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Introduction

The Australasian Centre for Corporate Responsibility (ACCR) is an independent, not-for-profit research and shareholder advocacy organisation. We regularly engage with investors and Australian-listed companies on environmental, social and governance (ESG) issues facing corporate Australia, including labour rights matters.

ACCR's Workers' Rights program of work, led by Dr Katie Hepworth, has recently focused on the business and operational risks associated with different employment relationships. In 2020, ACCR published a major research report, [Labour Hire and Contracting Across the ASX100](#), exploring some of the key workforce and operational risks associated with labour hire and contracting arrangements.

As discussed in section C., we note that the boundaries of a company's workforce increasingly stretch beyond its direct employees, and may include labour hire agencies, sub-contractors, service contractors, independent contractors, and even gig economy workers. Furthermore, many companies now outsource a large proportion of their activities to other businesses (which in turn, often outsource again).

ACCR is currently engaging companies in sectors that have significant exposure to risks associated with outsourcing and indirect employment, including horticulture, commercial cleaning, mining construction, large scale solar and warehousing. These sectors may be exposed to significant outsourcing risks due to the percentage of the workforce that is employed via third party agencies, or the severity of the risks associated with the outsourcing of labour (up to and including modern slavery).

In these sectors, the expansion of indirect employment is associated with a reduction in job security and working conditions for significant portions of the workforce. For this reason, we have elected to focus our submission on the dynamics, trends and impacts associated with the expansion of indirect employment and the multiplication of employment types.

Our submission to this important inquiry focuses on:

- A. the extent and nature of insecure or precarious employment in Australia;
- B. the risks of insecure or precarious work exposed or exacerbated by the COVID-19 crisis;
- C. workplace and consumer trends and the associated impact on employment arrangements in sectors of the economy including the 'gig' and 'on-demand' economy;
- D. the aspirations of Australians including income and housing security, and dignity in retirement; and
- E. the effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies;

We thank the inquiry for the opportunity to comment and hope that our insights will be valuable.

A. The extent and nature of insecure or precarious employment in Australia

Australian workers have been experiencing a decline in both the quantity and quality of work. In 2018, The Australia Institute published alarming research revealing the recent proliferation of employment insecurity in Australia. Economists Dr Tanya Carney and Dr Jim Stanford identified a 'consistent trend towards greater insecurity', including through: the growth of part-time, casual and marginal self-employment; fewer workers being protected by enterprise agreements; a proportional increase in temporary foreign migrant labour; and declining earnings for workers (in real terms) in insecure jobs.¹

In recent years, media stories and government inquiries have probed into some highly insecure sections of the Australian workforce. For instance, in 2015 ABC's Four Corners aired 'Slaving Away', an exposé on extreme exploitation by labour hire operators in fresh food supply chains.² In 2015, it was revealed that cleaners, hired by contractor Spotless and put to work in Myer retail stores, were working under sham contracts, hidden through multiple layers of subcontracting.

It is difficult to ascertain the precise size of particular sections of Australia's 'insecure' workforce. For instance, the Australian Parliamentary Library notes that the true numbers of labour hire workers in Australia may be underreported, partly due to these workers' confusion about their own employment relationships, and "whether they are being paid by a labour hire firm or the organisation they are on-hired to".³

While statistical data on labour hire workers in Australia is limited, it is clear that labour hire workers constitute a staggering proportion of workers in some industry sectors. For example, it has been noted that since 2012, many mining operators in Australia "have moved to predominantly labour hire workforces in recent years with the stated aim of reducing overheads and increasing workforce flexibility".⁴ In 2017, Rio

¹ T Carney & J Stanford, The Australia Institute, *The Dimensions of Insecure Work: A Factbook*, May 2018, shorturl.at/hjCTZ

² ABC Four Corners, 'Slaving Away', 4 May 2015

³ G Gilfillan, Trends in Use of Non-standard Forms of Employment, Parliament of Australia, 18 December 2018, https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/6383457/upload_binary/6383457.pdf. See also: R Hall, *Labour Hire in Australia: Motivation, Dynamics and Prospects*, Sydney, University of Sydney, April 2002, p. 4.

⁴ Queensland Government, *Inquiry into the practices of the labour hire industry in Queensland*, Report No. 25, 55th Parliament, Finance and Administration Committee, June 2016

Tinto announced that they will only use labour hire workers in their iron ore operations.⁵ Deloitte notes that 88% of new hires to BHP in the two years to 2019 were labour hire workers, while 50% of new workers at Fortescue Metals Group in the same period were indirect hires.⁶

We also note the incursion of labour hire work in sectors such as the health and community services sector. For instance, the 2019-20 NDIA Annual Report notes that the total NDIS workforce includes 1,692 labour hire contractors and consultants (nearly 15% of the total workforce), and 5,462 people employed by NDIA's partners (representing 46% of the total workforce).⁷ In its submission to the NSW parliamentary Inquiry on the impact of technological change on the future of work and workers, the United Workers Union (UWU) noted that 'health and care services are increasingly being outsourced to digital platform employment models, specifically designed to be integrated with privatised NDIS services'.⁸ For example, the digital platform homecare service company Ubercare launched in Australia in 2017, to coincide with the rollout of the NDIS.

Industry market research company IBISWorld suggests that the Temporary Staff Services industry in Australia has grown 6.2% between 2015 and 2020, with both public and private sector firms '(favouring) outsourcing non-core activities over the past two decades'.⁹ There are approximately 9,987 Temporary Staff Services businesses in Australia, employing 406,186 people.

The difficulty in estimating the size of the rapidly growing 'gig economy' has also been widely acknowledged. This is partly due to the 'secondary' nature of gig work—a significant group of gig economy workers consider their work in this economy to be 'secondary' or supplementary to a primary form of work.¹⁰ Furthermore, as many workers are moving from one type of self-employment to gig work (for example, driving Taxis to driving Uber), these shifts will not be detectable in the headline figures of self-employed workers in Australia (for example, from the widely-used HILDA Survey). Given these limitations, the Actuaries Institute recently used a 'non-traditional' approach to understand the scope and nature of the Australian gig economy. They estimate that between 2015 and 2019, the gig economy's market size grew nine-fold, to \$6.3 billion.¹¹

<https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2016/5516T1028.pdf>, p. 12; see also Commonwealth of Australia, *Keep it in the Regions*, Canberra, Commonwealth of Australia, 2018, <https://bit.ly/3dY6SsN>.

⁵ B Creagh, 'Rio Tinto contractor conundrum: The new normal in the Pilbara?', *Australian Mining*, 2016, <https://bit.ly/2V4qjYy>.

⁶ P Milne, 'Casual workforce a "threat" to mine culture, says industry expert', *The West Australian*, 29 January 2019.

⁷ NDIS, National Disability Insurance Agency 2019–20 (Annual Report), <https://www.ndis.gov.au/media/2724/download>, p. 43

⁸ United Workers Union, 2020, 'Technology and Power: Understanding issues of insecure work and technological change in Australian workplaces', <https://www.unitedworkers.org.au/wp-content/uploads/2020/08/Technology-and-Power-UWU-Submission.pdf>, pp. 52-53

⁹ <https://www.ibisworld.com/au/industry/temporary-staff-services/570/>

¹⁰ McDonald, P., Williams, P., Stewart, A., Oliver, D., & Mayes, R. (2019). Digital Platform Work in Australia. Research.qut.edu.au, https://research.qut.edu.au/work-industry-futures-research-program/wp-content/uploads/sites/35/2019/06/Report-ofSurvey-Findings_18-June-2019_PUBLISHED.pdf

¹¹ Actuaries Institute, *The Rise of the Gig Economy and its Impact on the Australian Workforce*, Actuaries Institute, 2020, <<https://bit.ly/31wPiqU>> [accessed 23 February 2021].

These problems are compounded by limited self-reporting by Australian companies about their total workforces.

Recently, ACCR reviewed how ASX-100 companies in the mining, construction and property service sectors were reporting on the composition of their workforces.¹² We reviewed relevant company documents—including Annual Reports, Sustainability Reports, Corporate Governance statements or appendices, and/or ESG Analyst toolkits—during a single company reporting period. We found that company reporting on 'indirect' or non-employee workers (labour hire, contract) is minimal.

Very few companies report any information about their use of labour hire and/or contract workers, despite the fact that these workers often made up a large proportion of a company's total workforce. Of the companies analysed, 42% made no material disclosure about their labour hire and/or contracting workforce in annual reporting documents. When companies do disclose some information about their use of labour hire and/or contracted workers, it is often unclear how the companies are defining each of these categories of work.

In this report, we concluded that:

Overall, it is impossible to deduce if and how companies are using labour hire and/or contract workers in their operations, or to make useful comparisons between companies. It is fair to say that in reporting on their workforces, companies are only providing 'part of the picture'.¹³

On the basis of this research, ACCR has encouraged companies to expand their reporting to more adequately reflect their entire workforces. We provided companies with a framework to guide them on the types of material and materiality-based disclosures that would allow investors to identify the employment model used, let alone determine the sustainability of that model and how it contributes to long-term shareholder value.

Since the publication of our report, other global reporting and/or disclosure initiatives are also encouraging companies to improve their public reporting. Companies are being asked to report information about all workers which they have some responsibility for, control over, or direct relationship with (even if this relationship is not an 'employment' one, as defined by the application of national industrial law).

For example, the Global Reporting Initiative (GRI) Universal Standards, the most widely used standards for organisational sustainability reporting globally, now ask companies reporting under the GRI 403 Occupational Health and Safety standard to report on all workers for whose occupational health and safety they are expected to be responsible. This includes:

- 'All workers who are employees';
- 'All workers who are not employees but whose work and/or workplace is controlled by the organization';
- 'All workers who are not employees and whose work and workplace are not controlled by the organization, but the organization's operations, products or services are directly linked to significant occupational health and safety impacts on those workers by its business relationships.'¹⁴

¹² ACCR, *Labour Hire and Contracting across the ASX100*, ACCR, 2020, <<https://bit.ly/3u8cIzo>>.

¹³ ACCR, *Labour Hire and Contracting across the ASX100*, Finding 1.

¹⁴ GRI (Global Reporting Initiative), *GRI 403: Occupational Health and Safety 2018*, June 2018,

B. The risks of insecure or precarious work exposed or exacerbated by the COVID-19 crisis

Indirect employment exacerbates COVID-19 transmission risks

Insecure work was a key driver of COVID-19 transmission during Melbourne's second wave. Numerous clusters were linked to indirect employment relationships, specifically subcontracting, contracting and labour hire arrangements.

ACCR's report on Labour Hire and Contracting across the ASX100, released in May 2020, highlights the key business, operational and workforce risks associated with the use of labour hire and contracting.¹⁵ Indirect employment often results in a lack of transparency and accountability for a workforce, with lead contractors eschewing responsibility for training, failing to provide adequate Personal Protective Equipment (PPE), and even failing to provide minimum wages and conditions. Lines of responsibility are often unclear, and critical information is easily miscommunicated.

In our investor brief, *Broken chains of responsibility: Victorian COVID-19 clusters reveal subcontracting risks*, we detail how labour hire and subcontracting increased the risks of COVID-19 transmission. ACCR engaged companies and investors on these risks throughout 2020.¹⁶

COVID exacerbates modern slavery risks

There are estimated 15,000 people living in slavery-like conditions in Australia.¹⁷ Sectors which have been deemed as 'high-risk', and in which non-compliance with labour law is common, include the commercial cleaning, meat production and horticultural sectors. High risk of modern slavery in particular sectors has been linked to a range of factors, including:

- A predominantly migrant workforce, often with low English language competency and knowledge of Australian workplace laws, and precarious - or no - visa rights;
- Significant downward price pressures by lead companies, particularly in sectors where lead companies have significant market power;
- Complex and informal sub-contracting and labour hire arrangements, often involving sophisticated pyramid structures and multiple sub-contracting arrangements; and
- Low barriers to entry for labour hire providers.¹⁸

<https://www.globalreporting.org/media/zripcgu2/gri-403-occupational-health-and-safety-2018-presentation.pdf>, p. 8.

¹⁵ ACCR, *Labour Hire and Contracting across the ASX100*, May 2020, <https://www.accr.org.au/research/labour-hire-contracting-across-the-asx100/>

¹⁶ ACCR, 'Broken chains of responsibility: Victorian COVID-19 clusters reveal subcontracting risks', July 2020, <https://www.accr.org.au/news/broken-chains-of-responsibility-victorian-covid-19-clusters-reveal-subcontracting-risks/>

¹⁷ Global Slavery Index, 'Global Slavery Index 2018: Australia', 2019, <https://bit.ly/2V59GvH>

¹⁸ Commonwealth of Australia, *Report of the Migrant Workers Taskforce*, Canberra, Commonwealth of Australia, 2019, <https://bit.ly/39SJs5a>

Australian Border Force notes that COVID-19 may increase the vulnerability of workers to modern slavery, including in Australia.¹⁹

Temporary migrant workers were not eligible for either the JobSeeker or JobKeeper payments. Many temporary migrant workers live paycheck to paycheck, and have minimal or low savings. Job losses puts these workers at greater risk of falling into slavery-like conditions as they are likely to seek out:

... even more precarious work and expos[e] themselves to a greater risk of exploitation. ... As work dries up, desperation among workers grows. In such circumstances working conditions can quickly deteriorate at the hands of unscrupulous employers.²⁰

Temporary migrant workers make up a significant proportion of the workforce in the cleaning, horticulture and security service sectors. ACCR has been engaging companies and investors in these sectors about how they are assessing and mitigating increased modern slavery risks due to COVID-19 in their supply chains.

ACCR has engaged a number of companies in high risk sectors about their modern slavery risks. While a number of companies have acknowledged increased modern slavery risks due to COVID-19, it is concerning that many companies have halted their auditing of high risk supply chains during the pandemic, arguing that auditors are unable to attend worksites.

C. Workplace and consumer trends and the associated impact on employment arrangements in sectors of the economy including the 'gig' and 'on-demand' economy

One of the most significant changes in Australian workplaces over the last few decades has been the resurgence of various indirect forms of employment. This has occurred not just through the creation of new casualised or 'gig' industries, but also through changes to the ways in which existing companies structure their operations. Increasingly, the boundaries of a company's workforce stretch beyond its direct employees, to include labour hire agencies, sub-contractors, service contractors, independent contractors, and even gig economy workers. Many companies now outsource a large proportion of their activities to other businesses (which in turn, often outsource again).

Scholar David Weil coined the term 'fissured workplace' to describe the trend away from standard employment relationships (in the US context). A central characteristic of the fissured workplace is the shedding of 'as many as possible of the activities' which are considered unessential in delivering the company's greatest 'competencies from the perspective of customers and... investors'.²¹ These non-core activities are then delivered by a host of subsidiary organisations, which 'orbit' around the lead company.

Australian scholars Richard Johnstone and Andrew Stewart have summarised how the trends observed by Weil in the US context can be discerned in Australia.²² The authors caution that 'not all forms of insecure

¹⁹ ABF, *Modern Slavery Act Information Sheet: Coronavirus*, 2020, p. 3, <https://bit.ly/3dfeeJ3>

²⁰ CAF, 'Cleaners are our frontline defence', *Cleaning Accountability Framework*, April 2020, <https://bit.ly/2XkOuom>.

²¹ D Weil. 2014. *The Fissured Workplace: Why Work Became so Bad for so Many and What Can Be Done to Improve It*. Harvard University Press. Cambridge, Massachusetts, p. 148.

²² R Johnstone & A Stewart, *Swimming against the Tide: Australian Labor Regulation and the Fissured Workplace*, *Comparative Labor Law and Policy Journal*, 37(1), pp. 55-90.

work are associated with fissuring, and vice versa', noting that direct employment can still involve insecurity (e.g. casualisation) and that some workers engaged through third party entities may have permanent employment with that entity.²³ However, in the sectors where ACCR is currently focusing our company and investor engagement, workplace fissuring is directly correlated with significant reductions in job security. Furthermore, be no doubt that fissuring, through subcontracting, supply chains, labour hire, franchising, and platform-based 'gig' employment, is now commonplace in Australia, introducing clear challenges to the provision of 'decent work'²⁴ for all.

D. The aspirations of Australians including income and housing security, and dignity in retirement

Superannuation balances at retirement are based on the accumulated compulsory (and potentially voluntary) contributions that are made over an individual's working life, and the investment returns achieved by their superannuation fund. In order for individuals to achieve dignity in retirement, adequate contributions must have been made over their working life, and their fund must have achieved sufficient investment returns to grow those contributions.

The fissuring of the Australian workplace may undermine individuals' ability to achieve dignity in retirement in numerous ways:

1. Wage suppression resulting in a reduction of income and therefore a reduction in employer contributions.
2. Independent contractors (such as gig workers and individuals caught in sham contracting schemes) being excluded from the Superannuation Guarantee (SG).
3. 'Fissured' workplace structures may undermine a company's long-term value creation, impacting on shareholder returns in the long term.

Wage suppression and the reduction of employer contributions

Compulsory employer contributions to superannuation are based on a fixed percentage of qualifying earnings. Any reduction in income therefore results in a reduction of contributions, resulting in lower superannuation balances overtime. Furthermore:

... since accumulated superannuation balances (and the income streams they ultimately support) are highly dependent on the accumulation of compound investment returns during the pre-retirement years, changes in earnings are amplified by the application of compounding to any changes in pre-retirement earnings.²⁵

In 2017, the Centre for Future Work published a report that highlighted that the suppression of wage growth represented a "time bomb" for the superannuation system.²⁶ The report examined the combined impact of

²³ R Johnstone & A Stewart. 2015. *Swimming against the Tide: Australian Labor Regulation and the Fissured Workplace*, Comparative Labor Law and Policy Journal, 37(1), p. 59

²⁴ See <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>

²⁵ Commonwealth of Australia, *Wage Theft and Non-compliance of the Superannuation Guarantee*, Commonwealth of Australia, 2017, p. 8, <https://bit.ly/3fpCjzF>

²⁶ J Stanford, *The Consequences of Wage Suppression for Australia's Superannuation System*, Centre for Future Work, 2017.

eight wage suppression strategies on Australia's retirement balance and the sustainability of Australia's current retirement system.

An additional element of wage suppression is the role of “fissuring” or indirect employment.

Weill notes that fissuring has a role in wage stagnation. As employees of the external entities providing labour and/or services to a firm are no longer bound by the wage structure of the lead entity, lead companies are able to put downward pressure on wages in external entities by favouring contractors and subcontractors who offer lower prices.²⁷ Studies in the US have found that workers who are directly employed by lead entities receive, on average, a wage bump of 8 - 12% for working in-house, compared to workers who are employed by external entities to perform the same work.²⁸

The use of labour hire or agency workers may also result in the creation of a “two-tier” workforce, with two or more sets of workers performing work for the same entity under drastically different pay and conditions. In our report, *Labour Hire and Contracting Across the ASX100*, we discuss specific case studies where labour hire workers do not receive the same wages and conditions as the directly employed workforce, even when performing the same work as the directly employed workforce.²⁹

Under Australian law, enterprise agreements that cover direct employees of a company do not apply to the company's labour hire or contractor workforce. These workers must negotiate a separate agreement with their direct employer. While host companies can choose to extend the same conditions to labour hire workers and contractors, in practice this is rarely done.

Superannuation Guarantee (SG) not extended to independent contractors

Not all workers are eligible for the superannuation guarantee. For example, employees who earn less than \$450/mth with a single employer, and independent contractors are not eligible for the SG.

The Association of Superannuation Funds of Australia (ASFA) finds that many self-employed individuals will struggle to achieve dignity in retirement.³⁰ 20% of self-employed workers have no super, compared with 8% of employees.³¹

The number of individuals with no or minimal super is likely to increase with expansion of the gig economy given these workers' status as “independent contractors”.³²

The Actuaries Institute calculated the impact of gig economy work on superannuation balances. Their simulation found that “workers who spend five to 10 years of their productive labour years participating in the gig economy may be between \$48,000 or \$92,000 worse-off in superannuation savings at retirement”.³³

²⁷ D Weil, ‘Understanding the Present and Future of Work in the Fissured Workplace Context’, in *RSF: The Russell Sage Foundation Journal of the Social Sciences*, vol. 5, 2019, 147–165.

²⁸ Weil, 147–165 (p. 155).

²⁹ ACCR, *Labour Hire and Contracting across the ASX100*.

³⁰ A Craston, *Superannuation balances of the self-employed*, ASFA, 2018, p. 27, <<https://bit.ly/3rIh0ff>>.

³¹ A Craston, *Superannuation balances of the self-employed*, ASFA, 2018, p. 4, <<https://bit.ly/3rIh0ff>>.

³² A Craston, *Superannuation and the Changing Nature of Work: Discussion paper*, ASFA, 2017, p. 6, <<https://bit.ly/2PFMx3U>>.

³³ Actuaries Institute, p. 33.

This will significantly undermine their ability to achieve dignity in retirement, unless the superannuation guarantee is extended to independent contractors or the government takes steps to address the misclassification of gig workers.

Fissured workplace structures impacting shareholder returns in the long term

An individual's superannuation balance at retirement is also due to the investment returns delivered by their fund(s) over the lifetime of their investment. Factors that undermine investment returns will also have an impact on superannuation balances and individuals ability to retire with dignity.

A company's workforce strategy (that is, its mix of direct and indirect workers) is material to its overall performance and to shareholder returns in the long term. While in the short term, outsourcing and indirect employment may provide lower labour costs, this may undermine long term value if a company fails to maintain and develop its long-term human capital.³⁴

There are a number of reasons why companies may adopt a fissured workforce model. However, in doing so, they may increase their exposure to a range of workforce, business and operational risks. These include:

- Poorer Occupational Health and Safety standards, including a lack of training and PPE;
- Confused lines of responsibility;
- Poor communication between host companies, intermediaries and workers;
- Less reporting of workforce issues, risks and breaches, as precarious workers fear losing their jobs;
- The creation of a two-tier workforce, with subcontracted workers on lower workers than other workers performing the same job.

These risks may impact on medium and long term value creation for the company and their investors, as outlined in our recent report *Labour hire and Contracting across the ASX100*.

ACCR has been engaging companies and investors about these risks since 2019, and will continue to do so in 2021. Many institutional investors with which we engage have expressed a willingness to understand more about the now-commonplace 'two-tier' workforce structure.

We also note that institutional investors are increasingly expressing concern regarding the misclassification of gig economy workers as independent contractors. At the time of writing, Deliveroo was planning to list on the London Stock Exchange, and had just launched their initial public offering (IPO). Stock was due to start trading on the LSE on the 7 April 2021.

A number of large asset owners and asset managers, representing over £2.5 trillion in assets have stated that they will not be participating in the IPO, highlighting concerns with the long-term implications of the misclassification of workers' for company performance and sustainability.³⁵ These investors include Aviva; Aberdeen Standard, Legal and General (LGIM) - the UK's largest fund manager; M&G.

³⁴ NAPF, *Where is the workforce in corporate reporting?*, London, 2015, p. 14, <https://bit.ly/2ReWcfM>

³⁵ A Mooney & T Bradshaw, 'Legal and General joins investors shunning Deliveroo IPO', 2021, <https://on.ft.com/2PBe9qW>; S Shead, 'Amazon-backed Deliveroo dogged by workers' rights complaints ahead of IPO', *CNBC*, 2021, <<https://cnb.cx/2O38fyi>>; I Levingston & S Gopinath, 'Deliveroo Hit by Investor, Rider Revolt Ahead of London IPO', *Bloomberg*, 25 March 2021, <https://bloom.bg/3cA32I0>

The explanations provided by these investors highlights how Deliveroo's current employment model is not just ethically dubious, it is also understood as a financial risk for investors. Deliveroo's employment model is not unique to the company, and these investors' analysis of materiality can be applied to other companies and even other sectors where similar platform models apply.

David Cumming, Chief Investment Officer for Equities, Aviva Investors:

If they are classed as riders they don't necessarily get basic rights for minimum wage, sick leave or holidays, and [Deliveroo] states a reclassification of employees as an investment risk to the business. We won't be investing in Deliveroo for a number of reasons but that is one of them. [...] A lot of employers could make a massive difference to workers' lives if they guaranteed working hours or a living wage, and how companies behave is becoming more important.³⁶

Andrew Millington, Head of UK Equities, Aberdeen Standard Investments:

We wouldn't be comfortable that the way in which its workforce is employed is sustainable.³⁷

Rupert Krefting, Head of Corporate Finance and Stewardship, M&G:

We still see risks to the sustainability of its business model for long term investors. This is largely driven by the company's reliance on gig-economy workers in the U.K. as informal employment contracts potentially fall short in offering the value, job security and benefits of full employment.³⁸

Legal and General:

We are unlikely to participate in the IPO via our active or index funds. We see increasing signs of countries and governments reviewing the gig economy status. We take our role as a responsible steward of our clients' capital very seriously and engage with a number of companies in this sector on ESG concerns, like the rights of employees and proposed share class structures.³⁹

LGIM has gone further than simply stating that they will not participate in the IPO, and are actively pushing for the UK regulator to remove the company from the UK's premium indices, which would otherwise force the company to invest in Deliveroo through their passive investments.⁴⁰

Deliveroo's own IPO documents highlight the reclassification of it's riders as employees as a material risk to the company.⁴¹ It highlights current proceedings in the United Kingdom, France, Spain, the Netherlands and Italy regarding contractor status, as well as investigations and consultations in Australia, France, Belgium and the EU which are considering the employment status of workers. The response of investors to the Deliveroo float demonstrates that where there is uncertainty regarding the status of platform workers, major

³⁶ Shead.

³⁷ T Murden, 'Aberdeen Standard and Aviva shun Deliveroo IPO', in *Daily Business*, March 2021, <<https://bit.ly/3uj7pgD>> [accessed 30 March 2021].

³⁸ Shead.

³⁹ Shead.

⁴⁰ Mooney and Bradshaw.

⁴¹ Deliveroo, *Deliveroo IPO*, Deliveroo, 2021 <<https://bit.ly/3sP2GD3>> [Accessed 30 March 2021]

investors will not invest. This has implications that extend beyond food delivery platforms to emerging gig sectors, such as the care sector.

In March 2021, the International Lawyers Assisting Workers Network prepared a brief that outlined over 40 key judicial decisions regarding the employment status of workers using digital platforms globally.⁴²

E. The effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies;

Since 2014, the Fair Work Ombudsman (FWO) has paid increasing attention to the responsibility of lead companies in a supply chain for labour rights violations by their suppliers and labour hire providers. They have used both accessorial provisions under the Fair Work Act and proactive compliance agreements to hold companies accountable and deliver remedy for workers. However, these provisions are still limited in their ability to compel lead actors in the supply chain to take responsibility for wage underpayments by their suppliers and subcontractors, even in cases where the lead actor exerts significant power over suppliers and/or contractors, and has a significant degree of oversight over their supply chain.

Given this, ACCR support recommendations by the Migrant Worker Taskforce (MWT) to extend:

...accessorial liability provisions of the Fair Work Act 2009 to also cover situations where businesses contract out services to persons, building on existing provisions relating to franchisors and holding companies.⁴³

Accessorial liability provisions under the Fair Work Act have already been increased via the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017. The Protecting Vulnerable Workers Act changes ensured that where franchisors and holding companies that exercise significant control over their franchisees and subsidiaries, they are “held responsible where they do not take reasonable steps to try to prevent breaches of workplace laws”.⁴⁴ The MWT amendment would simply extend these provisions to lead companies in supply chains.

ACCR also supports the FWO’s use of Proactive Compliance Agreements in those situations that do not meet the threshold for accessorial liability. Proactive Compliance Deeds are a legally binding enforcement mechanism between the FWO and a company or companies accused of non-compliance with the Fair Work Act. In many cases, it is the direct employer who is the partner to the deed. However, there have been a significant number of high profile cases where the FWO has entered into a compliance agreement with either the host company or company at the top of the supply chain. This has occurred in cases where the FWO believes the lead company has an ethical responsibility to promote compliance due to either their significant power over suppliers and/or contractors, and some degree of oversight over their supply chain.⁴⁵

For example, Woolworths has been subject to penalties and FWO Proactive Compliance Deeds in relation to their cleaning contracts in Tasmania and trolley collection contracts nationally. In the case of trolley

⁴² ILAW, Taken for a Ride: Litigating the Digital Platform Model’, 2021, <<https://bit.ly/3ftAhOY>> [Accessed March 25, 2021].

⁴³ Commonwealth of Australia, “Report of the Migrant Workers Taskforce,” 10.

⁴⁴ Commonwealth of Australia, 47.

⁴⁵ Fair Work Ombudsman, “Inquiries into Supply Chain Networks,” 2018, <https://www.fairwork.gov.au/>.

collection, the FWO found that Woolworths had “legal, moral and ethical responsibility” for its supply chain arrangements.⁴⁶ Their proactive compliance agreement required Woolworths to establish a \$1 million fund to cover payments to trolley collectors where their direct employer failed to back pay workers.

⁴⁶ Fair Work Ombudsman, “Woolworths Trolley Collection Services,” 2016, <https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/june-2016/20160625-woolworths-trolley-mr.Wool>