

## Chapter 8

### The gig economy: hyper flexibility or sham contracting?

Our community members found a great feeling of accomplishment when using Airtasker, to the point where they just might break into dance.<sup>1</sup>

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

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

8.3 To its proponents, the gig economy is a brave new world allowing people to be masters of their own fate: to choose the work they do and for how much they do it.

8.4 To its critics, the gig economy is dangerously unregulated and creates fertile ground for exploitation: the promise of choice rings hollow.

8.5 This chapter looks at the gig economy through illustrative examples presented by submitters and witnesses.

#### The rise of the gig economy

8.6 The term 'gig economy' gained prominence at the height of the 2009 global financial crisis, when job losses were rife and workers out of necessity turned to sporadic, casual work: gigs.<sup>2</sup> The term has since evolved; today it most commonly describes peer-to-peer arrangements where for-profit companies create online

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1 Mr Steve Reynolds, Vice President of Marketing, Airtasker:  
[www.campaignbrief.com/2016/09/airtasker-empowers-australians.html](http://www.campaignbrief.com/2016/09/airtasker-empowers-australians.html)  
(accessed 26 April 2017).

2 UnionsNSW, *Submission 180*, p. 5.

platforms, or 'marketplaces', which pair workers with jobs. In Australia, widely recognised examples include Airtasker, Freelancer, Uber and Deliveroo.

8.7 The rise of the gig economy can partly be attributed to technology paving the way for new, innovative ways of doing business.<sup>3</sup> People have always done 'odd jobs on the side'—for friends and family, or extra cash—but it is the entrepreneurial online platforms which have brought this kind of work into sharp focus. A report produced by Unions NSW estimates the size of the gig economy today:

The size of the gig-economy is increasing rapidly and attracts millions of users every day. Research conducted on behalf of the NSW Government estimated the sharing economy has contributed \$504 million to the State's economy annually, and provided 45 000 people with some form of work.<sup>4</sup>

8.8 It is impossible to say whether those people were paid fairly, how much has been lost in taxation revenue or what people working this way may have foregone in terms of superannuation and other benefits.

### **Who is the employer?**

8.9 Unions NSW describes four key features underpinning work undertaken in the gig economy:

- Work is fragmented into specific individual tasks or jobs and workers are engaged on a task by task basis with no guarantees of continuous work.
- Work is performed by individual workers, but may be commissioned by an individual or a business.
- Labour transactions between workers and individuals/businesses are facilitated by a for-profit company who charge users for this service (e.g., Airtasker, Uber). These transactions are performed through web based applications which are managed and controlled by the for-profit company.
- Workers are classified by the facilitating companies as independent contractors and are not afforded any employment protections or minimum standards in the performance of their work.<sup>5</sup>

8.10 The last feature—being classed as independent contractors—is why workers do not have access to minimum pay and conditions under industrial law, and it is the main point polarising opinions on the gig economy.

8.11 There is an argument that if businesses operating in the economy simply connect users, that is, customers and workers, then they are simply an intermediary:

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3 Unions NSW, *Submission 180*, p. 4.

4 *Innovation or Exploitation: Busting the Airtasker Myth*, Unions NSW, available at: [https://d3n8a8pro7vhm.cloudfront.net/unionsnsw/pages/3135/attachments/original/1474529110/Unions\\_NSW\\_Report\\_into\\_Airtasker.pdf?1474529110](https://d3n8a8pro7vhm.cloudfront.net/unionsnsw/pages/3135/attachments/original/1474529110/Unions_NSW_Report_into_Airtasker.pdf?1474529110) (accessed 19 July 2017).

5 Unions NSW, *Submission 180*, p. 5.

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Supposedly, when a customer and worker are matched they create a separate service contract with each other, which then absolves the gig economy company of any responsibility or involvement with the work that takes place.<sup>6</sup>

8.12 Mr Thomas Costa, Unions NSW Assistant Secretary, pointed out that the 'independent contractor' classification, when 'first envisaged by the law...did not encompass this kind of platform engagement work.'<sup>7</sup> Independent contractors operating in the gig economy—workers—may have their own Australian Business Numbers (ABNs), but many, even though independent by law, are in fact very dependent. Dependent on a single client, having little authority over their work, they are perhaps better described as dependent contractors.<sup>8</sup> They have 'embraced a freedom to choose when to work but are faced with a precarious and paradoxical lack of control.'<sup>9</sup>

8.13 This dependence on the control and direction of the person an individual is working for, Mr Giridharan Sivaraman, Principal at Maurice Blackburn Lawyers, said, is highly reminiscent of employment:

I think, well, you go, you do the work, you get paid, and you are subject to the direction and control of the person you are doing the work for. If you look at the classic High Court cases on employment, that looks and sounds like employment.<sup>10</sup>

8.14 Similarly, Unions NSW points out that companies operating in the gig economy in most cases exhibit one, if not multiple, features of employment. This calls into question operators' assertions that workers are independent contractors:

**Charges a work fee to workers using the site/app.** This generally takes the form of a percentage of the fee charged to the customer. For examples Airtasker takes 15 percent of earnings and Uber takes 20 percent of fares.

**Regulates the behaviour of workers.** The public image and brand of the company is regulated. This extends to controlling the public interaction of workers on the website. Workers can be blocked from work for publicly expressing dissenting views.

**Workers are dependent on ratings within the app for work.** Apps provide opportunities for customers to rate workers within the app. Workers are then dependent on the apps internal rating system in order receive work.

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6 Unions NSW, *Submission 180*, p. 7.

7 Mr Thomas Costa, Assistant Secretary, UnionsNSW, *Proof Committee Hansard*, p. 16.

8 Young Workers Centre, *Submission 190*, p. 6.

9 *Uber, Airtasker: new world of work is not without problems*, Australian Financial Review, 27 December 2016, available at: [www.afr.com/business/uber-airtasker-new-world-of-work-is-not-without-problems-20161222-gtgjz2](http://www.afr.com/business/uber-airtasker-new-world-of-work-is-not-without-problems-20161222-gtgjz2) (accessed 19 July 2017).

10 MR Giridharan Sivaraman, Principal, Maurice Blackburn Lawyers, *Proof Committee Hansard*, 20 April 2017, p. 6.

**Maintains the right to remove workers and thus restrict their ability to work.** Companies maintain the right to block workers from their platforms. This is particularly restrictive considering the market domination of gig-economy platforms in certain industries, making it very difficult for blocked workers to continue working in the area. Workers can be blocked for low ratings, cancelling jobs or speaking out against the company. Workers are given few rights to challenge.

**Provides (limited) insurance protection.** Some companies provide limited insurance, like Airtasker, Uber and Foodora. However, across all platforms there is no provision for worker's compensation.

**Provides equipment to perform work.** Deliveroo and Foodora provide branded carry bags for deliveries as well as uniforms.

**Regulates the service contract by providing mediation and arbitration.** If customers are not happy with services provided, companies will act as mediators in disputes between the worker and the customer.

**Controls who performs the work.** Gig economy work relies on individual worker profiles and ratings. As such, companies restricts workers from further outsourcing a task or having it partially performed by another contractor. This limits the ability of workers to fully control the nature and performance of their work.

**Interviews and screens workers.** Airtasker has a subset of workers called 'Airtasker Pro' which requires workers to be interviewed and screened and if they meet the standards specified by Airtasker, these workers are provided with preferential treatment for tasks. Foodora workers must submit an application for work which includes available days and number of preferred hours. Whizz pre-screens workers before providing them with access to the platform. Deliveroo and Foodora require riders to pass a fitness test before they can work on the platform.

**Provides training.** Runs training which provides specific instruction on how work is to be completed. Whizz runs a training and induction session for their cleaners, providing guidance on how work is to be conducted. Deliveroo and Foodora run training for new delivery riders/drivers covering road safety, branding and use of the app.

**Arranges a roster of shifts.** Foodora sets shifts which workers can sign up to and receive an additional hourly payment on top of their per delivery commission payments. Foodora can then suspend these shifts if there are fewer customers than expected.

**Time limits placed on the completion of work.** The company may require work to be completed in a set time. Foodora and Deliveroo set time frames food must be delivered within.<sup>11</sup>

8.15 The above arrangements demonstrate that workers are in fact often dependent on 'gig' companies, the platform operators, for the delegation of jobs. Nevertheless,

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11 UnionsNSW, *Submission 180*, p. 8.

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while ever they are classed as independent contractors workers are not entitled to workplace protection, including:

- a minimum wage;
- paid leave;
- minimum or maximum hours;
- superannuation;
- protection from unfair dismissal;
- workers' compensation;
- collective bargaining; and
- access to the Fair Work Commission.<sup>12</sup>

8.16 Independent contractors may form or join a union, but can only bargain collectively if specifically authorised by the Australian Competition and Consumer Commission (ACCC).<sup>13</sup>

8.17 Furthermore, some 'gig' companies are known to have partnerships with 'traditional' businesses. This includes food delivery companies such as Deliveroo, whose business is dependent on establishing and maintaining partnerships with participating restaurants. In this example, where workers are treated as independent contractors by businesses in partnership, this profits the restaurant as well and undermines the *Fair Work Act 2009* (FWA):

Restaurants who in the past may have employed a worker to deliver takeaway food can now shift the costs of employment onto the worker by engaging them as an independent contractor through Deliveroo or Foodora.<sup>14</sup>

8.18 This is a highly illustrative example. In the 'traditional' economy, restaurants which misclassify drivers as independent contractors may be found to be in breach of the FWA and fined accordingly:

A recent Fair Work Ombudsman audit of Pizza Hut franchises found 24 restaurants had misclassified drivers as independent contractors, with a total of \$12 086 of underpayments owed to workers. The Fair Work Ombudsman issued Pizza Hut franchises with \$6300 worth of fines and required the workplace noncompliance to be rectified.<sup>15</sup>

8.19 Fines and orders can be avoided, it seems, simply by using an intermediary 'gig' company. The following section looks more closely at Deliveroo.

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12 UnionsNSW, *Submission 180*, p. 8.

13 Young Workers Centre, *Submission 190*, p. 6.

14 UnionsNSW, *Submission 180*, p. 8; Young Workers Centre, *Submission 190*, p. 6.

15 UnionsNSW, *Submission 180*, p. 8.

## Deliveroo

8.20 Deliveroo describes itself as a 'food delivery tech business':

Our online delivery platform joins up customers who want great food, restaurants who seek additional revenue and riders who are looking for well-paid, flexible work. Customers order via our app from one of our partner restaurants, the vast majority of whom had never considered deliveries before Deliveroo. Riders then collect the prepared food and deliver it to the customer by bicycle or scooter.<sup>16</sup>

8.21 From the company's perspective, the platform benefits all involved. Riders enjoy a 'hyper flexible way of working', customers enjoy choice and convenience, and restaurants are able to expand their customer base (and revenue) by offering food delivery.<sup>17</sup>

8.22 Food delivery riders, Deliveroo confirms, engage with the company as independent contractors. Seventy-five per cent of Deliveroo riders are 18 to 29 years old.<sup>18</sup>

8.23 Refuting the mutually beneficial relationship described by the company, the Young Workers Centre (YWC), which helps young Victorians understand and protect their rights at work, suggested that the 'independent contractor' characterisation helps Deliveroo—and other companies operating in the same space, such as UberEATS and Foodora—avoid obligations under the FWA:

They engage these workers on independent contracts to work as food bike couriers. We believe that Deliveroo are employing these young workers on sham contracts to deliberately circumvent their obligation to provide safety insurance, minimum pay rates and minimum work conditions provided for in the National Employment Standards and relevant industry awards, and it is our belief that they are doing this in order to minimise their labour costs.<sup>19</sup>

8.24 Many of these young workers, YWC added, are visa workers studying or backpacking in Australia.<sup>20</sup> As a cohort, they are particularly vulnerable to exploitation.

### ***Unequal pay for equal work***

8.25 The committee heard that independent contractors—riders in Deliveroo's case—operate under difference contracts and do not receive equal pay for equal work:

[T]here are no minimum standards across Deliveroo contracts in themselves. We have seen over a dozen different contracts that have been

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16 Deliveroo, *Submission 210*, p. 1.

17 Deliveroo, *Submission 210*, p. 1.

18 Deliveroo, *Submission 210*, p. 2.

19 Ms Keelia Fitzpatrick, Coordinator, Young Workers Centre, *Proof Committee Hansard*, p. 54.

20 Ms Keelia Fitzpatrick, Coordinator, YWC, *Proof Committee Hansard*, p. 54.

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rolled out by Deliveroo over the past 18 months that employ people doing the same work on different hourly pay rates, and in some circumstances no minimum hourly pay rate at all—so just simply a drop rate or a piece rate.<sup>21</sup>

8.26 What this means, YWC representatives explained, is that the company is able to reduce its costs by offering riders different rates for the same job:

[F]or example, we were informed several days ago that in the South Yarra area, where Deliveroo is very popular, they have such a high number of riders now that they have moved completely off any hourly rates to just a piecemeal rate entirely, whereas in other areas that is not the case.<sup>22</sup>

8.27 A former Deliveroo rider added:

I was hired on an \$18-an-hour contract, with \$2.50 per delivery, and then there were also people who were hired a couple of weeks after me who were on a rate of \$16 an hour and \$2.50 per delivery, and then there were other people I worked with on contracts with \$9 per delivery and no hourly rate. So everyone I worked with would have completely different amounts that they were being paid and ways that they were being paid.<sup>23</sup>

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21 Ms Keelia Fitzpatrick, Coordinator, YWC, *Proof Committee Hansard*, p. 55.

22 Ms Keelia Fitzpatrick, Coordinator, YWC, *Proof Committee Hansard*, p. 55.

23 Ms Alison Millward, Volunteer, YWC, *Proof Committee Hansard*, p. 56.

### ***Deliveroo case study – Andrea\****

*Andrea is a 21 year old food bike courier with Deliveroo. She is engaged as an independent contractor to deliver food on demand around Melbourne rain, hail or shine. The contract Andrea signed up to when she started the job was not the result of negotiations between her and the company, rather it was the standard contract Deliveroo were using at the time. This ‘standard’ contract does not provide Andrea with any of the minimum pay, conditions or other entitlements set for the industry by the Award. There is in fact, no standard or floor for Deliveroo food bike couriers, as contracts change within a matter of months. Deliveroo riders in Melbourne are currently working identical tasks and jobs, on at least five different contracts as seen by Young Workers Centre. Each contract specifies different pay rates and conditions depending on the date the worker commenced work with the company. Andrea describes being lucky enough to be on a ‘good’ contract compared with others, despite the fact that her contract undercuts the industry Award as shown below.*

***No minimum hourly wage.*** [Andrea] is paid a below Award base rate with 'bonus' payments for each completed delivery. On a busy night Andrea might be flat out, but if it's quiet she will earn only the base rate of \$18, well below the minimum pay rates under the Award of \$23.44 for casuals.

***No minimum shift lengths.*** Andrea works shifts allocated to her on a roster, just like an employee. However as Andrea has no right to a minimum shift length and no minimum hourly wage, she has no minimum shift pay. Under the Award, Andrea would be entitled to minimum four hour shifts and four hours pay \$75 for full or part time worker or \$93.76 for casuals.

***No penalty rates.*** The chefs, wait staff and others employed in the preparation and cooking of the food that Andrea delivers are entitled to penalty rates for hours worked on their weekends, public holidays or late evening. Despite working the same hours, Andrea’s contractor status means she misses out on those penalty rates.

***No superannuation.*** Andrea is over 18 and earning more than \$450 pre tax per month, so if she were an employee she would be receiving 9.5% super paid into her account to set her up for retirement later in life. Unfortunately in her case, contractors are responsible for their own superannuation. Andrea will have to take a 9.5% pay cut and pay super out of her already below Award pay rates if she wants to keep up her superannuation investment.

***Other.*** Andrea’s contract states she must ‘provide equipment and/or tools necessary to undertake work including but not limited to smart phone, sufficient data plan and appropriate mode of transport’ If Andrea was an employee, she would be provided transport, a phone and data or an allowance for these tools required for the job.

*Andrea’s contract states she’s responsible for obtaining and maintaining all insurances needed including: mode of transport insurance, workers comp insurance, professional indemnity insurance, and public liability insurance.*



8.28 Deliveroo confirmed that its contracts had been updated since the company's 2015 launch in Australia. This, the company explained, was done to reflect the growth and evolution of the business and riders' changing requirements. Deliveroo submitted that it was factually incorrect to say that 'over a dozen' contracts had been rolled out.<sup>24</sup> The company did not clarify what, in its view, would be a factually correct number.

8.29 YWC supplied a table showing considerable differences between three different Deliveroo contracts.

**Table 8.1—Comparison of 3 Deliveroo contracts**<sup>25</sup>

CONTRACT DATE	DELIVEROO CONTRACT TERMS	WEEKLY INCOME UNDER DELIVEROO CONTRACT	WEEKLY INCOME UNDER THE AWARD	WAGES STOLEN PER WEEK
November 2015	\$18/hour + \$2.50/delivery	12 hours @ \$18 20 deliveries @ \$2.50 \$216 + \$50 <b>\$266</b>	9 hours @ \$26.72 3 hours @ \$32.81 <b>\$338.91</b> + 9.5% super \$32.20	-\$72.91 income \$32.20 super
February 2016	\$16/hour + \$2.50/delivery	12 hours @ \$16 20 deliveries @ \$2.50 \$192 + \$50 <b>\$242</b>		-\$96.91 income \$32.20 super
April 2016	No hourly rate \$9/delivery	20 deliveries @ \$9 <b>\$180</b>		-\$158.91 income \$32.20 super

8.30 Table 8.1 illustrates the financial consequences of variations in hourly pay for riders—people doing the same work. Alarming, it also shows how far below the relevant award riders are, as well as the superannuation entitlements lost because riders are not covered by the FWA. This is most pronounced in the most recent contract provided, April 2016, under which the rider is paid per delivery only, rather than receiving an hourly rate, plus fee per delivery.

8.31 Nor do Deliveroo's contracts provide adequate insurance for riders, YWC asserts.<sup>26</sup>

8.32 The company disagreed with this, stating that workers' compensation insurance is provided for all riders in Australia, but that each rider is also required to obtain his or her own public liability insurance coverage.<sup>27</sup> How riders arrange this

24 Deliveroo, *Submission 210*, p. 2.

25 YWC, *Submission 190*, p. 7.

26 Ms Keelia Fitzpatrick, Coordinator, YWC, *Proof Committee Hansard*, pp. 54–55.

27 Deliveroo, *Submission 210*, p. 2.

insurance differs; they can seek out their own policy, or pay to join the company's group scheme:

Each rider can choose to arrange this cover via their own policy or can choose to join a Deliveroo group scheme available to every rider via a small fee that is deducted from their payments. These requirements are consistent with the usual arrangements for independent contractors.<sup>28</sup>

8.33 Deliveroo did not provide the committee with sample contracts.<sup>29</sup> Contracts provided by YWC do not include workers' compensation insurance. One sample contract states the following:

7.6 The Contractor agrees that he/she will obtain and maintain at all relevant times any necessary insurances and insurance cover relating to the performance of the Work and, upon request by the Company, provide proof of such insurance cover to the Company prior to commencing the Work. Such insurance cover should include, but is not limited to:

7.6.1 any applicable motor vehicle insurance;

7.6.2 any necessary workers' compensation insurance; professional indemnity insurance; or

7.6.3 public liability insurance.<sup>30</sup>

8.34 Insofar as the contracts made available to the committee refer to occupational health and safety, they do so to absolve the company of any responsibility toward its riders.<sup>31</sup>

8.35 One former Deliveroo rider gave evidence on this point, describing for the committee how she went about satisfying the arrangements required of an independent contractor:

My parents bought me insurance for Christmas. It is a dangerous job. A lot of people get car doored or slip on tram tracks, things like that. My brother was deployed [with the military] at the time but my mother would say she was much more worried about me out on the streets than him in Iraq. It is not the safest of jobs. If someone is injured at work and cannot work, not only are they not insured and would have to either have their own insurance or cover their own medical bills but it also means when they are out sick from work they are not getting paid at all. For any shifts they are not able to work, there is no income coming in. I think that is something that is not good.<sup>32</sup>

8.36 The committee now turns to another high-profile gig company, Airtasker.

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28 Deliveroo, *Submission 210*, p. 2.

29 See Deliveroo, *Submission 210*.

30 YWC, *Submission 190*, p. 16.

31 YWC, *Submission 190*, pp. 19–24.

32 Ms Alison Millward, Volunteer, YWC, *Proof Committee Hansard*, p. 57.

## Airtasker

8.37 Airtasker was established in 2012. Today the company is the leading provider of task-based services. Unions NSW reports that over 550 000 users generated \$3.5 million per month in paid tasks by July 2016—a gig economy success story.<sup>33</sup> According to the *Australian Financial Review*, the number of users had reached 900 000 by the end of 2016.<sup>34</sup>

8.38 The company describes itself as 'a trusted community marketplace for people and businesses to outsource tasks, find local services or hire flexible staff in minutes—online or on your mobile.'<sup>35</sup>

8.39 The platform works by allowing people to post details of tasks to be completed, including an offer of how much these posters are offering to pay. Workers can bid for the task as advertised, or they can bid down the rate of pay in order to secure the job. Bids are blind, visible only to the original job poster, and Airtasker does not involve itself in how much people are paid. In fact, Airtasker's CEO, Mr Timothy Fung told the committee, the company does not benefit if fees are driven down:

...the quotes that are shared between the prospective worker and the potential customer are not shared with other workers. We have no interest at all in a race to the bottom; in fact, the way that Airtasker makes money is by a service fee that is applied to the overall price of work on the platform. In fact, we are completely incentivised for workers to be well treated and to be paid more. The more they earn, the more we would earn as well. But we do not ever force them to do anything, and we certainly do not tell them how much to be paid or anything like that.<sup>36</sup>

8.40 Unions NSW views the platform's 'blind bidding' differently, finding that it creates 'a competitive environment where workers may seek to undercut the advertised rate to gain a competitive advantage.'<sup>37</sup>

8.41 The fee Airtasker takes is charged only to the worker. Posters deposit payment into an account managed by the company, and Airtasker then releases 85 per cent of that money to the worker, once the job poster declares the work to be complete.<sup>38</sup>

Airtasker also takes a 15 per cent cut of all the work that is engaged through its site. This is something that does not occur in normal independent

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33 *Innovation or Exploitation: Busting the Airtasker Myth*, Unions NSW.

34 Australian Financial Review, *Uber, Airtasker: new world of work is not without problems*, 27 December 2016, [www.afr.com/business/uber-airtasker-new-world-of-work-is-not-without-problems-20161222-gtgjz2](http://www.afr.com/business/uber-airtasker-new-world-of-work-is-not-without-problems-20161222-gtgjz2) (accessed 5 September 2017).

35 [www.airtasker.com](http://www.airtasker.com) (accessed 16 July 2017).

36 Mr Timothy Fung, Chief Executive Officer, Airtasker, *Proof Committee Hansard*, 18 April 2017, p. 1.

37 *Innovation or Exploitation: Busting the Airtasker Myth*, Unions NSW, p. 3.

38 *Innovation or Exploitation: Busting the Airtasker Myth*, Unions NSW, p. 3.

contracting type arrangements. There is not a platform or a matchmaker that takes 15 per cent of your wages when putting you together with your client. If you think of the traditional Trading Post, you just pay a one-off advertising fee. There are problems here because Airtasker is happy to take a decent cut of the payment but it is not providing the same sorts of protections that traditional employment would.<sup>39</sup>

8.42 Some posts on the platform clearly indicate businesses are turning to Airtasker to advertise ongoing roles—without the burden of employment. For example:<sup>40</sup>

**Figure 8.1— Airtasker sample post**

The screenshot shows an Airtasker task post for a 'Remote receptionist' role. At the top, there are tabs for 'OPEN', 'ASSIGNED', and 'COMPLETED', with 'OPEN' selected. To the right, there is a 'Follow' button with a heart icon. The task title is 'Remote receptionist'. Below the title, it says 'POSTED BY Peter H.' with a profile picture and '48 mins ago'. To the right of the post, there is a 'TASK BUDGET' section showing 'Approx. 10hrs' and '\$250', with a green 'Make an Offer' button. Below that is a 'More Options' dropdown menu. There are also social media share icons for Facebook, Twitter, Google+, and LinkedIn, and a 'Report this task' link. The 'LOCATION' is 'Online' and the 'DUE DATE' is 'Wednesday, 26th Jul 2017'. The 'DESCRIPTION' section contains the following text: 'We are considering employing someone to be a remote receptionist. We require someone that (maybe working from home) that could answer ~12 - 20 calls per day. Over time you would gain a better understanding of the business and could provide initial sales support. The business is based in Perth so would need to work Perth hours.'

8.43 The post below looks for staff. If the customer—in this case clearly a business—looked for 'temp' staff through an agency, fees would be applicable and charged to the business. Because businesses hiring workers through Airtasker are unburdened by minimum wage requirements, payroll tax, superannuation or other workplace entitlements, the fee is instead passed onto the worker, whose payment absorbs Airtasker's 15 per cent cut:<sup>41</sup>

39 Mr Thomas Costa, Assistant Secretary, Unions NSW, *Proof Committee Hansard*, 18 April 2017, p. 16.

40 Airtasker sample post, available at: [www.airtasker.com/tasks/](http://www.airtasker.com/tasks/) (accessed 20 July 2017).

41 Airtasker sample post, available at: [www.airtasker.com/tasks/](http://www.airtasker.com/tasks/) (accessed 20 July 2017). See also *Innovation or Exploitation: Busting the Airtasker Myth*, UnionsNSW, p. 10.

**Figure 8.2— Airtasker sample post**

The screenshot shows a task post on the Airtasker platform. At the top, there are tabs for 'OPEN', 'ASSIGNED', and 'COMPLETED', with 'OPEN' selected. A 'Follow' button is visible. The task title is 'Simple eftpos upgrades for 21/7 Sydney'. To the right, the 'TASK BUDGET' is listed as '\$240' with a 'Make an Offer' button below it. The post was 'POSTED BY' someone '1 min ago'. The 'LOCATION' is 'Sydney, New South Wales, Australia'. The 'DUE DATE' is 'Friday, 21st Jul 2017'. There are social sharing options for Facebook, Twitter, Google+, and LinkedIn, along with a 'Report this task' link. The 'DESCRIPTION' section contains the following text: 'Hello, we are looking for two temps to work as a customer support in Sydney. The temps would be required to drive to a number of small businesses, change the SIM card and upgrade software in the business' eftpos terminal. They would therefore need to have an up to date Australian drivers license and basic technical ability. Training will be provided. Someone who is familiar with a smartphone/apps etc would have enough understanding to perform the SIM swap and we would be looking for staff who are well presented and professional in their approach. Efficiency is a must as we are looking to complete this assignment as quickly as possible.' Below the description, it states 'Location will be Sydney' and '9am - 5pm'.

8.44 Airtasker co-founder and CEO, Mr Timothy Fung, describes how the company views the difference between the platform and an agency model:

The way that we would differentiate those two things is that a marketplace gives control to its community members or its participants in the marketplace; whereas an agency is a much more structured and defined type of arrangement, where the marketplace creator itself would control a lot of the price and structure of what goes on on that platform.<sup>42</sup>

8.45 Airtasker takes pride in the transparency its platform offers. This transparency, together with the communication between 'the constituents' on Airtasker's platform, is the main service Airtasker believes it offers.<sup>43</sup>

8.46 It is not clear what is meant by transparency however. The jobs available on Airtasker's platform are highly varied, and include posts looking for highly skilled professions. In one example, a poster looks for a web developer who will work from

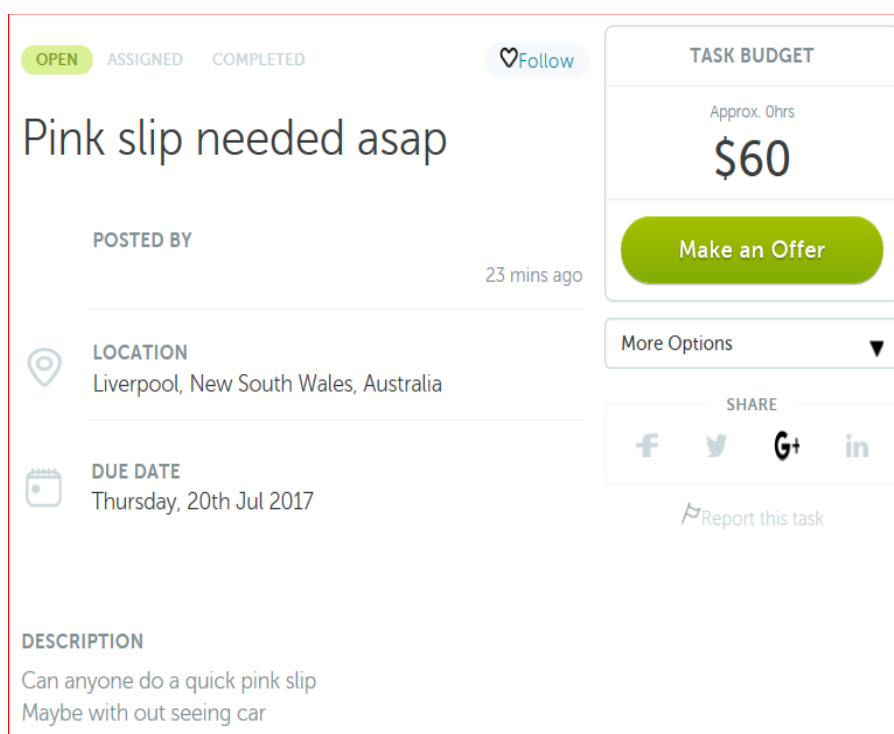
42 Mr Timothy Fung, Chief Executive Officer, Airtasker, *Proof Committee Hansard*, 18 April 2017, p. 1.

43 Mr Timothy Fung, Chief Executive Officer, Airtasker, *Proof Committee Hansard*, 18 April 2017, p. 1.

the posting company's Sydney office. A contract is alluded to but from the post alone it is not clear what the arrangements—including taxation—will be.<sup>44</sup>

8.47 Another post, below, looks for 'someone' to issue a pink slip—which is a safety check, carried out by authorised mechanics and legally required, before car owners can renew their registration in New South Wales. Cars older than five years require a safety inspection before a pink slip can be issued.<sup>45</sup> Without alluding to the age of their car, the poster below, however, looks for someone who can issue the inspection report 'maybe without seeing the car':<sup>46</sup>

**Figure 8.3— Airtasker sample post**



8.48 Airtasker, in theory, applies restrictions on illegal activities being posted on its platform. It would be of interest to know whether the above poster found a qualified mechanic to issue a safety inspection report 'maybe without seeing the car.'

8.49 The questionable legality of some of the jobs advertised aside, it also raises serious safety concerns, as do other posts. For example, the poster below looks for someone to load heavy pods onto pallets.<sup>47</sup>

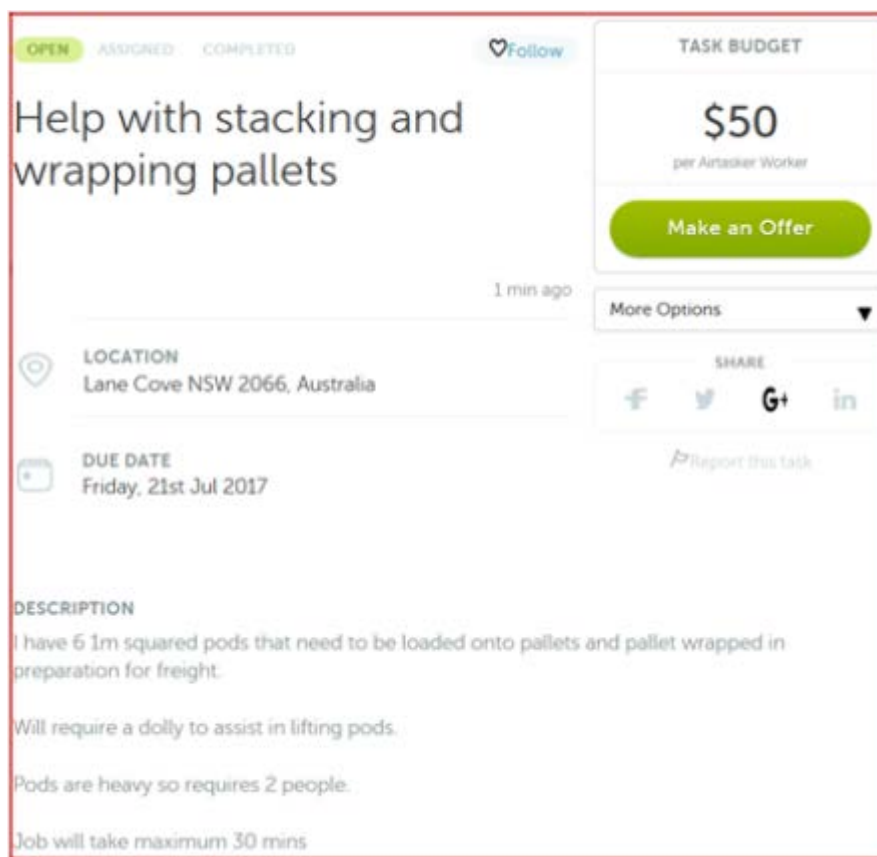
44 Airtasker sample post, available at: [www.airtasker.com/tasks/](http://www.airtasker.com/tasks/) (accessed 20 July 2017).

45 See Service New South Wales, available at: [www.service.nsw.gov.au/transaction/esafety-checks-pink-slips](http://www.service.nsw.gov.au/transaction/esafety-checks-pink-slips) (accessed 20 July 2017).

46 Airtasker sample post, available at: [www.airtasker.com/tasks/](http://www.airtasker.com/tasks/) (accessed 20 July 2017).

47 Airtasker sample post, available at: [www.airtasker.com/tasks/](http://www.airtasker.com/tasks/) (accessed 20 July 2017).

**Figure 8.4— Airtasker sample post**



8.50 It is worth noting that, as independent contractors, whoever 'won' the above task to lift and move heavy objects would not have been covered by workplace health and safety laws.<sup>48</sup> It is also worth noting that Airtasker, despite considering workers to be independent contractors, does not in fact verify whether workers have ABNs.

8.51 Asked whether anyone other than an independent contractor could perform advertised tasks, Mr Fung explained the company's position:

I believe that the structure of the work lends itself to independent contracting, so, yes, I think it is important that they are independent contractors. But I am not an expert in the various categorisations. When I say 'independent contractor', I clarify by saying that I certainly do not think that any form of employment relationship is being created.<sup>49</sup>

8.52 In other posts, people look for someone to babysit their children. As recently reported by the *Sydney Morning Herald*, Airtasker applies no requirement for Working with Children checks or experience. On the platform, one poster says, 'I have

48 *Innovation or Exploitation: Busting the Airtasker Myth*, UnionsNSW, p. 6.

49 Mr Timothy Fung, Chief Executive Officer, Airtasker, *Proof Committee Hansard*, 18 April 2017, p. 5.

three girls aged 5/6/10 and need someone to watch them tomorrow night.' He assigns the task to a bidder for \$75 for three hours.<sup>50</sup>

8.53 The *Herald* reports Airtasker CEO, Mr Fung's, response to concerns:

'We are really allowing people to be responsible for their own work,' Mr Fung says. 'If you look at the way people hired babysitters before and the trust signals people relied upon, I would question whether they are more reliable than user reviews are.'

Mr Fung says Airtasker will continue to allow users to post babysitting services. Airtasker has created a police badge so users can add a police verification check to their profiles and Mr Fung says the platform is also working on third party verification through a company called Risq.

'It is very important that buyers are aware that just because someone has had a police check done, it is not necessarily a 100 per cent signal that you should open up your doors to someone,' Mr Fung says. 'Peer reviews could be a stronger signal than a \$45 police check.'<sup>51</sup>

8.54 The article also cites the example of a child care platform in the United States, Urbansitter, which conducts rigorous background checks on all babysitting applicants. Eighty per cent of people applying for babysitting tasks are rejected.<sup>52</sup>

8.55 The range of tasks included above is a fraction of what is available on the Airtasker platform. There are few limitations on what posters can request; these include escort services, illegal activities and tasks regarding school and university assignments.<sup>53</sup> Mr Fung informed the committee that Airtasker seeks to empower people and even drive change in how people value skills:

...our mission statement is really to empower all people to realise the full value of their skills. We believe that the typical definition of 'skills' has not really taken into account all of the skills that individual people have, and we want to create a platform that allows them to share those skills and to realise the value of those skills.<sup>54</sup>

8.56 Some of the skills sought after in a typical day include:

- **Installing a rangehood kit.** The poster looks for someone to install a rangehood vent kit which will provide ventilation through a tiled roof.

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50 'People are auctioning off their children: Airtasker safety concerns, *Sydney Morning Herald*, 11 July 2017, available at: [www.smh.com.au/small-business/startup/people-are-auctioning-off-their-children-airtasker-safety-concerns-20170710-gx84yx.html](http://www.smh.com.au/small-business/startup/people-are-auctioning-off-their-children-airtasker-safety-concerns-20170710-gx84yx.html) (accessed 19 July 2017).

51 'People are auctioning off their children: Airtasker safety concerns, *Sydney Morning Herald*, 11 July 2017.

52 'People are auctioning off their children: Airtasker safety concerns, *Sydney Morning Herald*, 11 July 2017.

53 *Innovation or Exploitation: Busting the Airtasker Myth*, UnionsNSW, p. 3.

54 Mr Timothy Fung, Chief Executive Officer, Airtasker, *Proof Committee Hansard*, 18 April 2017, p. 2.



\$100 is offered for an 'experienced' tasker, because the poster '[does not] want any leaks in future.'

- **Families to host overseas students.** A poster looks for friendly families to host students from China, requirements unspecified.
- **Plumbing work.** One poster seeks a plumber to fix a toilet for \$50. Another would like a complete bathroom pipe relocation—old pipes removed and replaced—for \$500.
- **Tax returns.** A poster looks for a bidder who will complete two tax returns for \$150, experience unspecified. Another offers \$30 to a 'highly qualified professional' who will complete his tax return.
- **Cleaning houses.** One customer looks for someone to clean a two bedroom apartment on an ongoing basis, offering \$100 for 'approximately' four hours. Another offers \$70 for 'approximately 3.5 hours' work cleaning a three bedroom house. A third needs end-of-lease cleaning work performed for \$100.
- **Laying synthetic grass.** A poster offers \$25 for someone to fill a 14x5 metre area with synthetic grass.
- **Drinking companions.** A male poster looks for a 'female drinking buddy' in Bondi Beach, offering to pay for the winning bidder's drinks. Another man offers \$35 for someone to 'bring [him] alcohol', a bottle of Smirnoff vodka specifically—a female bidder, who reports having a car and being bored, bids on the task.
- **Servicing drug paraphernalia.** An Airtasker customer looks for someone to 'clean [his] bong', which he 'recently smoked "tobacco" out of' but does not know how to clean. He offers \$20; of course taskers are free to bid lower.<sup>55</sup>

8.57 The posts above are just a sample—tasks are updated continually, but the scale of opportunity the internet provides takes users of gig platforms beyond the realms of 'odd jobs' posted on community noticeboards:

The scale that the internet provides means that you can use one website for thousands of jobs, which effectively becomes a matchmaking service or some form of labour-hire service, and it regulates your employment relationship with them...It is not the traditional independent contractor who puts up their own advertisement on the noticeboard or in the Trading Post, who quotes the job with their own terms of service and their own requirements. It just does not occur that way.

There are what Airtasker calls very low friction points in order to engage with the site, but what that really means is that there is very little scrutiny of the people engaging on their site. They just matchmake people and send

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55 This is a representative sample of tasks, available at: [www.airtasker.com/tasks/](http://www.airtasker.com/tasks/) (accessed 20 July 2017).

them off on their own. In some ways it is very similar to what happened in the past, but it is now on such a massive scale that those lower 'friction points' of entry mean that you are not getting small-business owners; you are not getting independent contractors that have all their own tools and equipment, who have gone out to start their own business with all the risks but also all the advantages of that. You are getting low-skilled workers who are desperate for work going online and signing up for jobs that are, in some cases, very far below the standard employment job you would get with an employer.<sup>56</sup>

8.58 It is clear that a large number of people are making some money working this way. It is also clear that businesses are increasingly turning to Airtasker to find workers, saving considerable money in the process and undercutting regular workers in the process:

The sharing economy enables businesses to get odd jobs done as they look to expand and grow without hiring one-off expensive contractors. Many businesses also turn to these platforms when it's challenging to find specialised labour or when they are burdened by overheads in agency fees.<sup>57</sup>

8.59 Rather than being an exciting advancement in how people work, the Australian Manufacturing Workers' Union (AMWU) describes the gig economy as a 'mutant form of labour hire and contracting...where they effectively remove the contracting company altogether and make the employees into contractors.'<sup>58</sup>

### **Disruptive employment**

8.60 Gig companies' descriptions of their contributions are effusive, peppered with words and phrases such as 'hyper flexibility', 'choice' and 'new economic opportunities'.<sup>59</sup> Airtasker believes it aligns itself with the workers, because the more they get paid, the more money Airtasker makes:

I would be careful to say that averages are averages, but overall we ourselves have a complete vested interest in pushing the price up. In fact, a race to the bottom would only reduce our own revenue. We did that on purpose to align ourselves with the workers of our community, to say, 'Only when you win do we win; when you get paid more, we get a bigger fee.'<sup>60</sup>

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56 Mr Thomas Costa, Assistant Secretary, Unions NSW, *Proof Committee Hansard*, 18 April 2017, p. 16.

57 K. Hume, *7 tasks a business never thinks to outsource but should*, available at: [www.first5000.com.au/blog/7-tasks-a-business-never-thinks-to-outsource-but-should/](http://www.first5000.com.au/blog/7-tasks-a-business-never-thinks-to-outsource-but-should/) (accessed 20 July 2017).

58 Mr Michael Nguyen, National Research Officer, Australian Manufacturing Workers' Union, *Proof Committee Hansard*, 15 March 2017, p. 6.

59 Deliveroo, *Submission 210*, p. 2.

60 Mr Timothy Fung, Chief Executive Officer, Airtasker, *Proof Committee Hansard*, 18 April 2017, p. 3.

8.61 Recognising that logic—in Airtasker's view, workers often drive fees up rather than down<sup>61</sup>—nonetheless suggests that only workers with specialised skills have the leverage to command higher fees. There is no shortage of cleaning jobs advertised on the platform for below award rates. To suggest that cleaners, not infrequently migrant workers who are a particularly vulnerable cohort of workers, have the leverage to demand higher fees is counterintuitive. Looking at one task on the Airtasker platform,<sup>62</sup> where a poster offers \$200 for someone to deliver freight from Seven Hills, NSW, to Young, NSW—an approximately 360 kilometre, almost four-hour drive—it is not difficult to estimate how little a person would be paid after factoring fuel costs into the \$200 fee. And yet these jobs are posted, and someone bids for them.

8.62 It is unlikely that the freedom to be paid under minimum wage is really about flexibility and choice, for workers at least. Unions NSW Secretary, Mr Mark Morey, instead points to a steady shift of responsibility onto workers as work is increasingly casualised. The gig economy is just an extension of this phenomenon:

Some employers are using the traditional definition of 'independent contractor' combined with online platforms to escape their employment obligations. In fact, the traditional definition of an 'employee' ensures that people do have workers compensation, insurance protections and other workplace protections. This expanded use of the definition of a contractor, combined with online platforms, means that employers are now vacating the field of any obligations to those employees.<sup>63</sup>

8.63 The evidence provided to the committee strongly suggests that gig companies and the people who use them are undermining workers' rights, law-abiding businesses and the industrial relations system more broadly. The committee notes those who respect progress, but urge caution:

[W]e are trying to take a progressive approach, and we are looking at it and working with some law firms that actually represent those gig economy providers to say, 'What is their social contract? What is their responsibility? How does the market rely upon them?' For example, if Airtasker supplies a worker to clean Aunt Margaret's gutter out in Oakleigh in Melbourne, why is that any different to that same individual being assigned or on-hired to perform work cleaning BHP's gutters at the same height et cetera? We think we actually have different rules playing out here. It sounds cool and freelancing is a state of mind, but I am challenging a lot of the younger people and younger generation and saying, 'Be careful what you create here,' because we are actually—and I think it is the case in that circumstance—creating a race to the bottom.<sup>64</sup>

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61 Mr Timothy Fung, Chief Executive Officer, Airtasker, *Proof Committee Hansard*, 18 April 2017, p. 2.

62 As seen on [www.airtasker.com/tasks/](http://www.airtasker.com/tasks/) (accessed 20 July 2017).

63 Mr Mark Morey, *Proof Committee Hansard*, 18 April 2017, p. 15.

64 Mr Andrew Cameron, Chief Executive Officer, Recruitment & Consulting Services Association, *Proof Committee Hansard*, 15 March 2017, p. 45.

## The way forward

8.64 The committee notes that Unions NSW and Airtasker have engaged in ongoing discussions in recent months, and have made progress in some areas:

For example, when we first released our report Airtasker were advertising recommended rates of pay far below award wages. As a result of our discussions with them, they now recommend that people using their site pay award rates.<sup>65</sup>

8.65 Media reports following the committee's hearing in Sydney hailed a 'landmark agreement' between the two in early May 2017, with Airtasker agreeing to work with the union to increase minimum rates of pay and improve conditions for workers in the gig economy.<sup>66</sup> University of Sydney labour market expert Professor John Buchanan described the agreement as a significant shift in how new economic players interact 'with the collective voice of workers':

Labour standards start from modest bases. This isn't a full-blown industrial agreement with rock-solid enforceable rights... What it provides is a point of reference for defining relations in the realm of economic practice which has been labour-standards free... This is very important. This is like the Normandy landings...they haven't got to Berlin yet, but they are on the beach and there is a clear beachhead.<sup>67</sup>

## Committee view

8.66 Having looked at sham contracting in the previous chapter, the committee can only conclude that 'gig economy' is just a more discrete and sanitised way for companies to abrogate their obligations by requiring workers to be contractors.

8.67 The committee strongly believes that there is nothing incompatible between flexible working and being an employee. The law is entirely capable of regulating, protecting and taxing employers and workers who favour flexible working arrangements. In the words of the general secretary of the Independent Workers' Union of Great Britain:

The category of self-employed person who carries out their work as part of someone else's business exists. It's called a worker. And they have rights.<sup>68</sup>

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65 Mr Thomas Costa, Assistant Secretary, UnionsNSW, *Proof Committee Hansard*, 18 April 2017, p. 15.

66 Ms Anna Patty, *Airtasker and unions make landmark agreement to improve pay rates and conditions*, Sydney Morning Herald, 1 May 2017, [www.smh.com.au/business/workplace-relations/airtasker-and-unions-make-landmark-agreement-to-improve-pay-rates-and-conditions-20170427-gvtvpo.html](http://www.smh.com.au/business/workplace-relations/airtasker-and-unions-make-landmark-agreement-to-improve-pay-rates-and-conditions-20170427-gvtvpo.html) (accessed 19 July 2017).

67 Ms Anna Patty, *Airtasker and unions make landmark agreement to improve pay rates and conditions*, Sydney Morning Herald, 1 May 2017.

68 J. Moyer-Lee, 'What everyone assumes about rights in the gig economy is wrong', *The Guardian*, available at: [www.theguardian.com/commentisfree/2017/mar/22/rights-gig-economy-self-employed-worker](http://www.theguardian.com/commentisfree/2017/mar/22/rights-gig-economy-self-employed-worker) (accessed 19 July 2017).

8.68 Gig companies have not invented a new way of working—they have exploited 'a cloak of innovation and progress to reintroduce archaic and outdated labour practices.'<sup>69</sup> The gig economy is normalising labour conditions it took generations of political struggle to stamp out in this country: precarious circumstances in which a person may not know where their next few dollars are coming from: insecure, unprotected, sporadic work.

8.69 Sporadic work may well suit those whose specialised skills service a niche and attract high fees, or those who may indeed choose to do odd jobs for extra, disposable, income. But serious questions and consequences arise for people without specialised skills and without a financial safety net beneath them, or for people who make a living by stringing odd jobs together. Why would a customer turn to an established cleaning business which pays its workers at or above the award, superannuation, insurance etcetera, and therefore charges higher fees, when they can find an online 'entrepreneur' to clean their house, possibly for below minimum wage? And will the customer burden him- or herself with questions about the person who comes to clean their house, how much they are paid and why it is that they might be 'choosing' to work for below minimum wage? It is one thing to be a contractor without sick leave or job security if you are, for example, an in-demand, highly-skilled IT professional commanding generous fees and handpicking jobs. It is another to be a contractor without sick leave or job security if you are a cleaner.

8.70 In previous chapters the committee has looked at ways in which employers have skirted or sought to reduce their obligations under various sections of the FWA, with numerous examples of blithe disregard for workers on display. With the gig economy, however, the committee is faced with employers who—simply by engaging workers as entrepreneurial independent contractors—have quite shrewdly managed to avoid the Act altogether. If this practice is allowed to proliferate, companies whose overheads are higher because they honour workers' entitlements will be placed under unsustainable pressure. This does not bode well for ethical business practice or workers' rights.

8.71 Further to this, in the committee's view the gig economy, as a rapidly growing sector, facilitates cash-in-hand work. The cost of this to the national economy and in particular government tax revenues is likely to be incalculable.

8.72 The committee concludes that the FWA and governments have failed to keep pace with the inescapable challenges presented by technology, and urges policymakers to act without delay in ensuring that legal definitions of 'employee' and 'employer' are clarified so as to cover all workers.

8.73 Finally, the committee is alarmed by reports that unqualified, unvetted, anonymous online users are bidding on jobs involving children, and considers this to be of the utmost gravity. The committee strongly urges online platforms facilitating such arrangements to act without delay to ensure that every precaution is taken to protect the safety of children.

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69 *Innovation or Exploitation: Busting the Airtasker Myth*, UnionsNSW, p. 1.

8.74 The committee again thanks Airtasker and Deliveroo for engaging with the inquiry process. The committee is confident that legislative change to protect workers in the gig economy is imminent. Companies which understand this and work with unions and government to drive positive change will be best placed to grow their business in a legal and ethical way. The committee notes Airtasker's commitment in this regard:

We are happy to work with the various bodies to really support doing the right thing by the Australian economy. Certainly, in terms of what we can do, there are some technical limitations, but what our jobs are is to try and improve the system and make it better for people.<sup>70</sup>

8.75 It should be noted that the committee repeatedly approached Uber, the subject of considerable criticism and concern, without success. In this instance the committee chose not to summons Uber to appear at a public hearing, being of the view that the company's unwillingness to engage with Parliament speaks for itself.

### **Recommendation 25**

**8.76 The committee recommends that the *Fair Work Act* be amended to ensure that all workers have the protections of the Act and access to the labour standards, minimum wages and conditions established under the Act, so that these rights accrue to dependent and on demand contracting, preventing those arrangements from being disguised as independent contracting. These amendments should capture the dependant contractor who is dependent upon a labour hire company, a company using a work allocation platform or a major corporation using a relationship power imbalance to exercise control over the worker.**

### **Recommendation 26**

**8.77 The committee recommends that the government initiate a review to determine the tax implications of the gig economy and examine legislative and regulatory mechanisms to minimise the avoidance of legitimate Commonwealth tax arrangements.**

### **Recommendation 27**

**8.78 8.1 The committee recommends that the government, as a matter of priority, bolster the employment conditions of workers engaged in the gig economy by requiring platform providers to verify all platform users comply with minimum standards.**

### **Recommendation 28**

**8.79 The committee recommends that the government legislate to ensure that workers in the gig economy are protected by a minimum wage by requiring**

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70 Mr Timothy Fung, Chief Executive Officer, Airtasker, *Proof Committee Hansard*, 18 April 2017, p. 8.

**platform providers to provide clear minimum labour price guidelines aligned to the relevant award for different categories of work, along with information about the relevant union for the category of work (where multiple unions would have coverage the ACTU should be provided as a point of referral).**

**Recommendation 29**

**8.80 The committee recommends that the federal government work with state and territory safety regulators to review health and safety and workers' compensation legislation to ensure that companies operating in the gig economy are responsible for the safety of workers engaged in the gig economy.**

