages, being treated as an employee with at least super being paid"*

*"No minimum guaranteed per hour income"*

*"Uber should not be allowed to keep registering drivers when the drivers they already have can't make a living."*

*"More than the minimum wage. Wage that covers driving expenses that you can live on pay rent/mortgage, Insurance, clothing, food, save for sick and holiday leave, go to dentist/doctor when you need to, afford to go out. Right to negotiate contract"*

*"Price mechanism, safety, deactivate and blocking of account without justifications and right to unionized"*

*"I have to keep driving when I feel sick"*

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**Work status**

47.62% of drivers think they "should be an employee and not an independent contractor"

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| | |
|---|---|
| **Demographics** | AGE:<br>18 to 24 – 2.63%<br>25 to 34 – 17.89%<br>35 to 44 – 17.37%<br>45+ - 62.11%<br><br>GENDER:<br>Female – 16.32%<br>Male – 83.16%<br>Transgender – 0.53%<br><br>RESIDENCY STATUS<br>Australian Citizen – 80.42%<br>Permanent Resident – 8.47%<br>Visa Holder – 11.11% |

N= 210

**Costs have been estimated and deducted from the survey results. A breakdown of these costs can be found in Part 3.2 Table 1.1 of this submission.*

## Section 3 – Response to Terms of Reference

### *3.1 The Growth of Precarious and Insecure Work in the Transport Industry*

20. The gig economy has almost doubled the number of self-employed workers in the transport industry in recent years. Prior to the three waves of gig economy restructuring, marked by the establishment of rideshare, food delivery and parcel delivery gig transport companies, the transport industry had a relatively stable number of owner drivers with an increase of just 254 'businesses' in the industry between 2014-2015[14]. From 2015 to 2020, during the period in which gig economy companies began to establish themselves in Australia, there has been a staggering 74,485 'businesses' added to the transport industry.

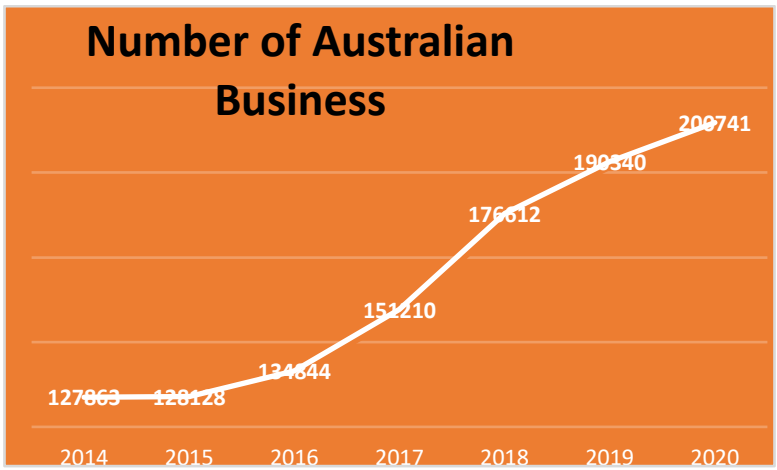


Figure 1 – Growth of Australian Business in Transport, Postal and Warehousing Industry

21. Of these 'businesses' 65% or 130,000 workers are 'sole proprietors' or 'sole traders'. In 2020, sole traders accounted for 80.8% of all entrants in the previous year[15]. In the year leading up to 2020, the transport industry recorded the highest increase of sole traders than anything other industry in Australia. 95% of all new entries during the same period were contained within the 'taxis and other road transport', 'road freight transport', 'courier pick-up and delivery services' and 'other transport services' sectors.

22. The precarious and insecure nature of these new arrangements is particularly pronounced. The three-year survival rate of new business in the transport industry has plummeted to 41.8%, the lowest of any other industry. Taken together with earnings data, which will be discussed in the subsequent section, the trends seem to suggest what has been too often observed in the

[14] 8165.0 Counts of Australian Businesses, including Entries and Exits, June 2016 to June 2020
[15] https://www.abs.gov.au/statistics/economy/business-indicators/counts-australian-businesses-including-entries-and-exits/latest-release

traditional transport sector, that economic pressures are fuelling unsustainable demands leading to workers being forced out of the industry shortly after entering it.

23. The precarious nature of these emerging and very likely entirely gig arrangements is further borne out by ABS data concerning whether independent contractors in Australia have effective control over the work they perform, as would be otherwise expected for a business. In 2020, only 40.7% of these new so-called 'businesses' said they 'had authority over their own work', the lowest of any major industry in the country.

24. All these trends taken together broadly demonstrate the nature and extent of the impact that the gig economy has had in the transport sector. There has been nothing short of an explosion of ultra-dependent contracting arrangements which by all indications is continuing to grow rapidly. The following sections will discuss in greater detail the nature of these arrangements and the dreadful implications they are having for workers in the transport industry.

### *3.2 Effects on Working Conditions in the Gig Economy and Other Precarious Work*

25. The transport sector has been greatly affected by growth of insecure and precarious work, which has manifested in the unparalleled expansion of the gig economy. It is within the transport sector that the development of the gig economy has been most advanced and, as the following section will demonstrate, its impact on working conditions and safety has been most concerning.

26. The unique manifestation of 'gig work' in the transport sector can be distinguished from other sectors of the gig economy. 'Gig' companies in the transport sector maintain a high degree of control over how work in this sector is performed. [16] For example, gig transport workers have no control over price-setting or an ability to determine their terms of engagement and have a strong reliance on these companies as the sole source of work. The nature of these work arrangements has particularly worrying implications for gig transport workers and highlight the need for strong regulatory intervention.

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"*We need the ability to choose what kind of jobs you want to do and not penalised for not accepting or starting a job ...*"

Anonymous - Uber, Ola, Didi – Jul, 2020

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"*All the companies demand loyalty and punish the drivers on acceptance rate if a job is 20mins plus to pick up a 3min ride you should be able to say no without it affecting acceptance rate*"

Gregory – Uber, Ola, Didi – Jul, 2020

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27. Gig economy work arrangements strongly resemble those of 'owner drivers' in the traditional transport sector. As will be discussed, owner drivers have historically faced similar challenges because of the comparable nature of their dependant and precarious work arrangements which is important to consider in the development of policy to address broader issues in the transport industry. At times, the only difference between the two is the prominence of an 'app' in managing and delivering work.

28. The transport sector has been transformed in recent years by three successive waves of gig-based restructuring, the first marked by the introduction of 'ridesharing' passenger transport services in 2011, the second, through the introduction of food delivery services in 2015 and the

[16] Wood, A.J., Graham, M., Lehdonvirta, V., & Hjorth, I. (2019). Good gig, bad gig: autonomy and algorithmic control in the global gig economy. Work, Employment and Society, 33(1), 56-75.

third in 2020, marked by the introduction of gig transport companies to the parcel delivery sector. These services have since rapidly expanded and, as the aforementioned statistics have suggested, there are close to 100,000 new workers in these arrangements today. The transport sector will soon experience a fourth wave of gig-based restructuring in freight and trucking, with companies like 'Uber Freight' and 'Amazon Freight Partners' already well-established in overseas markets.

29. As will be discussed below, the gig economy has had serious and concerning implications for the working conditions & safety of transport workers in Australia. The TWU expects these implications to become increasingly prevalent should the Government fail to urgently intervene to ensure fair competition, decent working conditions, safety and sustainability throughout the transport industry.

*Rideshare and food delivery sectors*

30. Transport workers in the rideshare, food delivery and parcel delivery sector are subject to insecure patterns of work, systematic forms of underpayment and are not provided access to minimum work rights or entitlements.

31. In preparation for this submission, the TWU has conducted two surveys of rideshare and food delivery workers which it submits to the committee for consideration. The results, which were outlined previously in *Section 2* of this submission and are considered below, demonstrate that workers in rideshare and food delivery sectors are now engaged in some of the most dangerous and low paid work in the country.

32. The rideshare and food delivery sectors are dominated by a few key 'gig' companies which engage the majority of workers. Many workers use these few apps simultaneously in order to access work. The survey results show that 67.46% of food delivery workers work for Uber Eats, 49.28% for Deliveroo, 31.58% for Menulog, 31.58% for Doordash. In the rideshare sector, 94.29% work for Uber, 62.38% for Didi and 53.33% for Ola.

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"*Companies operating in monopolistic factor (particularly Uber) paying staff continuously lower wages and continuously onboarding new drivers to drive down the wages and jobs for existing drivers...*"

Joseph – UberEats, Menulog, Doordash – Sep, 2020

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33. The results are not surprising given the oligopolistic structure of the food delivery and rideshare sectors, which are controlled by a few main companies with undue market power to determine standards and conditions. A Roy Morgan poll last year found that 90% of all rideshare users book rides with Uber, followed by Ola (20%) and Didi (14%).[17] The concentration of

[17] http://www.roymorgan.com/findings/8285-rideshare-users-urban-mobility-202002190039

market power has allowed Uber to deteriorate standards in recent years, with repeated cuts to earnings and conditions.

34. The survey results reveal that transport workers in the gig economy are being paid significantly lower than the national minimum standard. Respondents to both the rideshare and food delivery worker surveys reported earnings well below the Australian national minimum wage for casual workers ($24.80 per hour). The average food delivery worker reported gross earnings of $17.11 per hour with the average rideshare driver earning $23 per hour gross, before tax and other deductions.

35. The effective hourly rate is substantially lower once work expenses like vehicle costs (fuel, insurance, maintenance, depreciation, finance, registration & insurance), phone costs and protective equipment are deducted from the gross earnings. Table 1 provides cost estimates prepared by the TWU for a typical food delivery worker with a scooter and a rideshare driver with a car.[18] The calculations suggest that work expenses account for roughly 30% of the gross earnings of a food delivery and rideshare drivers. This would place food delivery and rideshare drivers among the lowest paid workers in the country, earning on average $10.42 and $12.85 per hour respectively.

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*"We hardly making 10$ per hour. Please help us"*

Vishnuvardhan Reddy – UberEats, Deliveroo, Menulog, Doordash - Aug, 2020

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*"Biggest issue is that all the companies are developing different ways of squeezing every single cent from drivers pocket and competing in a race to bottom"*

Ramesh – Uber, Ola & Didi – Jul, 2020

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[18] Estimate of vehicle costs are allowed for on the basis of rental costs given the fact that a large number of respondents reported renting vehicles and for simplicity. However, it is worth noting that workers which own their vehicle outright incur other costs which include capital and depreciation costs, registration fees, insurance and vehicle maintenance.

| | | Food Delivery Worker (Scooter) | Rideshare Driver (Car) |
|---|---|---|---|
| Income | Gross earnings | 555.00 | 874 |
| | Average Hours | 34 | 38 |
| | Gross Hourly | $16.32 | $23.23 |
| Variable Costs | AVG KM per week | 499 | 862 |
| | Fuel cost per km | 0.06612 | 0.12312 |
| | Avg Fuel Cost Per Hour | $0.97 | $3.12 |
| Fixed costs | Scooter Rental ($130 per week) | 6,760.00 | |
| | Car Rental ($200 per week) | | 10,400.00 |
| | Motorcycle PPE | 1,000.00 | |
| | Phone | 960.00 | 960.00 |
| | Total Annual Fixed Costs | 8,720.00 | 11,360.00 |
| | Hourly Fixed Cost | $4.93 | $5.60 |
| Other Costs | GST | $0.00 | $1.32 |
| | Avg Hourly Rate | **$10.42** | **$12.85** |

Table 1 – Rideshare and Food Delivery Worker Hourly Earnings After Costs

36. The hourly rates computed in the table above are conservative in the sense that no additional deductions have been made for entitlements which would otherwise be provided to employees engaged in this line of work. Workers in these sectors are not provided access to superannuation (+9.5%), casual loadings (+25%), workers compensation (+2-3%) and shift-loading and penalty rates including for weekends and public holidays – all of which would further reduce the effective pay rates of these gig transport workers when compared to those classified as employees.

37. Gig transport companies regularly make attempts to deny the extent or nature of worker underpayment in the transport industry. In the days leading up to this submission, Uber Eats released a report it had commissioned which claimed that Uber Eats workers earn on average $21.55 per hour after costs.[19] These figures, while still placing delivery workers below the minimum casual wage in Australia, are nevertheless an attempt to deceive policy

[19] https://www.uber.com/en-AU/newsroom/makingdeliverywork/

makers and the general Australian public about the extent of underpayment in the food delivery sector. The earnings figures reported are misrepresentative given (1) they are based on a sample of 'meal-time' work hours that do not account for time when food delivery workers earn the least (2) make further deductions for 'travel-time' during these observed periods, when people are in fact logged on and working (3) Grossly understates costs absorbed by workers by omitting key items (phone costs, non-CTP insurance, protective equipment) and full vehicle costs for those who primarily use their vehicle for delivery work.

38. Gig economy companies in the transport sector also often justify providing low pay and a lack of worker entitlements by arguing that workers on their platforms are engaged in transient, part-time arrangements to 'earn a little bit of extra cash'. However, the surveys found that over 77% of rideshare drivers and 86% of food delivery workers reported being dependent on gig work as their main source of income. Food delivery workers and rideshare drivers also reported working 38 and 34 hours per week respectively, suggesting more stable and dependent patterns of work than companies may otherwise suggest.

39. The social and human cost associated with full-time work patterns, high dependency on income and systemic underpayment is also borne out in findings that 54.76% of rideshare drivers and 74% of food delivery workers are struggling to 'keep up with bills and buy groceries'. The sad irony of these results is that workers, who are providing food to the Australian community, are unable to provide food for themselves and their families.

40. To compound these issues, rideshare and food delivery workers are classified by gig economy companies as 'independent contractors', meaning that they do not have access to the legal protections available to employees, including protections to unfair dismissal or access to an independent umpire to resolve disputes. This means that workers are significantly more vulnerable to harsh or unfair treatment including termination without warning, procedural fairness or effective consultation.

41. The survey results show that 9.22% of rideshare drivers reported being deactivated (terminated) as a result of a false allegation, with 18.45% being suspended without pay as a result of a false allegation. 61% of food delivery workers reported being 'unfairly treated by a company' without the ability to defend themselves. 87.38% of rideshare drivers were left negative feedback by customers for factors beyond their control (i.e. poor traffic, app issues).

***Case Study – Diego Franco***

*Diego Franco worked for Deliveroo for three years. Deliveroo was Diego's main source of income – which he relied on to support his young family.*

*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.*

*Unfortunately, Diego's story is all too common at Deliveroo and for gig workers in the transport sector. The TWU is currently running an unfair dismissal case in order to support Diego and countless other delivery workers.*

42. The absence of regulation to set minimum standards in the gig economy, has led gig transport companies to further deteriorate working conditions over time. Since the inception of the gig economy in 2011, companies in the rideshare and food delivery sectors have routinely compromised working conditions to maintain their competitive position in the market. For example, as Table 2 highlights, many food delivery companies paid an hourly rate and provided superior terms and conditions for delivery workers in the early years of their entry into Australia. As competition has intensified in the absence of any regulation, these conditions deteriorated significantly in subsequent years. Many food delivery companies now pay a variable rate for food delivery shifting business risk entirely to workers. The survey results indicate that 83% of rideshare drivers and 95% of food delivery workers reported that their earnings have reduced over time.

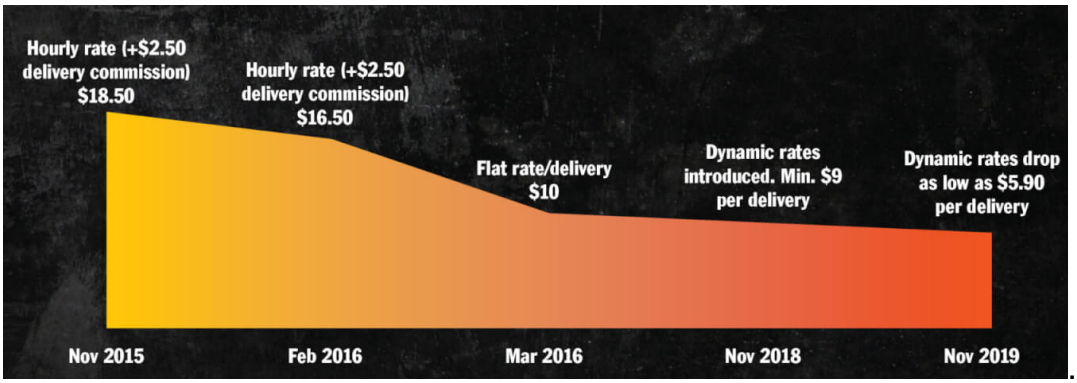


Table 2 – VTHC & TWU Survey of Food Delivery Worker pay standards at Deliveroo[20]

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*"With new agreement with uber payment reduced at least by 30% per trip means I earn 30% less every week. Not sufficient to survive in the difficult times. Harsh weather, cold and corona risk. Yet delivery company reducing payment."*

Rakesh – Uber Eats – Jul, 2020

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*"When I started on a busy night I would get up to $30 an hour staying online for 3-4 hours. Now I'm barely making $20"*

Alex – UberEats – Sep, 2020

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*"Uber has decreased driver fee substantially very recently. Its already tough due to covid and uber has made things even more difficult with less earnings"*

Muhammad – UberEats – Sep, 2020

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43. Finally, there is a safety crisis in the transport sector, which has intensified by the development of the gig economy. The deterioration of working conditions and unsustainable business practices is having a direct impact on worker and community safety in the transport sector. 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.
44. This is evident in the results of both surveys which showed:
    - 34% of food delivery workers reported being injured at work

[20] https://www.twu.com.au/wp-content/uploads/2020/01/Delivery-Riders-snapshot-2-scaled.jpg

- 31% of food delivery workers reported knowing someone that had been injured at work
- 70% of food delivery workers reported worrying about being injured at work
- 34% of rideshare workers reported being involved in a car accident
- 66% of rideshare drivers reported being harassed
- 17% of rideshare drivers reported being physically assaulted

45. The safety crisis was brought to the fore following the tragic deaths of five food delivery workers in just two months between September to October last year.[21] While these deaths are the subject of ongoing investigations, all those workers tragically lost were likely, given the industry trends evidenced in this submission, subjected to highly pressured environments where they were paid well below minimum wage, worked long and often unsustainable hours to provide for themselves and their families, had the threat of constant termination for delivering 'too slowly' hanging over their heads and were provided little-to-no safety training or personal protective equipment. In many of these cases, the deaths of the workers were not even reported to the relevant regulatory authorities by the companies that had engaged them at the time of their deaths.

*The third wave – Amazon Flex and the Parcel Delivery Sector*

46. The gig economy in the transport sector has been to date, relatively contained to food delivery and passenger transport. However, the recent entrance of 'Amazon Flex' to Australia is now expanding the reach of the gig economy to a third frontier, the 'parcel delivery' sector.
47. In February 2020, Amazon Flex introduced its 'last-mile' parcel delivery service in Australia. Amazon's 'Flex program' engages people to perform parcel delivery work in an Uber-style arrangement through an app. While 'Flex drivers' are engaged as 'contractors', these drivers are made to work in a highly regulated employee-like roster arrangement of four-hour shifts (referred to as 'blocks'), for which they are paid a lump-sum.
48. Like other transport workers in food delivery and rideshare sectors, 'Flex drivers' are not afforded the legal protections provided to other couriers in the transport sector[22]. Flex drivers are, similarly, classified as independent contractors and do not have any access to penalty rates, sick or other leave entitlements, minimum rates of pay, superannuation or any other working rights or protections.
49. As a result, Flex drivers face the same challenges. On the one hand, Flex drivers do not enjoy any of the basic protections afforded to a worker classified as an employee. On the other hand, their work arrangements lack

[21] https://thenewdaily.com.au/news/national/2020/11/26/ubereats-delivery-deaths-australia/
[22] Chapter 6 explanation

the flexibility and control which would otherwise characterise a genuine 'independent' contracting relationship.

50. Amazon Flex has been in operation since 2015 in the US and has been the centre of much scrutiny over poor working conditions for drivers and its broader effects on the transport sector. In 2018, financial analysts at Bernstein estimated that the average Amazon Flex driver earnt $5 to $11 USD per hour, after on the job expenses were deducted, placing earnings well below the minimum wage.[23]

51. Studies in the US have also suggested that Amazon Flex 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.[24]

52. Amazon has also been accused of avoiding any liability for crashes among its Amazon Flex drivers through clauses which indemnify it against "all loss or damage to personal property or bodily harm including death". This, in turn, allows Amazon to intensify work negligently and unsafely and absolve itself of liability when safety issues arise as a result.

53. Since the introduction of Amazon Flex in Australia, the TWU has found Amazon is already engaging in the underpayment of workers below national minimum standards and dangerously undermining safety standards. In recent visits to the Amazon Flex distribution centre in Moorebank, TWU NSW organisers spoke to numerous drivers who reported:

    - 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.

54. The operation of Amazon Flex, like other gig-like models of work in the transport sector, is often excused on the premise that companies such as Amazon are providing a valuable and new source of employment. In reality, the operation of Amazon Flex does not create jobs but instead replaces existing transport jobs with low-paid and unsafe counterfeits.

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[23] https://www.business-humanrights.org/en/latest-news/usa-amazons-pay-increase-will-not-apply-to-flex-workers-inc-company-comments/

[24] https://features.propublica.org/amazon-delivery-crashes/how-amazon-hooked-america-on-fast-delivery-while-avoiding-responsibility-for-crashes/

55. Prior to the introduction of Amazon Flex in Australia, Amazon outsourced the majority of its last-mile delivery work to established transport operators like Australia Post, CEVA, Toll & Fastway. The expansion of Amazon Flex has only replaced the outsourced component with internal Amazon Flex work. This trend is also consistent with those in the US where the growth of Amazon Flex has seen work increasingly taken away from major transport operators like the United Postal Service and FedEx.[25]

*The Impending Fourth Wave– Freight and Trucking*

56. A fourth wave of the gig economy now threatens the freight and trucking industry in Australia. 'Uber Freight' and 'Amazon Freight Partners' have expanded rapidly in the US and other foreign markets and will hit Australian shores in the coming years.[26] Overseas trends suggest the implications for working conditions and safety will be just as catastrophic in these sectors as they have been for other parts of the transport industry.

57. The effects of this fourth impending wave will reach more workers in the transport sector than have been affected to date. In 2018, the road transport sector employed 648,700 people.[27] Across all industries in Australia, there were 119,400 truck drivers, 44,500 couriers and postal drivers and 60,900 delivery drivers. These workers, who are already under intense pressure given the existing failings to address issues surrounding owner driver arrangements, stand to have these pressures compounded by the ongoing expansion of the gig economy.

58. The implications for worker and public safety are more concerning yet. In 2019, heavy vehicle fatalities accounted for 56% of all fatalities as a result of a vehicle collision.[28] 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.[29] 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.
[30]

59. Should the Government fail to intervene, this dangerous model of work will soon become the only competitive one, with reputable transport operators forced to follow suit in order to remain commercially viable. The effects on transport workers and other transport operators will be catastrophic.

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[25] https://www.investopedia.com/articles/investing/020515/why-amazon-needs-dump-ups-and-fedex-amzn-fdx-ups.asp
[26] https://www.ccjdigital.com/business/article/14939633/amazon-freight-brokerage-goes-nationwide
[27] https://australianjobs.employment.gov.au/jobs-industry/transport-postal-and-warehousing
[28] Work-related Traumatic Injury Fatalities, Australia, Safe Work Australia, 2019
[29] ibid
[30] ibid

*Working conditions among all 'gig' workers – old and new*

60. The nature of the problems associated with gig work in the transport sector are not new. Independent contractor arrangements in the context of the transport sector were first scrutinised in relation to 'owner drivers' – workers who own their vehicle and perform transport work under contractor arrangements.

61. Owner Drivers have very similar precarious and insecure working arrangements as gig workers, and can be compared as follows:

| Owner-Drivers | Gig Transport Workers |
|---|---|
| Independent contractors | Independent contractors |
| Can hold more than one contract at a time | May work for more than one gig company at a time |
| Own (or provide) their vehicles | Own (or provide) their vehicles |
| Changing workplaces and locations of work | Changing workplaces and locations of work |
| May be paid per delivery | Paid per delivery |

*Table 2 – Comparison of OD & Gig Transport Worker Arrangements*

62. Many owner drivers continue to share the same challenges currently facing gig economy workers including systematic underpayment, poor safety outcomes driven by unsustainable contracting practices and an inability for workers to access minimum legal rights and entitlements.

63. The working arrangements under which owner drivers and gig workers are engaged are characterised by a lack of flexibility and high degree of control and dependency. These transport workers are often promised the flexibility of small businesses but are afforded very little. They do not have an ability to set their own prices, develop their own clientele, develop a brand, invest significantly in their 'business' or have any influence over the terms of their engagement or contract.

64. Poor working conditions are the result of unsustainable competitive practices which plague the transport industry. When a company is able to avoid its minimum legal obligations by structuring its engagements with its workers under the guise of independent contracting, it is then able to more effectively control its position in the market by compromising working conditions (such as reducing pay to below the national minimum wage or

indemnifying itself against the safety of its workers), leaving other companies compelled to do the same. It is within this spectrum that competition becomes unsustainable and unsafe – and this is the broad emerging trend in the transport sector.

65. Despite these challenges, there is also an opportunity for gig companies to raise working conditions and standards and promote fair and safe outcomes in the transport sector. For example, gig economy companies like Drive Yello, an Australian based food delivery company, recently finalised agreements with the TWU aimed at lifting standards for food delivery workers. Traditional transport operators like Toll, Linfox and others have historically worked with the TWU to address industry-wide challenges in the transport sector.

66. Recently, food delivery workers at the Chinese food delivery and gig economy company 'Hungry Panda' were, with the support of the TWU, able to improve pay and conditions following the tragic death of a Hungry Panda food delivery worker and subsequent cuts to rates of pay by up to 20%.[31] Hungry Panda has since agreed to provide injury insurance, increase and harmonise rates of pay across the Sydney region, improve safety including through the delivery of induction training, reinstate two workers who had been previously terminated at the start of the dispute and commit to ongoing negotiations with the TWU and other workers to resolve other work issues.

67. While such initiatives are positive, an industry-wide and fair regulatory solution is crucial in order to restrain companies like Deliveroo, Uber, Amazon, Didi, EASI and Menulog from compromising working conditions and promoting dangerous models of work to maintain their competitive edge. Without an industry-wide regulatory solution, such achievements will be eroded through competition and are ultimately unsustainable.

68. The TWU has been responding to these broader challenges for over 115 years and submits that the only means of effectively addressing the above challenges is by ensuring that 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.

[31] https://www.abc.net.au/news/2021-03-16/hungry-panda-food-delivery-riders-win-back-their-jobs/13250216

### *3.3 Precarious Work & the COVID-19 Pandemic*

69. The issues surrounding gig transport workers, owner drivers and other workers engaged in insecure and precarious predates the COVID-19 pandemic. Yet, the COVID-19 pandemic acted to expose these work issues and exacerbate the consequences which they had for workers. All these work issues derive centrally from a failure of Australia's industrial relations system to provide rights and entitlements to workers with little bargaining power in contracting arrangements. In the context of the COVID-19 pandemic, these cleavages became all too apparent, as companies were left to set these conditions on their own, with dire and dangerous consequences for workers and the broader Australian public.

70. During the COVID-19 pandemic many gig transport companies found themselves in two situations – either experiencing a huge surge in demand for services (as in the food delivery and parcel delivery sectors) or having to completely halt operations (as in the rideshare sector). In both instances, the affects for workers were catastrophic – and gig transport workers across the board were disproportionally affected relative to workers in standard forms of employment.

71. In the food delivery sector for example, while demand had increased dramatically across the country, this was outpaced by workers coming into the sector – with no effort by companies to regulate this in a way which would ensure working conditions were not adversely affected. Rather companies actively exploited this situation with corresponding sharp reductions of wages and conditions. Despite company revenues soaring, in April 2020, Uber Eats implemented a 'new payment structure' which saw 300 workers reporting an estimated 44% reduction in the pay and conditions. [32] This was despite a boom in the revenues of food delivery companies, with consumer spending on food delivery increasing by more than 350% across some areas of Sydney.[33]

72. In the rideshare sector, drivers found themselves without any job overnight as intermittent lockdowns came into effect. With no access to leave entitlements to soften the blow, many in the sector found themselves with no means whatsoever to support themselves. In addition to this, the 45% of drivers who, as the survey in Section 2 ascertains, were leasing or financing their vehicles, had the added burden of having to continue to absorb their ongoing vehicle costs during the lockdown periods. .

73. Some workers in these precarious arrangements were lucky enough to access 'JobKeeper' and 'JobSeeker' supplements and isolate from the effects of the COVID pandemic. However, for the large part, workers in

[32] Results were collected during a survey conducted by workers in April with 337 respondents around the country.
[33] https://www.smh.com.au/business/the-economy/boom-time-the-council-areas-with-the-biggest-surge-in-food-delivery-20200429-p54o8g.html

precarious arrangements found themselves unable to access any support during the pandemic. In the food delivery sector, the vast majority (over 80%) of workers are temporary visas who did not have access to these schemes and were left having to contend with wages cuts in the industry.[34] Other Job Keeper restrictions were placed on contractors and casuals who were ineligible for the scheme if they had not worked for a designated period of time for the one company.

74. A lack of access to standards, rights and entitlements also undermined the safety of both workers during the pandemic and the broader Australian public. During the pandemic, workers in gig economy and other contracting arrangements did not have access to sick leave entitlements. As a result, workers who were sick or otherwise affected by COVID-19, were less likely to isolate.

75. Following public pressure from the TWU and others at the start of the pandemic, some gig economy companies arranged limited isolation funds and provided some piecemeal interventions to promote public safety.[35] However, the isolation funds did not cover workers for the duration of the two-week isolation period, only covered those with confirmed COVID cases or did not otherwise adequately compensate workers who were otherwise forced into isolation. The effect of this was that workers found themselves having to choose between feeding themselves or adhering to isolation directives with consequences for both worker and public safety.

76. Gig economy companies had before the pandemic failed entirely to manage work health and safety risks. Again, the COVID-19 pandemic showed the serious and concerning consequences of this for a workforce in precarious work. The aforementioned surveys conducted by the TWU showed that the majority of gig transport workers failed to receive sufficient PPE, training or instruction to protect themselves and the public from during the pandemic. The results 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)
    - 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
    - 1/5 delivery workers and rideshare drivers said the company they worked for took no measures to respond to COVID

[34] https://www.abc.net.au/news/2020-04-03/international-students-financial-hardship-coronavirus/12116176
[35] https://www.abc.net.au/news/2020-04-04/food-delivery-riders-not-being-supported-in-coronavirus-response/12120480

77. What the COVID-19 pandemic has shown is that in times of crisis, the greatest failings of our society become most apparent. Those who were most vulnerable and little-to-no entitlements suffered most – and workers in the gig transport sector were unfortunately an all too tragic example of this.

### *3.4 Regulatory and Legislative Failures of Australia's Industrial Relations System*

78. From the outset of this section, the TWU would like to refer the committee to two recent exemplary academic publications which together provide the most detailed assessment of Australia's industrial system with respect to the gig economy and precarious work more broadly. In addition, these publications provide a substantive analysis of the regulatory frameworks which can be applied to address the current failings of Australia's industrial relations system. These publications are:
    - Nossar, I. (2020). *Protecting 'Gig Economy' Workers through Regulatory Innovation*. In P. Sheldon, G. Gregson, D. Lansbury & K. Sanders (Eds.), *The Regulation and Management of Workplace Health and Safety: Historical and Emerging Trends* (1st edition., 212). Routledge New York.
    - Rawling, M. & Munton, J.R. (2021) Proposal for legal protections of on-demand gig workers in the road transport industry: A report prepared for the Transport Education Audit Compliance Health Organisation (TEACHO) by UTS Faculty of Law.

#### *Shortcomings of the binary employment divide*

79. Australian laws that cover and protect the interests of working people in Australia are failing to keep up with the changing nature of work generally, and this is particularly the case for non-standard forms of work. Gig economy workers and many others in precarious and insecure employment, are being failed by safety and industrial laws which either do not apply to them entirely or are not fit for purpose.
80. The major source of this failing is that Australia's now outdated industrial relations system almost entirely affords rights and protections to workers on the basis of an outdated binary-distinction between workers as either 'independent contractors' or 'employees'. As a result, workers in 'employment-like' contracting relationships are being denied access to any rights and entitlements, leading to the previously discussed concerning trends among dependent workers in the transport sector.
81. Workers in the emerging sector of the gig economy have almost no protections and entitlements under the *Fair Work Act 2009 (Ctw) (***FWA***)*, National Employment Standards, Modern Awards, the *Workplace Injury Rehabilitation and Compensation Act 2013* or *Superannuation Guarantee Administration Act 1992.* This means that even the most basic rights and entitlements simply do not apply to a fast growing segment of transport workers and those in the broader Australian workforce. Workers in these highly dependent arrangements do not have access to a minimum wage, superannuation, leave entitlements, industrial representation, collective

bargaining, penalty rates, protections from unfair dismissal or any rights which Australians have come to expect in the workplace.

82. While some of the General Protections provisions of the FWA to purport to extend 'workplace rights' to independent contractors, protections to adverse action for example, are entirely inadequate to addressing the needs of these workers and are inaccessible in any case. As Rawling & Munton observe, "even the right against adverse action in Fair Work Act s 341(1)(c)(ii) taken because a person has raised a complaint or inquiry in relation to their employment applies only to employees".[36] Similarly, the *Independent Contractors Act 2006* (Cth) (**ICA**), which provides protections for unfair or harsh contracts, is entirely ineffective and inaccessible. Claims brought under the ICA 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 ICA.

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*"I need an ombudsman to govern the ride share companies so they don't keep changing rules whenever they wish to"*

Gamal - Uber - Jul, 2020

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83. The only practical route by which a worker may be provided access to rights and protections involves seeking reclassification of worker status through the common law definition of an employee. While the TWU has run multiple cases against Foodora, Uber Eats and Deliveroo in recent years to extend rights and protections to workers in these dependent arrangements, such a route is ultimately both ineffective and undesirable.[37]

84. Seeking the reclassification of contractors in dependent arrangements to provide rights to workers is a long and indeterminate process. Gig economy companies have shown time again that they are willing to expend exorbitant amounts to appeal cases all way to the High Court and as, *Amita Gupta v Portier Pacific Pty Ltd; Uber Australia Pty Ltd t/as Uber Eats* (2020) ('Gupta') shown, settle these cases should an unfavourable outcome seem imminent. Furthermore, a reclassification case does not set a binding precedent with companies able to restructure their work arrangements to evade any subsequent case. Last year, Uber flagged that it would move to restructure its arrangements to allow drivers to set their own prices for work, a move

[36] Michael Rawling & Joellen Riley Munton, *Proposal for legal protections of on-demand gig workers in the road transport industry: A report prepared for the Transport Education Audit Compliance Health Organisation (TEACHO)*, (Sydney: UTS Faculty of Law, 2021), p.10.
[37] See for example *Klooger v Foodora Australia Pty Ltd* [2018] FWC 6836; AND *Amita Gupta v Portier Pacific Pty Ltd; Uber Australia Pty Ltd t/as Uber Eats* (2020)

which would have only exacerbated the economic pressures placed on drivers.[38] Finally, any such employment classification case would apply only to the specific arrangements of any given worker, with subsequent cases required to extend employment rights to workers for other companies and other sectors of the gig economy.

85. To address these failings, what is needed is a system which can extend rights throughout the spectrum of work flexibly and appropriately. Such an approach should not require the ongoing intervention of legislators or be contingent on long and protracted employment classification cases. Such a system must have the capacity to move with the ever-changing nature of work arrangements into the future and should this occur, it would provide a disincentive to the misclassification of workers where this may otherwise occur.

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*"(We need) a governing body who regulates what Ubereats can do"*

Souzanna – UberEats – Jul, 2020

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*State-based Industrial Instruments for Owner Drivers*

86. As has been mentioned throughout this submission, owner drivers have long faced similar issues to gig transport workers. Both sets of workers face highly dependent arrangements, with little-to-no ability to set their terms and conditions or control their work. Being classed as 'independent contractors' they are afforded no rights and protections otherwise provided to employees. This situation has led to unsustainable and often unsafe standards throughout the industry.

87. Recognising this to be the case, State Governments of various persuasions have regulated to address this failing of the industrial relations framework by designing regulatory mechanisms to support contractors in these dependent arrangements in the transport industry. The only effective example of this today is in NSW where an innovative regulatory mechanism has for decades extended basic work rights and safe and sustainable standards to owner drivers through Chapter 6 of the *Industrial Relations Act 1996* (NSW) (**Chapter 6**).

88. Chapter 6 moves beyond the failed binary employment divide to extend rights and entitlements to Owner Drivers performing 'contracts of carriage'. This is achieved through two standard setting mechanisms (1) 'Contract Determinations' which are broadly analogous to industry awards; and (2) 'Contract Agreements' which are broadly analogous to collective

[38] https://www.afr.com/policy/economy/uber-considers-letting-drivers-set-prices-20201125-p56hwi#:~:text=Uber%20is%20set%20to%20decide,their%20status%20as%20independent%20contractors.

agreements. These mechanisms are able to establish tailored minimum rates and conditions across sectors of the transport industry. In addition, Chapter 6 provides access to dispute resolution (including the ability to challenge the unfair termination of a contract), representational rights and an enforcement regime through the NSW Industrial Relations Commission which underpins these.

89. Many of the strengths of the system are self-evident, redressing many of the power imbalances owner drivers face and providing them with legislative protections. In particular, Chapter 6 provides a floor in terms of pay and conditions for owner drivers that keeps the market operating sustainably, provides stability to market players and ensures competition does not occur through a race-to-the-bottom of working conditions and standards. 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. The conciliation power of the NSW IRC also provides an important first step to resolve many industrial disputes without the need to arbitrate and thus is a quick and cost-effective way of dealing with disputes.

90. The limitations of Chapter 6 are important to note in considering how this system may be improved and its scope expanded. These limitations include:

    I. A lack of client accountability- in the transport sector major clients have the power to dictate pay and conditions of principal contractors and owner drivers through tendering processes. For example, major retailers have been increasingly outsourcing work to gig economy companies without any oversight of safety and working conditions. Chapter 6 does not provide the ability to force the client to ensure compliance with such minimum standards.

    II. Scope and definitional issues - ‘principal contractors’ and ‘owner drivers’ have very distinct and limiting meanings which means the system is unable to cover all non-employee drivers. Further certain types of owner drivers are excluded, such as those delivering bread and mail. While these arise from historical anomalies, it nonetheless means that groups of owner drivers and gig transport workers in similar dependent arrangements, are not afforded the same protections.

    III. Does not facilitate collective bargaining – while the system specifically allows for owner drivers to collectively bargain, outside of its industrial dispute power, the NSW IRC does not have an inherent ability to assist parties in facilitating collective bargaining. While a party could instead apply for a contract determination that would have a similar effect, this is a much more time-consuming process requiring evidence and arbitration. Similarly, owner drivers do not have the right to take protected industrial action in order to pursue claims and the NSW IRC has in the past found that principal contractors have been

within their rights to dismiss owner drivers who have taken such industrial action in relation to their claims.

IV. Enforcement – there is no effective enforcement arm in NSW outside of the union that has the power or resources to investigate and prosecute breaches of any industrial instruments. This has led to chronic underpayments in certain sectors of the industry.

*91.* While legislative advances like these, have helped to grant basic rights, channels for collective representation and safety nets for owner drivers, there remains much to be done for owner drivers in addition to emerging gig transport workers who are not covered by existing state-based legislative frameworks. Moreover, these State-based industrial instruments are in need of strengthening to deal with significant shortcomings like their inability to confer rights and entitlements through supply chains, facilitate collective bargaining and strengthen the enforcement regimes which underpin them.

*Work Health and Safety Laws*

92. Australian Work Health and Safety Laws which have been derived from the harmonised Model Work Health and Safety Regime (**Model WHS Laws**) (enforced in all states except Victoria and Western Australia) provide another regulatory mechanism which moves beyond the binary employment divide and in doing so, applies to workers in precarious and insecure contracting arrangements. While 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, the application of the laws have been circumscribed given limited enforcement to date and a tendency to ignore safety issues which arise from economic and contracting pressures in the road transport industry.

93. The Model WHS Laws extend the protections of the WHS Laws to “workers” who currently perform work for companies in the transport-based gig economy by imposing obligations on a person conducting a business or undertaking (PCBU) to their worker. This extends the scope of the WHS Laws to working relationships outside of the familiar employer and employee model. For example, under the WHS Laws:

- The definition of PCBU includes most business operations, including businesses such as Amazon Flex, Uber and Deliveroo.
- The definition of worker is any person who carries out work in any capacity for a PCBU. It includes contractors and subcontractors, such as rideshare or food delivery workers.

94. 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). Unfortunately, despite the broad and inclusive coverage of

WHS Laws, there persists among 'gig' companies the erroneous assumption that the WHS laws do not easily apply to them, because their workplace is unique, or their workers, because their working relationship is not a standard employment relationship.

95. A recent example of this pertains to a request made by food delivery workers to form 'workgroups' to elect 'Health and Safety Representatives' (**HSR**s) at the food delivery company Deliveroo. 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*"
>
> - Deliveroo Manager

96. The TWU has a long history of representing and organising owner-drivers in matters relating to their work health and safety. Despite their unique work arrangements, these workers are considered "workers" for the purposes of WHS, and established transport companies rarely contest this. As foreshadowed, owner drivers are contracted under similar arrangements to transport workers in the 'gig' economy, albeit without the cloak of innovation and technology placed on them.

97. The biggest shortcoming of current Model WHS Laws is that they fail to address safety at work in some very important ways. In the road transport sector, there has been a long substantiated link between rates of pay, remuneration structure and other contracting practices creating unsustainable pressures which lead to poor safety outcomes.[39]

[39] See for example Mayhew, C. & Quinlan, M. (2002), Fordism in the fast food industry: pervasive management control and occupational health and safety risks for young temporary workers, *Sociology of Health and Illness*, 24(3): 261-84: Quinlan, M., Fitzpatrick, S. J., Matthews, L. R., Ngo, M., & Bohle, P. (2015) Administering the cost of death: Organisational perspectives on workers' compensation and common law claims following traumatic death at work in Australia. *International Journal of Law and Psychiatry*, 38:8-17; Rawling M and Kaine S (2012) 'Regulating supply chains to provide a safe rate for road transport workers', 25(3) *Australian Journal of Labour Law* 237.

98. A recent Centre for WHS investigation into food delivery rider safety in the gig economy identified time and earnings pressures as the two most important factors as to why workers were pressured to engage in unsafe behaviour.[40] Yet, the WHS laws and recent enforcement of these laws have largely ignored these risk factors – with no ability to set effective and safe standards and conditions to enable safe work practices.

99. For example, a recent NSW Government Taskforce which brought together the Centre for WHS, Safe Work NSW and Transport NSW to respond to the safety crisis in the food delivery sector, failed to mention such pressures in guidance material it produced for the industry or in its 'Industry Action Plan'.[41] Instead, the Taskforce has provided small and piecemeal interventions such as providing safety videos, bits of safety equipment and ad-hoc consultation and risk management. Even more concerning, some interventions continue to espouse a punitive and compliance-based approach like issuing fines to rides on footpaths which merely target workers who are of course, bear the greatest costs of this safety crisis and only works to further increase the economic pressures on workers which is otherwise compromising their safety in the first place.

### *Workers Compensation Laws*

100. The health and safety of all workers, no matter how they are engaged, deserve the protection of the law. While there are concerns with enforcement, as discussed, workers in the gig-economy are not exempt from these protections on the basis of their working arrangements or the unique workplaces within which they work. On the other hand, gig economy workers have comparatively limited avenues or options available to them when they are injured at work.

101. State Governments are responsible for the design and operation of its workers compensation schemes. There has been no effort to create nationally consistent legislation across workers compensation jurisdictions.

102. In New South Wales for example, workers compensation is regulated by three complimentary pieces of legislation:

- Workers Compensation Act, 1987 (**1987 Act**)
- Workplace Injury Management and Workers Compensation Act, 1998 (**1998 Act**)
- Workers Compensation Regulation, 2016 (**2016 Regulation**)

103. The purpose of the Workers Compensation Scheme is to provide appropriate medical treatment and compensation to persons injured at

[40] Centre for WHS, 2020, *Work health and safety of food delivery workers in the gig economy*, (Sydney: NSW Government, 2020), Work-health-and-safety-of-food-delivery-workers-in-the-gig-economy..pdf (nsw.gov.au) p.26.
[41] https://www.safework.nsw.gov.au/compliance-and-prosecutions/joint-taskforce-food-delivery-rider-safety

work[42] and facilitate their return work. The Workers Compensation Scheme does 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.

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"Companies should provide financial assistance when riders are met with accidents"

Sreenath – Deliveroo, Menulog, Doordash – Sep, 2020

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104. The vast majority of gig transport workers cannot access the Workers Compensation Scheme. Again, it is important to note that the issues concerning the application of the Workers Compensation Scheme to contractors is not unique to the gig economy, nor is it a new problem for workers. Owner-drivers that work under similar contractual arrangements to gig economy workers also have no clear legislative basis for accessing the Workers Compensation Scheme.

105. In the absence of workers compensation, the State Insurance Regulatory Agency (SIRA) recommends that contractors hold a sickness and accident or income protection policy.[43] Other insurance offerings include comprehensive third-party, public liability and limited cover policies. In the gig economy this means workers may have access to insurance from two sources (1) Policies they individually enter into, or (2) Policies provided by the company. In both cases the cost of the policy coverage can be worn by the worker or the company.

106. Importantly, there is no obligation for this type of insurance to actually be taken out, and the main policies on offer provide less coverage than would otherwise be available through the Workers Compensation Scheme. The table below outlines the benefits available to an injured worker with no capacity to work.

[42] https://www.icare.nsw.gov.au/practitioners-and-providers/gps-and-treating-doctors/understanding-workerscompensation/the-nsw-workers-compensation-system#gref
[43] http://workerstatus.workcover.nsw.gov.au/

| | 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 |

*Table 1.3 – Insurance comparison between workers compensation and gig worker arrangements*

107. A recent survey commissioned by the Victorian Department of Premier and Cabinet reported the following worrying statistics of insurance coverage in the gig economy:[41]

I. 45.5% of workers report their main platform does not cover them for any type of work-related insurance,

II. 39.7% of workers reported their main platform requires them to take out their own insurance,

III. More than 20% of workers reported they did not know if their platform provides them with insurance or requires them to take out their own.

"I was a regular rider to them. It didn't matter that I had an accident and I had to climb huge amounts of stairs on an injured knee."

Vitor – Deliveroo – 2020

108. Despite a willingness to provide some insurance coverage to their injured workers, it is clear that these benefits are significantly worse than what is available from the Workers Compensation Scheme, particularly 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.

109. These piecemeal insurances, whether provided by the company or individually opted into, only seek to extend the principle of treatment and compensation from the Workers Compensation Scheme to gig workers. They are fundamentally unable to provide a suitable pathway for injured workers to recover at work. While the current Workers Compensation Scheme is by no means perfect, it provides payment and insurance for most work-related injuries, and a process for returning to work, at a standard that is consistent across the state.

"Insurance system does not include people injured"
Chiu – EASI – Jul, 2020

110. The Workers Compensation Scheme should be reformed to require businesses to provide workers compensation to all workers regardless of their method of engagement. While piecemeal insurance offerings may adequately protect the worker from some financial loss as a result of injury, they are fundamentally unable to promote the successful recovery at work in the long-term and are not consistent with the fair compensation for injury.

…

111. The cost of these legislative failings cannot be understated. Quite simply, it is due to these failings that hundreds of thousands of Australian workers today can be systematically paid below half the minimum wage, have their livelihoods stripped away at any second without any redress and can be seriously injured or killed without access to workers compensation. These legislative failing are in urgent need of address.

## Section 4 - Recommendations

112. Emerging forms of work can have the potential to provide substantial benefits to the transport sector and working people throughout Australia. Flexible work arrangements can provide new opportunities to workers to access work and are of particular benefit to workers who value flexibility. The TWU is committed to working with industry and the Federal Government to ensure the full potential of these benefits are realised.

113. As this submission has demonstrated, the potential benefits of emerging forms of work are being currently entirely displaced by unsustainable, dangerous and exploitative practices. Work arrangements for owner drivers and in particular, gig transport workers, in their current unregulated form, are presenting serious and unprecedented challenges to the safety and working conditions of workers and creating unsustainable and dangerous business practices.

114. The TWU submits that the following recommendations provide a roadmap to addressing these issues and ensuring a safe, sustainable and vibrant future of work for all Australians:

> **Recommendation 1**: Establishment of a national tribunal with powers to create and enforce safe and sustainable rights and entitlements for all workers regardless of employment classification.
>
> **Recommendation 2**. Enforcing obligations for companies under existing WHS Laws by providing trade unions a greater role in enforcement and clarifying obligations for gig economy companies.
>
> **Recommendation 3**. Ensuring all workers in the transport sector and other high risk-industries are provided access to workers compensation.

*Recommendation 1. National Tribunal to provide safe and sustainable standards to all workers*

115. As this submission has demonstrated, the introduction of apps and other technologies to monitor, manage and organise transport workers through contractor classifications, has led to a rapid deterioration of working conditions among the rideshare and food delivery sectors. Companies like Amazon Flex, Uber Freight and Amazon Freight Partners are now threatening to vastly expand the scope of these deleterious effects throughout the transport sector. The deterioration will continue to reduce the basic dignity and living standards of transport workers and compound the safety crisis which continues to grip the industry.

116. It is also noted in this submission that these challenges are not necessarily new. Owner drivers, like gig workers, in the transport sector have long faced similar issues with unsustainable contracting practices, a lack of bargaining power, limited access to industrial rights and highly dependent work arrangements combining to undermine safety and conditions.

117. The main issue for both owner drivers and gig workers is that workers in dependent arrangements are not afforded appropriate rights under our outdated industrial relations system. Australia must move beyond a system which provides rights and basic protections to workers on the basis of a binary and arbitrary categorisation of workers as 'employees', with the full-suite of industrial rights, or 'independent contractors', with none. Work arrangements are and always will be on a spectrum of varying degrees of dependency, and it is the metric of 'dependency' which should ultimately be the determinant to the rights a worker is afforded.

118. Before considering these recommendations, the TWU submits that the common law concept of employment should not be jettisoned. A majority of workers fall within the common law definition of employment and are, in turn, entitled to rights and protections under the FWA. The introduction of a separate classification of employee or worker would not be effective, as it would invite corporations to devise new arrangements and platforms of work that fall outside that classification. It may also result in employees who are currently correctly classified to be reclassified into an inferior class of workers. Finally, a separate classification is likely to lead to greater uncertainty and potentially unpredictable outcomes from courts and tribunals, which could result in the legislature having to amend the definition of work. As follows, it would be most effective to allow a tribunal to determine forms of work based on varying degrees of dependency.

119. The TWU recommends the Federal Government act to deliver:

- a system which can provide workers in dependent arrangements, like owner drivers and gig workers in the transport sector, access to the rights they deserve while promoting fair, sustainable and safe competitive practices. This system must include:
    - A tribunal which is empowered to inquire into work arrangements falling outside the category of employment and determine what rights and entitlements are appropriate to those arrangements.
    - A tribunal which has the ability to determine the extent of rights and entitlements categories of workers should receive, depending on the degree or level of dependency.
    - A tribunal which has the capacity to resolve (including where necessary through binding decisions) transport supply chain / contract network disputes, including those in relation to the unfair terminations of engagement.
    - The ability for all workers to join and be represented by their union in the creation of such standards. An ancillary role for the tribunal to facilitate collective bargaining.
    - Ensuring all such standards and conditions are legally enforceable on all supply chain and contracting parties to ensure that minimum standards are upheld. An effective

enforcement regime to ensure that these legally enforceable standards are realised.

*Recommendation 2. Enforcing existing obligations for companies under existing WHS Laws*

116. The safety crisis is the transport sector must in the first instance be addressed by recognising the role which competitive pressures and a lack of working standards play in encouraging dangerous work practices. WHS Laws are an important tool in addressing some aspects of safety but do very little to address the major risk factors in the transport industry and gig economy.

117. Notwithstanding this, the submission noted the limitations of existing WHS Laws – namely, that the lack of enforcement of safety obligations in the gig economy and broader unregulated sections of the transport sector. There is a need for all industry stakeholders to act to urgently address these issues.

118. The TWU recommends the Federal Government act to ensure:

- SafeWork Australia prepare guidance on the responsibilities of PCBUs in the gig economy and begin actively enforcing WHS Laws.
- Union officials are provided the ability to participate more directly in the enforcement of WHS Laws by:
    i. Allowing trained union officials to issue improvement notices to companies breaching their obligations under the WHS Act.
    ii. Providing funding to trade unions to perform enforcement activities in the interest of work health and safety.
- The adoption of all 34 recommendations of The Australian Senate Education and Employment References Committee report 'They never came home – the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia'.
- SafeWork Australia to work with State regulators to investigate the underreporting of notifiable incidents by gig companies, with particular emphasis on the underreporting of serious injuries and worker deaths.

*Recommendation 3. Ensuring all workers in the transport sector are provided workers compensation*

119. The rise of gig and other non-standard forms of employment in the transport sector is leaving a growing section of the workforce without access to workers compensation. This is arguably the largest failing of the Workers Compensation scheme today. The increasing prevalence of non-standard forms of work, including those in the gig economy and in other parts of the transport sector, are rendering the entire workers compensation system redundant.

120. The current system rests on the incorrect assumption that workers not classified as employees will take out their own workers compensation policy. In reality, workers will not do so, particularly when issues of low pay among such sections of the workforce are taken into consideration.

121. The TWU recommends the Federal Government work with States to amended and harmonise Workers Compensation Laws to ensure:

a. the Workers Compensation Scheme is reformed to require businesses to provide workers compensation to all workers regardless of their method of engagement

b. the Workers Compensation Scheme should be formally reviewed with the intent of drafting new legislation to expand its coverage to all workers.