

## Select Committee on Job Security

Submission by<sup>1</sup>

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### Introduction

Insecure or precarious work can take many different forms and extends across a range of industries (Campbell and Burgess, 2018). It is well understood, both in Australia and internationally, that insecure or precarious employment has a negative impact on the economy, wages, social cohesion and workplace rights and conditions (Campbell and Burgess, 2018; Kalleberg, 2012; Markey and McIvor, 2018). While the negative impact of insecure or precarious work is established, there are ongoing debates about the size and growth of insecure or precarious work.

Non-standard forms of work such as casual employment, fixed-term, labour hire, part-time work are often associated with more insecurity than traditional, full-time employment (Burgess and Campbell, 1998; Campbell and Burgess, 2018). In Australia, the share of non-standard employment as a percentage of total employment grew significantly over the last 30 years and is estimated to have been 54.9% in 2001 (Laß and Wooden, 2020). The most recent data from 2017 reveals that the share is only slightly higher at 55.6%. Nevertheless, comparatively Australia has a very high level of non-standard work by international standards (Laß and Wooden, 2020).

In the academic literature, job security and insecurity have been studied by researchers from varied backgrounds (Campbell and Burgess, 2018; Kalleberg, 2012; Laß and Wooden, 2020; Preston, 2018), with its associated dimensions and attributes defined and conceptualised in different ways. For the purpose of this submission, we draw upon the work of Standing who identified and defined seven forms of labour-related security (2011: 10):

1. **Labour market security:** The security that comes from adequate jobs being available, traditionally characterised by governments' macroeconomic commitment to "full employment"
2. **Employment security:** The security that when in employment, that that employment will not end arbitrarily, that that job will continue for a sustained period.
3. **Job security:** That the job one holds will not be subject to skill dilution, and the opportunity to increase both income and status over time.
4. **Work security:** The security of a safe workplace, including regulation on work safety, hours, and some form of protection in the case of injury or death.
5. **Skill reproduction security:** The opportunity to gain skills, through training, and to deploy these skills in labour markets.

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6. **Income security:** The security of an adequate, stable income, both in the performance of work and in a comprehensive social welfare system.
7. **Representation security:** The security of collective representation and a right to strike.

Within this broader context, the focus of this submission is work in the digitally enabled ‘gig’ or ‘on-demand’ work, whereby we will highlight the layered insecurities associated with food-delivery services in particular.

On-demand work in the ‘gig’ economy is a relatively new phenomenon in Australia and is unlikely to have been captured in the above statistics. As a form of work organisation and source for workers to derive a primary or supplementary income this form of work is becoming increasingly prevalent. A 2019 labour market survey found that 7.1% of respondents were working, or had sought to participate in ‘on-demand’ work, in the past 12 months (McDonald et al., 2019). The growth of ‘gig’ work can be viewed as an extension of the established trends of precarious and insecure work outlined above.

‘On-demand’ or ‘gig’ work can be categorised into two distinct forms, based on the nature of the work and its organisation by platform firms. Both have their own distinct forms of insecurity and precarity, based on factors such as the ability to access work, and the other workers with whom a gig worker is ‘competing’ for jobs. One variant are *app-based services*, which use mobile phone applications to organise inherently local services. These services are performed in person by workers for end-users within the same geographical location and commonly involves the repackaging and/or re-organising of ‘real world’ tasks and jobs; for example, transport and delivery services (Stewart and Stanford, 2017), this work is referred to hereafter as app-based ‘gig’ work.

Crowd or *cloud-based* ‘gig’ work is the second form whereby workers perform digital tasks for end-users, frequently from their homes. Due to its online nature, workers and end-users are not necessarily within the same locale or country. For a more detailed definition and discussion of ‘gig’ or ‘platform’ work please refer to the work by Stewart and Stanford (2017) and De Stefano (2016).

We have been researching different facets of *app-based* ‘gig’ work since 2017, with a focus on worker experiences and consumer attitudes toward working conditions and entitlements. Our original empirical research has mainly concentrated around app-based food-delivery services. This form of work is not only insecure on its own, but also has an effect on employment more broadly, by placing downward pressure on pay and conditions in the non-gig-economy. Below we reflect upon this research in relation to the terms of reference as set out by the Select Committee on Job Security and reveal the ‘layered insecurity’ that these workers experience on a daily basis. We further draw upon original research conducted on the aspirations and desired working conditions of young Australians, which explored their attitudes towards flexibility and security at work.

## **The extent and nature of insecure or precarious employment in Australia;**

App-based food-delivery services first emerged in Australia around 2015. In the past twelve months, the COVID-19 pandemic, and subsequent government restrictions, have seen demand for food and other delivery services surge (Gibson, 2020). At the same time, we have witnessed an increasing number of unemployed people turn to this industry as a source of income (Derwin, 2020). Moreover, there is evidence that temporary migrant workers (e.g. international students or temporary work visa holders), who were already overrepresented in this industry, excluded from the JobKeeper package or social security benefits like JobSeeker, became delivery couriers in the app-based ‘gig’ economy. This left these workers in the precarious position of trying to sustain themselves in a difficult labour market, encountering issues around **labour market security**, having to accept these jobs as a means of getting by in the absence of state support. This was coupled with **income insecurity**, as some platforms do not

cap the number of riders available to accept jobs, meaning increasing numbers of workers found themselves competing for finite deliveries.

At the same time, our research found that many of these relatively vulnerable groups of workers (e.g. international students, working holiday makers and young Australian citizens) chose to perform this type of work, despite safety concerns and low pay and conditions, due to the poor quality of other insecure employment in Australia (Goods et al., 2019) – viewing ‘gig’ work as a preferable alternative. This preferential view can be explained, for example, by their life stage and their relative labour market position, as well as reflecting the poor quality of insecure work in other industries (e.g., in hospitality, retail or horticultural industry) making ‘gig’ work relatively appealing. In addition, some of these workers believed, though this belief remains legally untested, that due to their independent contractor status that they could circumvent working time restrictions associated with their visas.

In the context of COVID-19, gig workers were hailed for keeping the hospitality sector afloat, dubbed ‘essential’ workers. But their daily realities at work involve precarious and hazardous working conditions that would not be tolerated in few (if any) other industries, marked most tragically by the death of five couriers in late 2020, revealing a stark problem of **work insecurity**.

Exacerbating the issue is that the protections these independent contractors receive from the platforms are limited and inferior to employment conditions. They vary from platform to platform, with some offering basic insurance and others offering no support at all, illustrating the challenges around **work security** that individuals in this sector experience.

The nature of the work, and in particular the nature of **work insecurity**, exposes these workers to many risks. This occurs because, in a context of **income insecurity**, app-based delivery workers are incentivised to ride for longer periods to secure income as they have high variability of income as they are paid ‘piece rates’. The longer, faster and more reliably they work, the more they purportedly are allocated tasks by platforms.

Our research (Goods et al., 2019) of app-based food delivery couriers identified several issues around **work security**. First, we found the work to be physically strenuous for cyclists, with workers regularly riding in excess of 50 kilometres a day. This exertion leaves them fatigued and more susceptible to road accidents. They and their peers on motorbikes and scooters are further exposed to risk in inclement weather and other road users like cars and trucks. In an irony that did not escaped the workers we interviewed, the nature of the service is such that consumers are more likely to opt for delivered food, increasing demand and income opportunities, when the weather is bad, yet such conditions also make their jobs more hazardous.

Contributing to issues around **work security** is the built environment in which the work takes place, with road conditions in most Australian cities also making these jobs riskier. Developed for motor vehicles rather than bicycles, urban infrastructure adds another layer of risk. Workers are often in dangerous situations such as riding in tunnels or sharing lanes with busses (McKenny and Keep, 2017). Equally, critical questions need to be asked about the platforms’ business models and state and federal regulators’ responses to them.

From a **labour market** and **income security** perspective, as platforms create marketplaces for services workers who derive income through them tend to be more directly exposed to the ‘whip of the market’. Most platforms engage workers as independent contractors rather than employees. As our research found, this business strategy reduces labour-related costs while leaving workers underinsured and exposed to the whims of the market (Barratt et al., 2020a). While often framed through a flexibility narrative, it is a constrained one with work patterns dictated by market demands, for example in food delivery lunch and dinner time. Put simply, there are times and places where it does, and does not, make economic sense to work, and this market reality constrains workers’ flexibility.

Whereas employing entities most commonly will limit the number of individuals that they engage at any point in time due to associated labour costs, as ‘gig’ workers are only paid per the work that is undertaken – i.e., piece rate work, platforms face no such limitations. In practice, this frequently results in a situation where labour supply outstrips demand, in such circumstances issues around **labour market security** become even more pertinent. Due to the used independent contractor classifications, there is no need for platforms to provide any work even when workers are available. Depending on local labour market conditions, due to the relatively low-skill nature of food-delivery services, this can result in situations where due to labour oversupply workers have to directly compete with one another to sustain themselves – pointing to issues of **income security** and the lack thereof.

To avoid the ‘employer’ tag, food-delivery platforms go through considerable lengths to maintain arm’s-length relations with workers and restrict the level of support provided to them. This has significant ramifications for safety – i.e., **work security**. For example, workers can complete deliveries with limited to no formal safety training. Also, safety equipment such as high-vis clothing are commonly not provided as this would increase the likelihood that regulators would classify these workers as employees. At the same time, the lack of training and development opportunities means that these workers are fundamentally limited in their **skill reproduction security**.

The work is further characterised by low levels of what Standing (2011) refers to as **job security**. Most workers we interviewed viewed their food-delivery work merely as a temporary labour market opportunity, as we reported in one of our publications:

“Workers intended to operate in the food-delivery sector only short term, and most did not regard it as a career – merely something to get them by, which meant the jobs fit their individual circumstances. The majority of workers had clear exit strategies. Consequently, they were less concerned about some of the negatives, focusing on the positive aspects instead” (Goods et al., 2019: 19).

Another significant issue arising from the used classifications is that these workers are faced with greater challenges in seeking recourse and redress against decision made by the platforms over them and the accounts they use to solicit and procure work. From an **employment security** perspective, the used classifications entail that these workers cannot access the low-cost jurisdiction of the Fair Work Commission.

Moreover, the ability of these workers to be collectively represented and negotiate collectively is limited due to the independent contract classification. Existing competition laws hamper the ability of these workers to negotiate collective for pay and conditions, as this could be in breach of competition laws – highlighting issues around **representation security**.

The platforms’ decisions to structure this market where riders are paid per delivery also means with the number of deliveries couriers can make directly influences their earnings and the future allocation of work. While platforms are unable to direct the workers where and how to work, they have built in a number of ‘indirect’ controls, based on asymmetrical information, including requirements for high acceptance rates, concealment of delivery addresses to stop workers ‘cherry-picking’ profitable gigs, and offering financial incentives and written encouragement to work at times where demand may outstrip supply (Veen et al., 2020). This is all significant as it increases the insecurity faced by app-based delivery workers as workers bear the economic risks and are reliant on the platforms to generate an income, creating, and then reinforcing a power imbalance between workers that leaves them with limited opportunity to overcome this **income insecurity**.

With workers placed in competition with each other for ‘scarce’ gigs, there is only a limited amount of work available resulting in many reporting earnings below the minimum wage (Goods et al., 2019; Transport Workers’ Union, 2019). The influx of new workers because of COVID-19 likely has only increased competition and issues around the various dimensions of labour-related security. This, in turn,

compounds many of the factors above that increases the incentives, and propensity for app-based gig workers to take risks.

## Workplace and consumer trends and the associated impact on employment arrangements in sectors of the economy including the ‘gig’ and ‘on-demand’ economy;

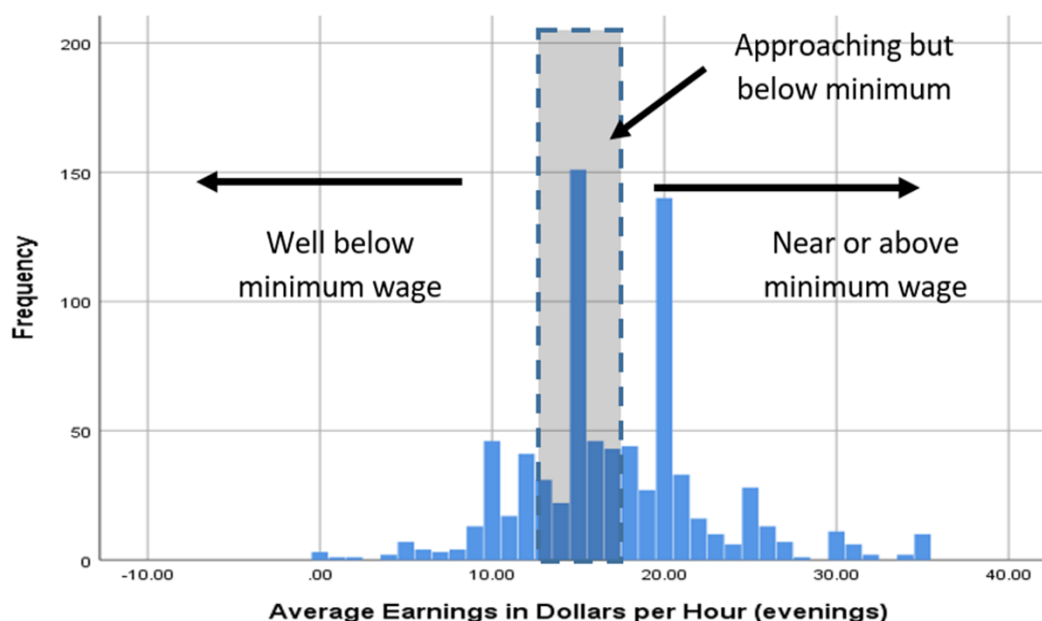
As part of our research agenda we also focused on other stakeholders involved in the ‘gig’ economy. In December 2018 we conducted our first consumer panel survey focused on working conditions and entitlements in the app-based food-delivery sector. This survey was replicated in an adapted form in 2020. The insights presented below are based on the 2018 data. The data on young workers and their attitudes towards flexibility and security at work was collected in 2020 – as part of an honours thesis completed at the University of Western Australia. Findings from this study are currently under academic peer review.

### Consumer & citizen awareness of working conditions

Consumers, as a stakeholder, are of particular significance in app-based ‘gig’ services as they have a greater role in impacting work conditions than in the broader economy. This is because consumers generate (on an instantaneous basis) the ‘gigs’ that form workers’ work, and also performance manage the workers as a part of the work design, for instance in star ratings which influence the allocation of future gigs (Veen et al., 2020).

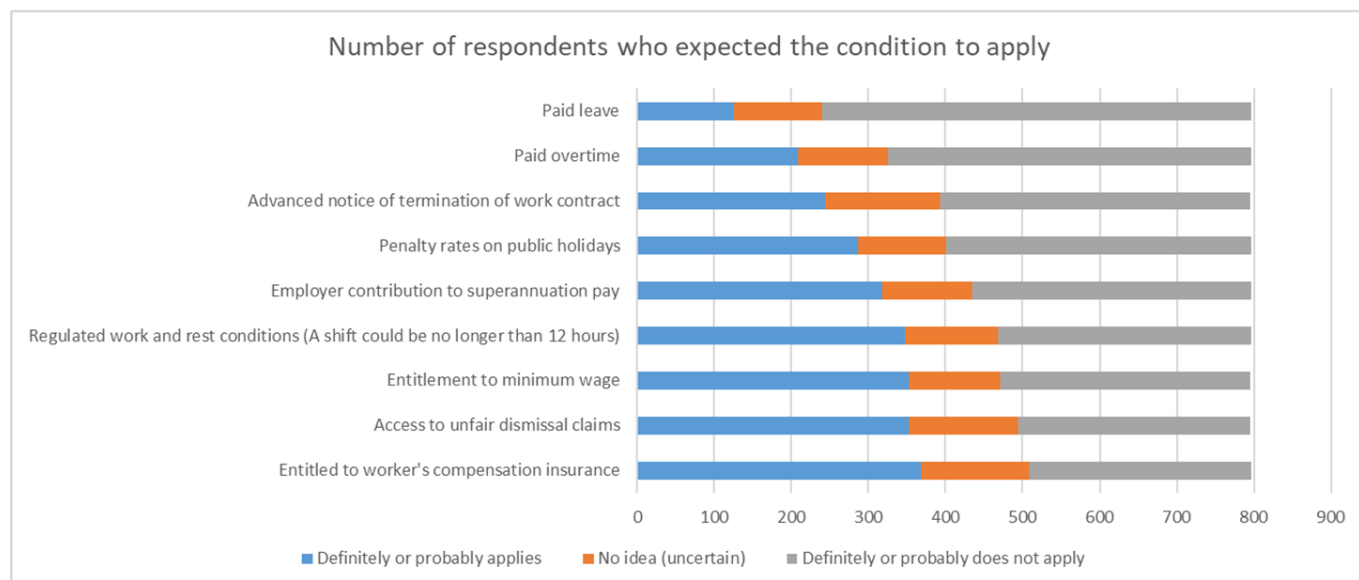
The research, through surveys, tested respondents' awareness of working conditions in the on-demand food-delivery industry, focussing on pay estimates and protections that ‘gig’ workers receive. After asking what they thought these workers *did* receive, we then asked what protections they *should* receive. With regard to pay, a recent survey found these workers actually earned around \$12.00 per hour (Transport Workers’ Union, 2019), which was consistent with our own findings from interviews with food delivery workers (Goods et al., 2019). Over 80% of respondents overestimated this amount, with the average estimate being \$16.25 per hour, as set out in figure 1. Both numbers are significantly less than the Australian minimum wage for casual employment (\$24.36 per hour).

**FIGURE 1 – Earnings Estimate of Food Delivery Work by Australian Consumers**



With regards to conditions, respondents also significantly overestimated the work entitlements that applied to these workers, as represented in Figure 2. None of the conditions actually applied at the time, however only 30 respondents (3.7%) correctly confirmed that none of these conditions applied. Indeed, 192 respondents (24%) suggested that all conditions applied or probably applied.

**FIGURE 2 – Estimates by Australian Consumers of the Worker Entitlements that Apply to App-based Food Delivery Workers.**



These findings, coupled with the overestimation of income, suggests Australian citizens currently have an overly optimistic understanding of how gig workers are treated.

With regard to entitlements that Australian citizens believed *should* apply, we asked: *The government is considering regulating the food delivery industry, please select which work entitlement/s you think the government should apply to app food delivery workers in Australia?*

The strongest support was for a minimum wage (70% agreed), with superannuation and occupational health and safety both receiving the second most support from survey participants (68%). There was strong, but less support for paid overtime (48%) and penalty rates (58%), but only 4% of the survey respondents believed that gig workers should receive none of these entitlements. This suggests a persistent desire for app-based workers’ conditions to be improved.

### ***Young workers and job security***

In terms of the “future of work” and its interconnection with security (Standing, 2011), we have also explored the aspirations and desired working conditions of young Australians. The study surveyed 388 Australian university students (average age of 19.4 years), exploring what young people want in terms of workplace flexibility and security – key dimensions of the insecure or precarious work policy discussion. Respondents were asked to rank a series of working conditions reflecting aspects of job and financial security as well as working conditions which reflect on-the-job control over work processes, time, and environment. Respondents were also asked to describe the factors influencing their ranking decisions.

Of the 388 students surveyed 298 (76.8% of the sample) indicated a desire for greater employment security. Employment security was cited as necessary in the mitigation of anxiety around future uncertainty by 113 respondents (29.1%). A total of 109 respondents (28.1%) indicated job security was necessary to provide structure facilitating work-life balance. Moreover, some participants indicated that long-term job security is important for planning around significant life events (e.g.

caring for dependents). With 35 respondents (9%) stating job security supports family formation, and 40 respondents (10.3%) stating they desire greater job security to make retirement possible in the future. Job-loss stemming from the COVID-19 pandemic was another important factor shaping 116 respondents (29.8%) desire for greater security. This suggests that although there is a significant level of variance between young Australians, the majority desire greater security when transitioning into their professional lives and thinking about their future work preferences.

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

The question of regulation has been fundamental to the gig economy since its emergence in Australia, indeed the first firms offering ‘gig’ work sought to skirt or reform regulation, including labour regulation, as part of their market entry. This question has been considered by legal scholars, academics, regulators, policy makers and previous inquiries.

Fundamental to these legal considerations are questions of classification, as to whether gig workers are employees entitled to minimum standards of employment, or independent contractors to whom these standards do not apply. It also has to be noted that certain platform-based firms, such as temporary staffing platform SideKicker<sup>3</sup> engage workers as casual employees rather than independent contractors. The question of classification is, under Australian law, determined ‘on balance’ on the basis of fact.

In Australia the case of Foodora, which went into voluntary administration in November 2018, shows that platforms can misclassify their workers. The Fair Work Commission found ([Klooger v Foodora Australia Pty Ltd \[2018\] FWC 6836](#)) that a food-delivery worker was unfairly dismissed, and therefore was an employee despite being engaged as a contractor. The relationship between the platform and this worker was factually atypical and unlikely to apply to other cases. As we have explained elsewhere (Veen et al., 2018), Foodora’s administrator agreed Foodora had likely misclassified its couriers, on the basis that the Australian Tax Office formed the view that the platform should have been collecting PAYG income tax and making superannuation contributions.

It is perhaps a perverse outcome of the current system that the platforms providing the most benefits and certainty to workers, are at most risk of running afoul of misclassification (Barratt et al., 2018). This is also an issue recognised by platforms, who have described how the regulatory apparatus provides disincentives for increasing support for workers, as this may threaten workers’ contractor classification.

In contrast to the Foodora case, the Fair Work Commission has found in multiple cases that platform workers were correctly classified as independent contractors. This includes:

- [Hinde v Rasier Pacific Pty Ltd \[2018\] FWC 1764](#)
- [Kaseris v Rasier Pacific v.o.f-Kaseris \[2017\] FWC 6610](#)
- [Pallage v Rasier Pacific Pty Ltd \[2018\] FWC 2579](#)
- [Gupta v Portier Pacific Pty Ltd & Uber Australia Pty Ltd \[2019\] FWC 5008](#)
- [Gupta v Portier Pacific Pty Ltd & Uber Australia Pty Ltd \[2020\] FWC 1698](#)

Critical to these determinations about the status of these workers, and a component of the ‘multi factor’ test are questions of ‘control’, which asks ‘who controls the way the work is performed’. The decisions

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<sup>3</sup> <https://sidekicker.com/au/>

to date have placed much weight on who controls where and when workers log in to apps, which *prima facie* is the worker's choice. We are of the view, however, that control occurs in a more nuanced manner than this, and is greater than it first appears – which one of our peer-reviewed papers explores in detail - which pertains primarily to issues of **employment** and **work security** (Veen et al., 2020).

One of the most notable of these decisions was in the full bench case of *Gupta v Portier Pacific Pty Ltd & Uber Australia Pty Ltd*, which found “that Ms Gupta had the capacity to develop her own independent delivery business as a result of her legal and practical right to seek and accept other types of work while performing work for Uber Eats, but chose not to”.

The decision did not scrutinize the plausibility of establishing such a business, rather highlighting how app-based work is characterised by (1) non-exclusivity of the relationship; (2) the flexibility of the work; and (3) the lack of any visible branding.

As non-legal experts we do not wish to comment on the findings of the Commission, rather we wish to explain to the Inquiry some relevant material about the first two points and how it might fully engage some of the technological aspects of this new form of insecure work.

First, Ms Gupta was free to work for other platforms, like EASI or Deliveroo. Indeed, our research also found that app-based food-delivery couriers do not exclusively deliver for one restaurant or venue, and many deliver for multiple platforms – a practice commonly referred to as ‘multi-apping’. This is indeed a strategy deployed by workers to mitigate the insecurity and income vulnerability of this work, and has the effect of increasing platforms effective labour supply, decreasing **labour market security** and placing downward pressure on the conditions of work (Barratt et al., 2020a).

Second, the Bench found that Ms Gupta enjoyed relative flexibility about ‘when’ and for ‘how long’ she worked. However, as we described above, the market reality means that these choices are constrained by market forces in a context where workers bear market risks – we have explored this issue in more depth in Goods et al (2019). Further, there is a notable lack of engagement with the nature and impact of algorithmic management on the level of control that workers experience and the amount of choice in the performance of their work that they can exercise.

We have argued (Barratt et al., 2020b), the gig economy is in the vanguard of implementing algorithmic management across Australian workplaces. Here it has been instrumental in enabling platform firms to create novel forms of work organisation. Partly with the support of consumers, platforms collect a range of data on worker performance, but only share limited information with workers as to how this is used to allocate work or prevent workers from being “locked out” of apps – a serious issue in terms of **work security**. This means that workers are indeed controlled by a combination of market necessity and the need to meet the concealed but significant demands of the algorithmic manager. Thus, flexibility appears overstated.

It is worth noting at this point that the recent Supreme Court decision in the UK ([Uber BV v Aslam](#) [2021] UKSC 5) has taken a more broad and contextualised view of control. The decision laid bare the extensive controls that platforms exercise over workers, with the Court finding that the sophisticated, de-humanized algorithmic management system effectively subjects workers to performance management practices akin to those found between organisations and employees rather than between businesses.

This development in the UK is an interesting interpretation of control, itself a key component of Australia's multi-factor test. Australia's continued adoption of a classification test that turns on the facts is problematic in the context of gig work for four main reasons:

- That the tests are not well adapted to twenty-first century work arrangements, for example the way control has been considered in Australia thus far has been very narrow, and we argue does



not characterise well the reality of gig work, nor take into account many of the insecurities at work and in life these workers face

- That the terms and conditions of work are frequently unilaterally changed by platforms, meaning any ‘precedent’ based on a particular work arrangement can be changed immediately, even in response to such a precedent
- That the terms and conditions of work can vary significantly between platforms, limiting certainty for workers who work across multiple platforms (multi-apping)
- Significant variation in task performance, particularly in cloud work, makes it hard to even characterise the nature of the relationship.

Further, the nature of ‘multi-apping’, a response to the insecurity of gig work (Barratt et al., 2020a), does not coherently comply with the ideas of regulation in Australia. That a worker could be logged on to multiple apps, which platform would be responsible for workers compensation insurance, for example, or how would this be apportioned between platforms? This has been characterised as an argument ‘for’ contracting, but this is a limited view that doesn’t consider the scope of policymakers to create regulation that meets the needs of all parties.

## Recommendations

Many of the insecure or precarious work issues in the app-based gig economy uncovered in our research, primarily relating to food-delivery services, and outlined here, are now well understood. Indeed, these issues have been detail by Federal (Select Committee on the Future of Work and Workers, 2018) and state inquiries (eg. James, 2020) into this emerging forms of insecure work. Thus far, as outlined above, the legality of the platforms’ business models, particularly around worker classification, has largely been upheld. So, unless legislators want to force platforms to engage these workers as employees, it is now the time for further action to increase app-based worker security and safety.

State and federal legislators could, for instance, initiate several sectoral-based measures for the food-delivery sector to improve safety in this high-risk sector, effectively carving out these parts from the multi-factor test. Based on our research we suggest the following approaches focused on:

- Enabling platforms to provide workers with basic safety training.
- Ensuring workers are supplied with adequate safety-equipment.
- Enacting an appropriate compensation scheme for all workers in case of injury or death.
- Creating a mechanism for transparency around earnings to better understand the economic pressures that these workers face.

A tribunal could be an alternative option, with precedents existing in other higher risk industries such as mining and transport. Alternately, it could be considered that the Fair Work Commission allows all workers to bring their claims. Access to such a tribunal would give workers a voice, helping to address some of the significant power imbalances that presently exist between workers and platforms and at present, the only recourse for these precarious and low paid workers is prohibitively expensive legal avenues.

Regulators can no longer ignore the dark side of the ‘gig’ economy. The cascade of risks must be mitigated to prevent future tragedies from happening and precarious work conditions becoming entrenched. This also has a direct impact on the Federal Government, as food-delivery workers in our survey stated they relied on government programmes (e.g. but not limited to Medicare) to overcome difficulties (e.g. injuries) relating to their gig work. Our survey of Australian citizens underscores that the vast majority of Australian also expect ‘gig’ workers to receive better workplace protections.

Moreover, the findings from our, admittedly small, survey of young Australians suggest that while young workers value some forms of flexibility, they also desire many forms of security. One does not have to be at the expense of another. We would recommend further research to better understand how the future labour force thinks about their work and encourage industrial relations reform that reflects young people's desire for job security.

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