

ACTU Submission to the Treasury Consultation on Implementing a  
Reporting Regime for 'Sharing' Economy Platform Providers

ACTU Submission, March 2019  
ACTU D No. 8/2019

## Contents

Introduction .....	2
Overview of the proposal .....	2
What is the ‘sharing economy’? .....	2
Defining the sharing economy: temporary access to underutilised assets .....	3
Defining the gig economy: discrete tasks performed by workers not access to assets.....	5
A reporting regime for the gig economy.....	7
The conditions of gig workers.....	7
The effect of the proposals on gig workers .....	11
How to ensure compliance with tax and labour laws in the gig economy.....	12
Measures to detect sham contracting.....	13
Regulating the sharing economy .....	14
Recommendations .....	15
Conclusion .....	16

## Introduction

1. The Australian Council of Trade Unions ('ACTU') is the peak national body representing Australian workers, approximately 1.6 million in total, through our affiliated unions and trades and labour councils.
2. The ACTU welcomes this consultation being undertaken by the Australian Treasury regarding implementing a reporting regime for sharing economy platform providers and the initiative to help ensure greater tax compliance.

## Overview of the proposal

3. The Background Paper proposes a reporting regime for the sharing economy either by sharing economy platforms or by financial institutions.
4. The paper picks up on the Black [sic] Economy Taskforce's recommendation that operators of sharing economy platforms should be required to submit data on payments made through the platform to their sellers, which could be used to pre-fill tax returns.
5. The focus of the proposal is on pursuing tax revenue from workers and consumer-asset holders in the sharing economy rather than the platforms themselves.
6. We note with disappointment that Treasury continues to use the outdated and culturally inappropriate term "black economy" uncritically rather than alternative synonymous terms such as the "shadow economy". As we have commented previously, the term may offend indigenous and Torres Strait islanders. It is reminiscent of the White Australia Policy and the era of Stolen Generations, and an outdated binarism that associates "white" with things that are good and legitimate and "black" with things that are bad and illegitimate. We encourage Government to show greater leadership in promoting reconciliation and cultural inclusion by being more aware of the language it uses in official communication and thus the ideas and values it legitimises and perpetuates.

## What is the 'sharing economy'?

7. The term 'sharing economy' as used in public discourse is both nebulous and problematic. It has its origins in non-profit digital online platforms which were designed to facilitate the sharing of goods and assets in order to minimise waste, reduce consumption and promote social connection. The term is now more commonly used to refer to commercial platforms

that provide temporary access to underutilised assets on a for-profit basis, usually with little connection to the aims of the original sharing economy initiatives, even if such firms seek to capitalise on the “feel good” associations with the term due to these original aims. Some have questioned the appropriateness of the word ‘sharing’ when it involves transactions between strangers in a business relationship without the element of voluntariness, reciprocity-in-kind or absence of money most often associated with sharing.<sup>1</sup>

8. More problematically, the term ‘sharing economy’ is sometimes used to include also the “gig economy”; that is, the on-demand provision of temporary labour, and the organisation of temporary work through digital platforms. Here, the term ‘sharing’ is clearly inappropriate. For example, paying a delivery rider \$5 through an app to deliver a pizza has nothing to do with ‘sharing’.
9. The Background Paper uses the term ‘sharing economy’ in its broadest sense and does not distinguish between the ‘sharing economy’ and ‘gig economy’ and seeks comment on the proper scope of the term.<sup>2</sup> The paper also does not distinguish between non-profit and for-profit asset-renting activities but we assume the former is not sort to be regulated.
10. We contend that the sharing economy and the gig economy are mutually exclusive and the terms should be defined separately. Both ought to be regulated via separate reporting regimes as a different approach is necessary in relation to the gig economy in order to avoid penalising low paid workers.

### Defining the sharing economy: temporary access to underutilised assets

11. To provide clarity, we recommend defining the commercial sharing economy as follows:  
*“The commercial sharing economy consists of consumers purchasing temporary access to other consumers’ under-utilised physical assets via platforms (ie digital interfaces, apps or online portals).”<sup>3</sup>*

---

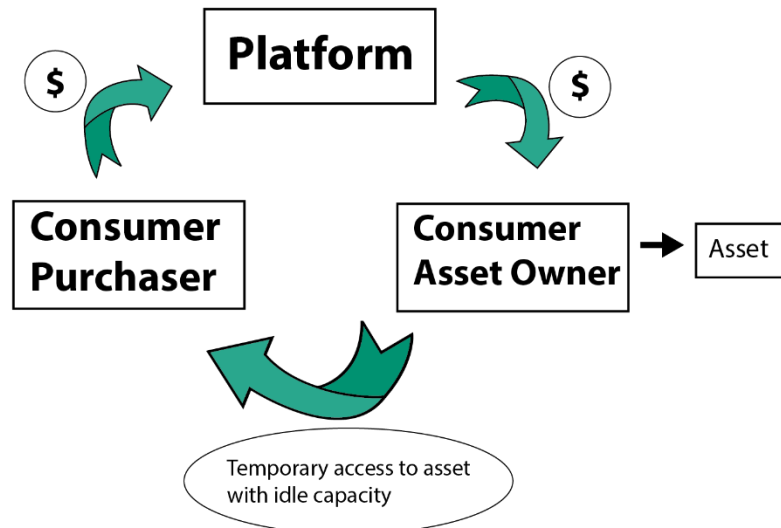
<sup>1</sup> For example, see discussion in Belk, R., 2007. ‘Why not share rather than own?’, *Annals of American Academy of Political and Social Science*, 611 (2007), 126–140, and Frenken and Schor, ‘Putting the sharing economy into perspective’, *Environmental Innovations and Societal Transitions*, 23 (2017) 3-10.

<sup>2</sup> See Australian Government Treasury, *A sharing economy reporting regime: A consultation paper in response to the Black [sic] Economy Taskforce Final Report*, January 2019, p3.

<sup>3</sup> For further discussion about access to under-utilised assets as being a defining feature of the sharing economy, see: Frenken and Schor, ‘Putting the sharing economy into perspective’, *Environmental Innovations and Societal Transitions*, 23 (2017) 3-10.

12. The parties to these transactions are consumer-purchasers, consumer asset owners, and platforms in a triangular relationship that typically takes the form described in the diagram below.

## Commercial Sharing Economy



13. Examples of well-known operators in this space include AirBnB and Car Next Door, and to a lesser extent, Rubberdesk, Spacer, Parkhound and Campspace. Ebay is not a sharing economy platform as consumers use it to purchase ownership and permanent possession of goods rather than temporary access. Hotels and car-leasing companies like Hertz are not in the sharing economy, even if they facilitate temporary access that can be purchased online, as the assets are not consumer-owned underutilised assets with idle capacity but assets owned or created for the purpose of being leased.
14. As the essential nature of the arrangements in the sharing economy is for the purchase of temporary access to goods, not work, no contract of service or for services is created between the parties; there is no question of the consumer asset owner being in an employment or independent contracting relationship with either the consumer-purchaser or platform. This is so even though some work may attend the provision of the asset, for example, an AirBnB apartment needs to be cleaned after use.
15. It is possible for non-sharing economy participants to use sharing economy platforms or for sharing economy platforms to expand beyond the sharing economy. In both cases, these transactions should not technically be considered part of the sharing economy.

16. AirBnB, for example, has clearly expanded beyond the sharing economy. Some small hotels and bed and breakfasts host on AirBnB and some hosts list properties that are purchased and used exclusively for short-term rental. These scenarios are indistinguishable from traditional short-term rental arrangements and although hosted on a sharing economy platform, shouldn't technically be considered part of the sharing economy. It makes sense, however, to capture all transactions of sharing economy participants in case these actors are using sharing economy platforms to evade tax.

#### Defining the gig economy: discrete tasks performed by workers not access to assets

17. Ride hailing, food delivery, and other task-performance platforms like Uber, Foodora, Airtasker, Upwork and Freelancer are not in the sharing economy, as they are not primarily concerned with granting temporary access to physical assets but rather access to discreet tasks or services provided by a worker. In some cases, the worker may use equipment such as a motor vehicle or bicycle in the performance of those services, but the essential nature of the service is the provision of labour involving necessary equipment rather than the provision of temporary access to equipment.

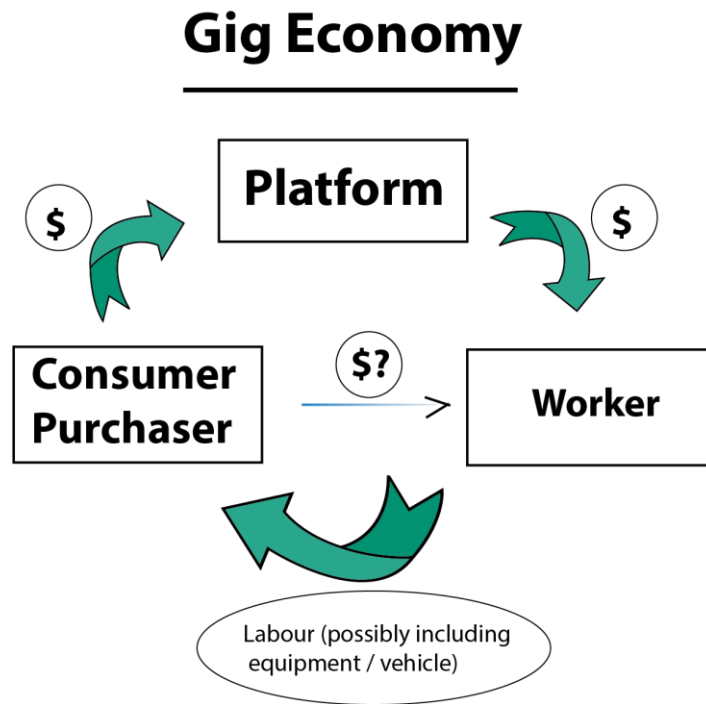
18. The difference can be illustrated, for example, by comparing temporarily renting a person's idle motor vehicle to do with as one pleases (aka Car Next Door, a sharing economy 'app') with booking a chauffeur to drive one from point A to point B using the chauffeur's own car (aka Uber, a gig economy app).

19. It is conceivable, of course, that one platform could operate in both the sharing economy and gig economy, for example, if Car Next Door and Uber merged, just as many companies operate different services and businesses and offer multiple products and services in various industries. However, we are not aware of any such dual platforms and this possibility does not detract from the fact that the sharing economy and gig economy are analytically distinct, mutually exclusive and able to be targeted by separate regulatory approaches.

20. Hence, the gig economy can be defined as follows:

*The gig economy consists of consumers purchasing the temporary on-demand services of workers to perform discrete jobs (ie tasks or "gigs") via platforms (ie digital interfaces, apps or online portals).*

21. Arrangements between consumer, platform and worker in the gig economy typically take the form described in the diagram below:



22. As the diagram indicates, workers are usually paid through the platform but, in some cases, it may be the case that the platform facilitates payments directly to workers. As mentioned earlier, well-known examples of gig economy platforms include Uber, Foodora, Airtasker, Upwork and Freelancer and a distinguishing feature of gig economy platforms is that, unlike sharing economy apps, the essential nature of the transaction involves jobs and the provision of labour, creating labour contracts.
23. Gig economy work arrangements can be subdivided into two categories depending on the nature of those labour contracts; that is, whether the worker is an independent contractor or employee.
24. In the first category, the platform acts as an arms-length facilitator, between the consumer and worker. The worker takes commercial risks, generates goodwill and exercises genuine control and direction over the work. In this case, an independent contracting relationship is more likely to exist between the worker on the one hand and the platform and or consumer on the other. In the second category, the platform/consumer has more direction and control over how the work is performed, and/or represents the worker as a representative of themselves, and, in this case, an employment relationship is more likely to exist between the worker and platform or between the worker and consumer.

## A reporting regime for the gig economy

25. The proposals in the Background Paper are clearly aimed at capturing both sharing economy and gig economy activities. For example, the paper explicitly defines the sharing economy as including “ride sharing or short-term accommodation services” and refers to gig work apps including Airtasker, Uber eats, Menulog, and Deliveroo.<sup>4</sup> However, the proposal takes no account of the circumstances of gig workers and the implications for regulating that ‘sector’.<sup>5</sup>
26. Our primary concern is that the background paper completely ignores the elephant in the room—the widespread use of sham contracting, wage theft and other avoidance of minimum entitlements in the gig economy. Hence, it fails to appreciate the implications of regulatory avoidance generally in the design and implementation of an appropriate tax revenue collection system. It further fails to consider the impact of pursuing low paid workers for tax before addressing the entitlement evasion and taxation responsibilities of the platforms that engage them.

### The conditions of gig workers

27. It must be appreciated that gig workers are generally low-paid, insecure workers undertaking low quality jobs and that not only tax avoidance but the evasion of minimum wage protections is the very *raison d'être* of many sectors of the gig economy. The growth of the gig economy is explained not primarily through significant innovation but rather the use of digital technology to gain unfair advantage through regulatory arbitrage.
28. The first form of regulatory arbitrage is platforms’ tax minimisation and avoidance made possible through complex international corporate arrangements—and in some cases, immense financial resources and aggressive political tactics—and the opacity and nimbleness of businesses operating digitally across multiple jurisdictions. Many of the platforms in the gig economy are run by multinational corporations with the potential to engage in tax arbitrage by declaring income in low tax jurisdictions or tax havens.

---

<sup>4</sup> See Australian Government Treasury, *A sharing economy reporting regime: A consultation paper in response to the Black [sic] Economy Taskforce Final Report*, January 2019, p3.

<sup>5</sup> As the gig economy operates across a wide variety of industries, it is not a sector as such.



29. Uber is the most prominent operator in the gig economy and notorious for its flagrant disregard of local regulations and its use of its formidable financial and political resources to bully its way into new markets. Uber operated illegally in Victoria, for example, for almost five years between November 2012 and August 2017, in defiance of the legal requirements to have a taxi or hire car license to operate, and actively facilitated drivers' non-compliance by pledging to pay their fines.<sup>6</sup>
30. Uber Australia is a wholly owned subsidiary of Uber International Holdings BV, based in the Netherlands, a tax haven. In 2017, leaked documents revealed Uber uses shell companies and various loopholes to shrink its tax obligations to low rates.<sup>7</sup> Uber Australia paid only \$2.5 million in tax in 2016 and the extent of its revenue is difficult to estimate as it routes all earnings directly from the consumer to its parent company in the Netherlands, declaring only the fees the parent company pays Uber Australia for "marketing services" as local profit in Australia.<sup>8</sup>
31. Such tax minimisation strategies would be more scandalous if corporate tax minimisation had not become so widespread in Australia. ACTU analysis shows that over \$2 billion in revenue was forgone in 2016-17 through 722 large companies paying no tax, including Woodside, BHP, Alcoa and Origin Energy.<sup>9</sup> Whilst the corporate tax rate is nominally 30 percent, the average corporate tax rate paid is closer to 17%, one of the lowest rates in the OECD, and the effective corporate tax rate is just 10.4 per cent.<sup>10</sup>
32. A second form of regulatory arbitrage engaged in by gig economy platforms is sham contracting. This involves platforms misrepresenting employees as independent contractors, invariably to engage them at lower rates of pay than the minimum rates applicable to employees and to externalise various costs onto the worker, such as the cost

---

<sup>6</sup> See ['Melbourne cab drivers sue Uber for \\$500 million in damages and 'lost profits'](#), *Nine News*, 19 October 2018; Clay Lucas, Ben Grubb, ['Uber pledges to pay \\$1700 ride-sharing driver fines in Victoria'](#), *The Sydney Morning Herald*, 23 May 2017.

<sup>7</sup> See, Rebecca Staudenmaier, ['Paradise Papers expose tax schemes of global elite'](#), *Deutsche Welle*, 5 November 2017; Timothy Rooks, Timothy Rooks, ['Paradise Papers – what you need to know'](#) *Deutsche Welle*, 6 November 2017.

<sup>8</sup> Nassim Khadem, ['Uber pays \\$2.5 million in Australia, says company is not under ATO audit'](#), *The Sydney Morning Herald*, 3 November 2016.

<sup>9</sup> See ACTU Media Release, ['\\$2 billion lost thanks to 722 companies paying no tax'](#), 13 December 2018 based on Australian Taxation Office, [Corporate Tax Transparency: 2016-17 Report of Entity Tax Information](#), updated 13 December 2018 and ACTU calculations.

<sup>10</sup> See Congress of the United States Congressional Budget Office, [International Comparisons of Corporate Income Tax Rates](#), March 2017 (published in 2017 based on 2012 data from: KPMG International, the Organisation for Economic Co-operation and Development, the Internal Revenue Service, and the Oxford University Centre for Business Taxation).

of workers compensation insurance, capital expenses and maintenance costs (for example, motor vehicle expenses in the case of ride hailing platforms) and the costs of unpaid downtime in-between ‘gigs’.

33. Sham contracting is illegal but currently difficult to detect in the gig economy where work is organised through electronic apps. Workers in the gig economy tend to be alienated from each other, kept in the dark about company operations and experience various barriers to accessing unions and obtaining collective support. Further, many gig economy platforms like Uber are not yet publicly listed and are traded in ‘dark pool’ trading markets without the public reporting requirements and scrutiny applicable to publicly-traded companies.
34. It is likely that sham contracting is so widespread in the gig economy that it is one of its defining features. The vast majority of gig economy platforms nominally engage their workforce as ‘independent contractors’. However, employment status is an objective question judged in all the circumstances and, when legally challenged, many of these nominally ‘independent contracting’ relationships have been found to be employment relationships. The Fair Work Commission found a Foodora delivery rider was an employee<sup>11</sup>, and the Australian Tax Office and Revenue NSW have both ruled Foodora riders were employees for tax purposes.<sup>12</sup> Uber drivers have already been found to be employees in the United Kingdom,<sup>13</sup> and New York City, and litigation challenging ride hail workers’ status persists around the world.<sup>14</sup> Whilst an Uber driver failed to establish he was an employee in the Fair Work Commission for the purposes of unfair dismissal law,<sup>15</sup> he was unrepresented in the case and the question of Uber drivers’ status generally in Australia remains live.
35. Employment status not only has implications for gross entitlements of the workers involved under our industrial laws. All employers of employees, including platform operators, have obligations under Australian tax law to withhold and remit on behalf of those employees, amounts according to the PAYG tax scales. This second failure by these businesses to observe existing laws is often overlooked and deserves closest attention in any consideration of new regimes whose aim to is improve taxation compliance.

---

<sup>11</sup> See *Klooger v Foodora Australia Pty Ltd*, [2018] FWC 6836, 16 November 2018.

<sup>12</sup> Anna Patty, ‘[Foodora faces claims for unpaid tax and superannuation](#)’, *Sydney Morning Herald*, 28 August 2018.

<sup>13</sup> Linton Besser, ‘[Uber loses landmark case over worker rights, entitling UK drivers to minimum wage and sick leave](#)’, *ABC News online*, 20 December 2018.

<sup>14</sup> Dan Rivoli, ‘[N.Y. judge grants Uber drivers employee status](#)’, *NY Daily News online*, 13 June 2017.

<sup>15</sup> See *Kaseris v Rasier Pacific V.O.F.* [2017] FWC 6610, 21 December 2017.

36. As we have noted previously<sup>16</sup>, whether independent contractors or employees in sham contracting arrangements, gig workers are invariably subjected to:

- (a) lack of standard employment protections such as minimum wages, paid sick leave and holiday pay, superannuation, and various forms of work insecurity (intermittency of work, varied start and finish times, unpredictable pay, job insecurity, and most especially, disaggregated working time, short shifts, and unpaid downtime between gigs whilst still being 'at work');
- (b) lack of coverage by the platform operators' workers' compensation insurance;
- (c) pay below the legal minimum that would apply to employees, in many cases, well below. Food delivery riders report being paid as little as \$6 per hour;
- (d) where gig workers are legally independent contractors, an inability to collectively bargain due to commercial competition rules;
- (e) continuous competition for work and shifts with other workers. This can take the form of pressure to underbid or undercharge for work on platforms like Airtasker or pressure for food delivery riders to be available to accept work and deliver at unsafe speeds;
- (f) other unreasonable surveillance and continuous performance pressures, due to digital tracking and harsh, and usually unchallengeable, consumer feedback ratings that can limit or end work opportunities;
- (g) an inability to find sufficient work;
- (h) poorer health and safety outcomes. Gig work has a negative impact on training, service quality and skills due to a number of factors. The lack of a clearly identified employer means that the obligation to provide workers with information, instruction and training under Occupational Work Health and Safety legislation is not enforced. Platforms such as Airtasker have been shown to actively circumvent consumer protections such as the requirement for high risk occupations such as electricians requiring a licence to perform the work. There is no requirement in most gig work platforms to verify the person performing the task is qualified or in fact licenced to perform the task. This poses a threat to both the gig workers health and safety but also that of consumers;<sup>17</sup> and
- (i) being engaged through start-up businesses with a high chance of failure or closure and lost wages and entitlements or outright entitlements theft. For example, Foodora recently exited from Australia in the wake of prosecution for sham contracting and the threat of class actions from thousands of workers owed millions of dollars in backpay and superannuation.<sup>18</sup>

37. Lest it be thought that all gig economy work is incidental and optional; that workers typically have another main job and quality source of employment and income or are retired, a TWU survey reports approximately half of all ride hail drivers, for example, are working fulltime

---

<sup>16</sup> See ACTU Submission to the Victorian On-Demand Workforce Inquiry, February 2019.

<sup>17</sup> See concerns raised by Unions NSW in Katherine Gregory, '[Airtasker: Unions raise safety concerns over 'gig economy' cowboys](#)', ABC News Online, 9 March 2018.

<sup>18</sup> See David Marin-Guzman, '[Foodora Administrators admit 'misclassified' delivery riders underpaid \\$7.5m](#)', Australian Financial Review, 8 November 2018.

and almost one third are driving for ride hailing platforms because they have debts to pay.<sup>19</sup> Many gig workers are balancing gig work with other low-quality work, such as intermittent, low-paid casual employment in an increasingly insecure labour market.

38. The Centre for Workforce Futures at the Australia Institute found that Uber drivers, for example, earn on average \$15 per hour before tax, net of expenses, well below the Federal Minimum Wage and half the award minimum wage for transport drivers.<sup>20</sup>

### The effect of the proposals on gig workers

39. In these circumstances, it would be extremely harsh to pursue unpaid taxes from illegally underpaid workers until the platforms' compliance with workplace and taxation laws has been secured and the fact of workers' low wages has been addressed. Yet that is precisely what the Abbott/Turnbull/Morrison Government appears to be intending. The consequence would be that workers with some of the lowest pay and conditions in Australia would be targeted whilst the companies involved are able to continue misclassifying workers, stealing their entitlements and retain the benefit of an unfair competitive advantage of low wages.
40. Tax compliance by platform workers is generally not something that is within workers' control. Taxation arrangements are imposed unilaterally at the point of engagement by the platforms. Where platform operators fail to remit PAYG tax, it allows them to pay what appears to be higher wages and provides a competitive advantage for platforms who find it notoriously difficult to retain workers. Uber, for example, has an extremely high driver turnover rate. As a TWU Survey shows, drivers are deeply dissatisfied with the pay and conditions and half of all drivers in Australia report quitting within 3 months.<sup>21</sup> An American survey showed 96% of Uber drivers in America quit within the first year.<sup>22</sup>
41. The competitive advantage of deliberately misclassifying workers and opting out of the usual taxation arrangements enables platforms to displace businesses and workforces who are paying their fair share of tax.

---

<sup>19</sup> See TWU, Rideshare Drivers Survey, available at <https://www.twu.com.au/home/campaigns/rideshare-drivers/>; Ally Foster, 'Drivers ditching rideshare apps due to low pay and long hours', *News.Com.au*, 13 November 2018.

<sup>20</sup> Jim Stanford, *Subsidising Billionaires: Simulating the Net Incomes of UberX Drivers in Australia*, Centre for Future Work at the Australia Institute, March 2018.

<sup>21</sup> See TWU, Rideshare Drivers Survey, available at <https://www.twu.com.au/home/campaigns/rideshare-drivers/>; Ally Foster, 'Drivers ditching rideshare apps due to low pay and long hours', *News.Com.au*, 13 November 2018.

<sup>22</sup> Ibid; Chantel McGee, 'Only 4% of Uber drivers remain on the platform a year later, says report', *CNBC*, 20 April 2018.

42. For all of the above reasons, the Government's primary focus in the use of any reportable payments system should be on targeting platforms, not their workforce: closing the loopholes that allow multinational platform operators to avoid paying their fair share of tax; ensuring workers are properly classified and PAYG tax is remitted by the employer; and ensuring a higher and fairer average rate of tax is paid by companies across the board. Gig economy platform workers should not be aggressively pursued for tax non-compliance without concurrently pursuing platforms' non-compliance with both tax and industrial relations laws and addressing the extremely low wages in the 'sector'. Otherwise the net effect of Government action will be to further punish low-paid workers who have been exploited by unscrupulous business practices.

### How to ensure compliance with tax and labour laws in the gig economy

43. Our submission to the Victorian Inquiry into the On-Demand Workforce outlines how the Federal Government can amend the Federal workplace relations laws to ensure compliance with labour laws in the gig economy and improve the pay and working conditions of gig workers.<sup>23</sup> This includes changing the Federal workplace relations laws to address both gig work and other low quality and insecure work in the Australian economy by:

- (a) introducing a new set of industrial rules and minimum protections with a broad scope to cover emerging forms of work and to keep pace with the varied ways in which corporations engage workers beyond standard notions of permanent employment, whether through digital platforms or otherwise;
- (b) introducing broad anti-avoidance measures to prevent employers from gaming the system with new avoidance tactics;
- (c) eliminating sham contracting;
- (d) providing better mechanisms for all workers to achieve secure jobs, and fair wages and ensure rights for gig workers to collectively bargain;
- (e) expanding the scope of bargaining to allow workers to press for more secure arrangements as part of collective agreement content;

---

<sup>23</sup> See ACTU Submission to the Victorian On-Demand Workforce Inquiry, February 2019.

- (f) allowing for sector and industry-wide bargaining so that firms are compelled to compete on the basis of genuine innovation, not a race to the bottom on wage costs and complex, tenuous labour supply arrangements that avoid standard worker protections;
- (g) legislating an objective statutory definition of casual employment;
- (h) providing adequate income support for the unemployed and underemployed to reduce coercive pressure on job seekers to accept exploitative job arrangements below their skills and experience;
- (i) improving freedom of association protections and access for workers to their unions without risk of intimidation and surveillance;
- (j) increasing equality through higher minimum wages and award standards, especially for casual employees;
- (k) restoring penalty rates, which would benefit gig workers, if combined with better enforcement of employee protections;
- (l) removing impediments to unions enforcing workplace laws; and
- (m) ensuring employers bear ultimate responsibility for all worker entitlements in the event of bankruptcy, and implement better protections against phoenixing.

### Measures to detect sham contracting

44. The proposed reporting regime can facilitate compliance with workplace and taxation laws. One of the barriers to enforcement is that platforms' operations are often opaque and workers are disaggregated from each other and a central workplace. Usually, no central workplace exists. Hence, it is difficult to monitor compliance, for workers and unions to connect, and for workplace laws to be enforced. Monitoring compliance is particularly acute regarding sham contracting, where workers have been misclassified as non-employees.

45. We propose two reporting regimes be created for the sharing and gig economies, respectively, with greater obligations regarding the latter in order to identify sham contracting issues. The gig economy reporting regime should be implemented concurrently with labour law compliance measures and other measures to lift the wages and conditions

of gig economy workers, and include additional reporting requirements to aid detection of sham contracting.

46. The detection of sham contracting would be aided by gig economy platform operators providing details of:
- (a) Financial payments made to workers;
  - (b) Worker's nominal employment status;
  - (c) Hours worked in relation to each payment, where available; and
  - (d) Whether the work is low skilled, trade qualified or professional.
47. As most major gig economy apps use extensive surveillance of their workforce, for example GPS location tracking, and measure the time taken to perform a "gig", the hours worked in relation to each payment is likely to be available.
48. From the above information, it ought to be possible in many instances to identify regular patterns of work and whether rates of pay are meeting award standards. This can then be used to target various operators that would be underpaying if an employment relationship exists who may be then further investigated.

## Regulating the sharing economy

49. Whilst the focus of our submissions has been on the gig economy, we note that the regulation of the sharing economy, as defined above, also has implications for workers. We would like to draw Treasury's attention to an inquiry being conducted by the Western Australian parliament into short-stay accommodation, which is of some relevance<sup>24</sup> and, in particular, to the submissions of our affiliate, UnionsWA<sup>25</sup>, to that inquiry. As UnionsWA argues, economic analysis suggests short-stay accommodation services like AirBnB do not drive demand for tourism and visitor expenditure, and do not contribute to GST or payroll taxation revenue. Further, short-stay accommodation providers like AirBnB are not required to comply with building codes and safety features like fire sprinklers, which may put

---

<sup>24</sup> See Parliament of Western Australia, Economics and Industry Standing Committee Inquiry into Short Stay Accommodation, <

[http://www.parliament.wa.gov.au/parliament/commit.nsf/\(WebInquiries\)/5A2D93940DDF1D254825833800277F1C?opendocument](http://www.parliament.wa.gov.au/parliament/commit.nsf/(WebInquiries)/5A2D93940DDF1D254825833800277F1C?opendocument)>.

<sup>25</sup> UnionsWA Submission, 7 February 2019, <

[http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Evidence+Lookup+by+Com+ID\)/43182C8D98945930482583A1002BA318/\\$file/20190208+-+BNB+Submission+190+-+UnionsWA.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Evidence+Lookup+by+Com+ID)/43182C8D98945930482583A1002BA318/$file/20190208+-+BNB+Submission+190+-+UnionsWA.pdf)>.

pressure on competitors to cut corners on safety and to endanger workers. The general lack of regulation in this sector is concerning. A reporting regime for the sharing economy is a necessary first step but further reform will be required to address the erosion of the government taxation revenue base and any disemployment effects resulting from the growth of the sharing economy.

## Recommendations

50. In summary, the ACTU makes the following recommendations in relation to the proposed reporting regime:

(a) Create one reporting regime for the commercial sharing economy and one for the gig economy;

(b) Define the commercial sharing economy as follows:

*The commercial sharing economy consists of consumers purchasing temporary access to other consumers' under-utilised physical assets via platforms (ie digital interfaces, apps or online portals).*

(c) Define the gig economy as follows:

*The gig economy consists of consumers purchasing the temporary on-demand services of workers to perform discrete jobs (ie tasks or "gigs") via platforms (ie digital interfaces, apps or online portals).*

(d) In relation to the gig economy reporting regime:

- Implement it concurrently with measures to raise the pay and conditions of gig economy workers, and eliminate sham contracting and gig economy platforms' non-compliance with workplace laws; for example,

- Require gig economy platforms to report on:

- (a) Financial payments made to workers;

- (b) Worker's nominal employment status;

- (c) Hours worked in relation to each payment, where available; and

- (d) Whether the work was low skilled, trade qualified or professional;

(e) In relation to the sharing economy, consider further measures to prevent the erosion of the taxation revenue base, disemployment, and, where relevant, avoidance of building and safety standards; and

(f) Close loopholes that allow companies to avoid paying their fair share of tax.



## Conclusion

51. The proposals need to distinguish between the commercial sharing economy and the gig economy and take into account the circumstances of the gig economy and gig workers, particularly sham contracting and evasion of minimum entitlements, in designing and implementing a special reporting regime for these 'sectors'. A dedicated gig economy reporting regime with further reporting requirements can aid in addressing sham contracting but platform operators themselves should remain the focus of tax compliance enforcement action and low paid gig workers should not be aggressively pursued until the low pay and entitlement avoidance and tax law contraventions by employers in the gig economy are also addressed.

ACTU March 2018

**address**

ACTU  
Level 4 / 365 Queen Street  
Melbourne VIC 3000

**phone**

1300 486 466

**web**

[actu.org.au](http://actu.org.au)  
[australianunions.org.au](http://australianunions.org.au)

**ACTU D No.**

8/2019



Australian  
Unions  
Join. For a  
better life.

