

Submission to the Select Committee on the Future of Work and Workers



Author: **Dr Tom Barratt**

Affiliation: Edith Cowan University, School of Business and Law¹

Postal Address: 270 Joondalup Dr, Joondalup, 6027 Western Australia

Email:



Author: **Dr Caleb Goods**

Affiliation: University of Western Australia, Discipline of Management and Organisation

Postal Address: UWA Business School, 35 Stirling Hwy, Crawley 6009, Western Australia

Email: [c](#)



Author: **Dr Alex Veen**

Affiliation: The University of Sydney, Discipline of Work and Organisational Studies

Postal Address: Abercrombie Bldg H70, The University of Sydney, NSW, | 2006

Email:

¹ The enclosed is expert opinion of Dr Barratt but does not necessarily represent the views of Edith Cowan University

Dr Tom Barratt (ECU)
Dr Caleb Goods (UWA)
Dr Alex Veen (USyd)

Introduction

In this submission we draw upon original research in the food-delivery sector of the gig economy to relate to the committee the impact of novel forms of work organisation that are facilitated by new digital technologies, paying particular attention to work arranged by online digital platforms. As Stewart and Stanford (2017) highlight, work in this new segment of the economy is characterized by four aspects: high levels of irregularity shaped customer demand; part of the capital is provided by workers; the work is frequently paid on a piece rate basis; and it is arranged and/or facilitated via online and/or mobile platforms. We draw the committee's attention to some of the academic discussion of this rising phenomenon, but also our own findings, the social consequences of our findings and regulatory responses to this phenomenon in other jurisdictions.

The gigification of work has created a lot of hype and divided opinion as to the merits for consumers, society and workers, as economic efficiencies potentially threaten to end traditional employment relationships (Sundararajan, 2016). However, much writing in this space is based on conjecture and opinion, whereas our work is based on empirical research which explored workers' experience in a particular segment of the gig economy. We draw upon interviews with 58 food-delivery workers in Australian capital cities who were working for on one, or multiple, food-delivery platforms.

While food-delivery is not a new phenomenon, platform-based food-delivery work is, as workers are directed and engaged by digital platforms with limited human interactions and inputs. Developments in communication technologies (e.g. smart phones, GPS and internet) and advances in 'algorithmic management' (Aloisi, 2016) have allowed digital platforms, such as Uber Eats, Foodora and Deliveroo, to provide additional services to restaurants to expand their delivery services and provide consumers with a wider range of choice. However, while the work is 'arranged' online, the material reality is that the work must be done by workers in the real world. These workers find work by 'logging on' to mobile applications which allocate jobs (usually paid at piece rates) and connect riders to restaurants and customers. The start-up costs for workers are low, in many cases just a bike, phone, mobile broadband data, a police clearance and an Australian Business Number, and requires no formal qualifications or licenses.

Platforms in the food-delivery sector have used technology to reorganize the work processes. This, in conjunction with contractual arrangements where workers are categorized as independent contractors under the Australian regulatory system, has resulted in novel forms of work organisation and control. The impact of these developments thus far has been subjected to limited empirical investigation. Our research provides insights about, and implications of, this new, technology-enabled, form of work organisation for workers.

The future earnings, job security, employment status and working patterns of Australians

The gig economy is an emerging force within the Australian economy. Although in some instances gig work can be completed from anywhere in the world (for example graphic design), other tasks such as cleaning and food-delivery require locally based workers. In these instances, the terms and conditions of work, for those engaged by these platforms, fall under the terms of reference of this inquiry. The emergence of the ridesharing service Uber and the 'task and local service' platform Airtasker are just two examples of the ability of platforms to re-organize work in the Australian context.

Employment Status

In the food-delivery sector workers are engaged as independent contractors rather than employees. This categorisation, while contentious, was recently affirmed as accurate in the ride-sharing segment of the gig economy by the Fair Work Commission (Fair Work Commission, 2017). Such classification is significant as it

Dr Tom Barratt (ECU)
Dr Caleb Goods (UWA)
Dr Alex Veen (USyd)

means that the work done by riders is currently not protected by the National Employment Standards, and has safety implications for workers in some jurisdictions where they are not covered by workers compensation insurance.

Job Security

Job security for these workers was extremely limited, as the nature of this work means workers' (with a narrow exception for some workers on a shift pattern) income security was fundamentally shaped by the demand for food deliveries, the number of riders available and the technologically mediated allocation of work by the platform. This led to income uncertainty and variability, with many workers expressing that they waited long periods, sometimes over an hour for the algorithm to allocate them a job. This waiting time is unpaid. In this context, workers regularly reported average hourly earnings well below the national minimum wage of \$22.86 per hour, the national minimum wage for casual employment. A pay rate which is legal as workers operates as independent contractors rather than employees.

Compounding this income insecurity, riders currently carry the majority of the risk associated with their work. While some platforms charge workers a compulsory workers' compensation insurance fee, the lack of regulatory requirements for the broader sector exposes society to the costs related to workplace injuries and permanent disabilities in some jurisdictions.

Future Earnings

The independent contractor status of workers means that unless they purchase some form of income protection insurance then they are extremely vulnerable to losing their income. One rider interviewed explained how they had become injured at work, and therefore had to stop working in the gig economy and, consequently, their earnings dropped to zero. Further, workers reported that their experiences in the gig economy were seen as having limited value when pursuing alternative labour market opportunities, possibly excluding gig workers from the race for better jobs, potentially pushing workers deeper into the gig economy or long-term unemployment as technological developments around automation have the real potential to replace these relatively low-skilled forms of work.

Working Patterns

Workers' ability to decide when, where and for how long they undertook their work was viewed as a positive of food-delivery work. This was enabled by the facilitating technology and utilised contractual arrangement. For some workers this meant that gig work enabled them to balance their work and non-work lives. That said, many workers described how the nature of demand constrained this flexibility. The highest period of demand for riders corresponded with lunch and dinner times, particularly Friday, Saturday and Sunday evenings, so although workers had flexibility in when they signed into work, this flexibility was curtailed by the need to meet demand to maximise their earning potential. A key factor when work is paid on a piece rate basis. We also note that the busiest work periods are those that have traditionally seen workers paid penalty rates to reflect the unsocial hours of work.

The impact of change on Australians, particularly on regional Australians, depending on their demographic and geographic characteristics;

Riders in our study were predominately young, non-Australian residents (47 of 58 interviewees indicated that they held temporary work, student, or working holiday visas), and had low English language skills. These workers were acutely aware of the tenuous positions they held in the Australian labour market, and suggested that they only had limited labour market alternatives. This labour market position was compounded by work restrictions associated with their visas, e.g. students are restricted in the number of hours they can work. Further, regulatory uncertainty over how to measure hours worked in the gig economy leads to uncertainty not only relating to employment relations, but also immigration law (Goods, Veen & Barratt 2017).

Food delivery work in the gig economy is inherently geographically uneven. The platforms focus on servicing inner-urban areas with a high density of restaurants and customers. This business strategy does not

Dr Tom Barratt (ECU)
Dr Caleb Goods (UWA)
Dr Alex Veen (USyd)

necessarily extend to outer-suburbs, let alone regional areas, meaning the costs and benefits of the food-delivery sector of the gig economy are disproportionately concentrated on urban, and particularly inner-urban areas.

The wider effects of gig work on inequality, the economy, government and society

The gig economy is not operating in isolation from the rest of the Australian society and economy. If arranging work via on-demand platforms can reduce labour costs within current legal frameworks, these 'gig jobs', and the working conditions in the gig economy, can influence other delivery services and low-paid sectors by creating downward pressure on wages and conditions. Further, interviewed food-delivery workers reported that they relied upon state programs such as Medicare and Centrelink to overcome difficulties (injury, lack of employment) in the gig economy. If they were employees they would be covered by workers compensation and other social protections. Longer-term, some of the bi-products of the gig economy, such as the use of public goods by, in effect, both platforms and workers may detrimentally impact social infrastructure such as the healthcare system. This raises questions about the feasibility of gig work to continue in its current form. Further, while their independent contractor status made workers responsible for their own taxation arrangements, there remained a great deal of uncertainty and inconsistency about how riders met (or attempted to meet) their taxation obligations.

The adequacy of Australia's laws, including industrial relations laws and regulations, policies and institutions to prepare Australians for change

Gig work in the food-delivery sector exposed workers to workplace risks and poor pay, leaving some riders feeling like an underclass. While mistreatment of vulnerable workers has received considerable media attention in recent times – including the Australian retail, hospitality and agricultural industries. What differentiates platform-based gig work from these other instances is that the platforms are operating within existing laws, in contrast to the other cases where laws were systemically being breached. The work conditions found in the food-delivery sector (low pay, limited OHS protections etc.) were traditionally cushioned by Australia's employment relations system. The emergence of gig work, however, has seen these workers moved outside of the realms of these traditional protections. Rather than through a deliberate shift in policy, it is an underpinning feature of the platforms' business models which has prompted this situation. Hence regulatory attention as to its acceptableness is required.

Examples of international regulatory and judicial responses to platform-based economy

Having outlined some of the experiences of these workers, as well as the social consequences of the emergence of this type of work, we now look to international attempts to regulate the gig economy and the consequences of these regulatory choices.

Uber in the UK

In the United Kingdom Uber drivers have been classified as employees by their Employment Appeal Tribunal. This extends to Uber drivers the protections of employees and, if something similar were applied in Australia, would remove some of the vulnerabilities gig workers currently face. It is worth noting that this decision is subject to appeal.

Dependent Contractors in Canada, Italy and Spain

In these countries regulators have created a '3rd' category, not independent contractor nor employee, of a dependent contractor (Cherry & Aloisi, 2016). For example, the Canadian category was designed to capture workers who were categorised as independent contractors but whose livelihoods were fundamentally dependent on the success of a single contracting firm, a situation analogous to food-delivery riders today. This

Dr Tom Barratt (ECU)
Dr Caleb Goods (UWA)
Dr Alex Veen (USyd)

categorisation, however, must be treated carefully. It has the capacity to extend protections to vulnerable workers, as it has in Canada, but also has the capacity to erode the conditions and protections for workers if employees are shifted into this new intermediate classification.

Court of Justice of the European Union - Judgment in Case C - 434/15 Asociación Profesional Elite Taxi v Uber Systems Spain SL

Underpinning discussions about the regulation of work in the platform-based economy, including food-delivery work, are questions of how to categorise services provided by the online digital platforms. A recent decision by the Court of Justice of the European Union highlights the complexities of how these platforms comply with or breach industry specific regulation. Uber's self-categorisation as merely an intermediating technology service provider was found to be both correct and insufficient, as it was an intermediation service provider which simultaneously offered urban transport services. This categorization required Uber to comply with local licensing requirements for transport services (CJEU 2017). This case highlights the importance of precise categorisations to ensure regulations are appropriately applied to changing forms and arrangements of work.

Food-delivery sector in the Netherlands

It has been suggested that the rise of platform-based work has resulted in new forms of false self-employment, which is an issue that has raised the concerns of legislators in other jurisdictions, such as the Netherlands. In 2017, the Dutch Parliament and Cabinet Ministers expressed serious concerns about the contractual arrangements adopted by Deliveroo. Consequently, in line with broader debates around the independent contractor status in the Netherlands, the relevant minister has sought to impose new penalties as of 1 July 2018 to address instances where there is the intended creation and/or continuation of false-self-employment by organisations (Rijksoverheid 2018).

Recommendations

We propose five sectoral oriented approaches which, in the Australian context, can possibly help to remedy some of the most concerning aspects of app-based food-delivery work.

Recommendation 1

The provision of additional mechanisms for worker voice within the gig-economy. Given their independent contractor status, workers lack access to the Fair Work Commission, limiting their options in seeking redress to resolve disputes. We propose three methods by which improved worker voice could occur:

- Expanding the scope of the Fair Work Commission to allow it to deal with these work arrangements.
- A more pro-active role for the Australian Competition and Consumer Commission in mediating the arrangement between platforms and the contractors they engage.
- The introduction of an industry specific tribunal.

Recommendation 2

To ensure that all workers, regardless of jurisdiction, are provided with access to workers' compensation arrangements. For instance, sector wide requirements could be set for compulsory insurance deductions from earnings and minimum expectations around training. Deliveroo has shown some industry leadership by providing induction sessions to new riders and charging an OHS insurance fee per delivery.

Recommendation 3

That greater transparency on average earnings across the sector be demanded from the platforms. For instance, this could be achieved by imposing simple sector-wide reporting requirements to relevant government agencies. Platforms already possess data on earnings, service fee deductions, and periods that workers are logged into their apps (i.e. time available for work). The collation of such information, therefore, would not be onerous, nor should it undermine commercial confidentiality or proprietary information. This will assist in ensuring that earnings remain aligned with community expectations.

Dr Tom Barratt (ECU)
Dr Caleb Goods (UWA)
Dr Alex Veen (USyd)

Recommendation 4

That more qualitative, quantitative and longitudinal studies on the gig economy be collected. We argue this should be done on a way that measures both the workers (those engaged in the gig economy) and the work itself (gig jobs) due to the potential for differences between these categories. The difficulty in establishing the size of the gig economy itself is indicative of the dearth of data. This could be supported by the Australian Bureau of Statistics and would allow for a clearer appreciation of the long-term implications of these work arrangements on the broader (formalized) labour market, as well as the career development of gig workers.

Recommendation 5

That any regulatory changes arising from this inquiry reflect the fact that many workers in the gig economy are influenced not only by work and employment law, but also migration law.

The researchers are willing to provide oral evidence at a hearing if requested by the committee.

Dr Tom Barratt (ECU)
Dr Caleb Goods (UWA)
Dr Alex Veen (USyd)

Reference List

- Aloisi A. (2016) Commoditized workers: Case study research on labor law issues arising from a set of on-demand/gig economy platforms. *Comp. Lab. L. & Pol'y J.* 37: 653.
- Cherry, Miriam A. and Aloisi, Antonio, 'Dependent Contractors' in the Gig Economy: A Comparative Approach (October 22, 2016). 66 American Univ. L. Rev. 635 (2017); Saint Louis U. Legal Studies Research Paper No. 2016-15. Available at SSRN: <https://ssrn.com/abstract=2847869> or <http://dx.doi.org/10.2139/ssrn.2847869>
- CJEU (2017) Judgment in Case C-434/15 Asociación Profesional Elite Taxiv Uber Systems Spain SL, Court of Justice European Union <http://curia.europa.eu/juris/documents.jsf?num=C-434/15>
- Fair Work Commission. (2017) Mr Michail Kaseris v Rasier Pacific V.O.F (U2017/9452). Melbourne: Deputy President Gostencnik.
- Goods, C., Veen, A., & Barratt, T. (2017) Being exploited and breaching your visa: the limited choices of the food delivery worker, *The Conversation*, 21 August 2017 <https://theconversation.com/being-exploited-and-breaching-your-visa-the-limited-choices-of-the-food-delivery-worker-82589>
- Rijksoverheid (2018) Opschorting handhaving Wet DBA verlengd tot 1 januari 2020, <https://www.rijksoverheid.nl/actueel/nieuws/2018/02/09/opschorting-handhaving-wet-dba-verlengd-tot-1-januari-2020>
- Stewart A. and Stanford J. (2017) Regulating work in the gig economy: What are the options? *The Economic and Labour Relations Review* 28(3): 420-437.
- Sundararajan A. (2016) *The Sharing Economy: The end of employment and the rise of crowd-based capitalism*, Cambridge: MIT Press.