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

30 January 2018

The Transport Workers' Union of Australia

TWU Background

The Transport Workers' Union of Australia (TWU) represents tens of thousands of men and women in Australia's aviation, oil, waste management, gas, road transport, passenger vehicles and freight logistics industries.

With over one hundred years' experience in conducting Australia's freight task, the TWU has been proactive in establishing industry standards that improve the lives and safety of transport workers, their families and the community. The TWU is also the largest membership organisation representing independent contractors in the country.

The TWU welcomes the opportunity to contribute to the Select Committee's investigation into the future of work and workers.

Introduction

The future of work and workers is currently under threat in Australia.

Rights are being eroded and in many cases the driving down of standards is the business model of existing employers and new, 'on-demand' entities.¹ The powerful players at the top of supply chains continue to put tremendous economic pressure on those businesses and workers that operate further down the chain.

As it stands, 'the future of work' is not new or innovative. It is in fact old-fashioned exploitation. Precarious employment arrangements are on the rise in Australia and the on-demand economy is itself characterised by jobs that provide low incomes with no certainty around pay or patterns of work.²

Further, new technologies - for example, in the transport industry - are being used as an excuse to undermine standards and extract more from working people for less. There is nothing to say that new technologies cannot be the drivers of quality jobs and lead to innovation in a way that spreads prosperity. However, technological innovations are currently largely being viewed as happenings that the community has no control over, with an inevitability that they will negatively impact the organisation of work.

It is time to change the rules.

All workers must have rights and, very importantly, must be able to exercise those rights.

There is an immediate onus on governments and labour regulators to develop a plan for the future of work and how quality jobs will be secured in a changing economy. This is about basic social and human

¹ Stewart, A. and Stanford, J., 'Regulating Work in the Gig Economy: What are the Options?' (2017) Economic and Labour Relations Review 28(3), p.2.

² http://www.huffingtonpost.com.au/jim-stanford/the-gig-economy-might-be-the-future-but-its-actually-moving-us-backwards_a_23156655/

rights. We cannot allow a race to the bottom to proliferate. We have choices.³ The debate needs to shift away from simply whether a particular worker should be classified as an employee to determining what rights all workers should benefit from. Critically, every link in the supply chain must be held accountable for safe and fair outcomes for workers, particularly those at the top of the chain.

The plan needs to be underpinned by a robust set of principles that are more than just a set of minimum rights. We need to apply community values across markets that benefit all and level the playing field. There needs to be a strong social safety net and comprehensive superannuation policies that mean that workers can always accumulate savings. Every workplace must be safe. The entire supply chain must be made accountable and responsible for fair and safe outcomes. Benefits and entitlements should be portable, universal and pro-rated. Workers should have a say in how any changes to the workplace are implemented and managed. All workers must be able to form a community of interest, negotiate with the relevant entity with the economic power and be represented by their union. There should be a tripartite fund established between government, industry and registered organisations, funded by appropriate levies, to further safety, training and compliance with industrial rights in the new economy.

a. the future earnings, job security, employment status and working patterns of Australians;

Changes in our economy will impact the Australian workforce. But it should be up to the Australian community as to what that impact will be.

Precarious work is on the rise across Australia, particularly in the transport industry. On-demand jobs carry no job security - a deliberate tactic used by currently unaccountable entities that frame themselves as intermediaries in a bid to avoid costs and risk - and there is no legal entitlement to expect continuity of engagement.⁴ In the case of bicycle riders working in the road transport sector, it is clear that these workers should fall under the Road Transport and Distribution Award.⁵ However currently many riders, and ridesharing workers, are made to become 'independent contractors' and as a result they are effectively paid below award rates and are denied basic benefits.⁶

The features of on-demand work over digital platforms, and subsequent working patterns, are well known: no guarantee of continuing work, irregular hours, piece-work compensation, the worker providing the capital equipment and a nominally independent status.⁷ These features all detract from job security and the effective ability to raise issues at work,⁸ have the effect of driving down standards more generally (including safety and training) and paint a picture of a world of work that does not meet community standards.

³ Chalmers, J. and Quigley, M., 'Changing Jobs – The Fair Go in the Machine Age' (2017), p.3.

⁴ Riley, J., 'Regulating Work in the Gig Economy' (2017) Legal Studies Research Paper No. 17/30, p.6.

⁵ https://www.fwc.gov.au/documents/documents/modern_awards/pdf/ma000038.pdf

⁶ Stewart, A. and Stanford, J., 'Regulating Work in the Gig Economy: What are the Options?' (2017) Economic and Labour Relations Review 28(3), p.4.

⁷ http://www.huffingtonpost.com.au/jim-stanford/the-gig-economy-might-be-the-future-but-its-actually-moving-us-backwards_a_23156655/

⁸ Riley, J., 'Regulating Work in the Gig Economy' (2017) Legal Studies Research Paper No. 17/30, p.6.

There is much debate around whether many on-demand workers should be classified as employees. However the reality is that, while this issue is being debated, we are overseeing an economy that sees many members of our community working without any of the basic rights that all should be entitled to, including rights to leave, retirement with dignity, minimum pay, and the right to challenge unfair workplace practices. While the employment debate is vital, there is an urgent need to be proactive to protect all workers. As Riley put it in relation to regulating on-demand workers:

“It should not be necessary to squeeze the labour arrangements of ‘on-demand’ workers in the new digital economy into the category of ‘employment’ in order to provide them with appropriately protective labour standards.”⁹

Supporting this position, a 2017 Sydney University study has shown that 61% of survey respondents believe that new regulations are necessary for the on-demand economy.¹⁰

b. the different impact of that change on Australians, particularly on regional Australians, depending on their demographic and geographic characteristics;

The increasing precarity of jobs and an under-regulated on-demand economy that permits entities to undermine working standards and conditions will ultimately affect all Australians, regardless of demographics and geographic characteristics. The affects are pervasive, driving a race to the bottom and crossing industries.

c. the wider effects of that change on inequality, the economy, government and society;

If left unaccountable, the on-demand economy and increasing casualisation of many industries will drive inequality. Precarious work lessens income levels and forces working people to take on more for less just to make ends meet, for example in the Australian aviation industry, where the TWU is fighting rates and conditions that force workers into casual and part-time positions with low rates of pay.¹¹

The flow on effects of precarious work and wage suppression more generally can be dramatic and compounding,¹² with workers forced to operate outside the employment relationship and more and more in part-time, irregular or temporary work¹³ for example less likely to make contributions to superannuation or other savings which will have a direct impact on dignity in retirement. Stanford argues that, with a superannuation industry already under pressure due to wage suppression strategies used by employers, the impact of this form of work is immense:

⁹ Riley, J., ‘Regulating Work in the Gig Economy’ (2017) Legal Studies Research Paper No. 17/30, p.9.

¹⁰ Goggin, G. et al, ‘Digital Rights in Australia’ (2017) University of Sydney, p.36-37.

¹¹ <http://www.twu.com.au/home/campaigns/home-campaigns-aero-care-airport-workers-protest-as-new-report-shows-100-b/>

¹² Stanford, J., ‘The Consequences of Wage Suppression for Australia’s Superannuation System’ (2017) Centres for Future Work at the Australia Institute, p.5.

¹³ Stanford, J., ‘The Consequences of Wage Suppression for Australia’s Superannuation System’ (2017) Centres for Future Work at the Australia Institute, p.8.

“When workers’ wages are unduly suppressed, then the normal flow of employer contributions into their superannuation accounts is also constrained. They will have smaller superannuation balances when they retire, and will consequently experience a lasting reduction in post-retirement income. Moreover, governments will share a significant portion of the resulting damage: they will collect less taxes on superannuation contributions and investment income, and will pay out more in means-tested Age Pension Benefits (since workers’ superannuation incomes will be smaller).”¹⁴

Further, the social impacts of precarious work include stress and anxiety, with precarious workers more than twice as likely to have the employment relationship interfere with personal and family life.¹⁵

d. the adequacy of Australia’s laws, including industrial relations laws and regulations, policies and institutions to prepare Australians for that change;

A fundamental issue for the Australian industrial system is that many newer types of work are currently under-regulated,¹⁶ with most workers seen to fall outside the employment relationship, which is the source much of the Australian safety net. This is a huge challenge that must be confronted, but not only by debating whether a worker is in an employment relationship at any given moment. While this debate rolls on, our standards of work are declining.

One of the reasons for the increase in the number of entities arguing that their workers are independent contractors is that this is a way of avoiding much of the Australian safety net and accompanying social responsibilities. The characterisation also incorrectly assumes that those workers are capable and able to negotiate their own – fair and safe – rates of pay and conditions.¹⁷ This is often simply not the case, as has been seen in the on-demand economy when companies are unilaterally reduced rates of pay with workers given no recourse to challenge this.¹⁸

Those entities that effectively control the work – the intermediaries, platforms and economic employers at the top of supply chains – must be made accountable and cannot be allowed to escape providing fair and safe conditions for workers.¹⁹ We must change the rules for the benefit of all workers.

In NSW, for example, there is a successful history of protections and safeguards for men and women that run their own transport businesses. The NSW Industrial Relations Act is widely regarded as an example of regulation that sets appropriate minimums and a safety net absent an employment

¹⁴ Stanford, J., ‘The Consequences of Wage Suppression for Australia’s Superannuation System’ (2017) Centres for Future Work at the Australia Institute, p.4.

¹⁵ Lewchuk, W., ‘Precarious jobs: Where are They, and How Do They Affect Well-Being?’ (2017) Economic and Labour Relations Review 28(3), p.13.

¹⁶ Stewart, A. and Stanford, J., ‘Regulating Work in the Gig Economy: What are the Options?’ (2017) Economic and Labour Relations Review 28(3), p.13.

¹⁷ Riley, J., ‘Regulating Work in the Gig Economy’ (2017) Legal Studies Research Paper No. 17/30, p.3.

¹⁸ <http://iunkee.com/ubereats-just-changed-pays-couriers-impact-get-food/96949>

¹⁹ Riley, J., ‘Regulating Work in the Gig Economy’ (2017) Legal Studies Research Paper No. 17/30, p.3.

relationship, providing for “a basic degree of regulatory protections designed to mitigate the vulnerabilities of owner-drivers.”²⁰ The Act allows a form of regulation across entire industry sectors, with rights to union representation. Regulators and law makers should look to this powerful example in preparing to make changes.

e. international efforts to address that change; and

Jurisdictions around the world continue to tackle the future of work and workers in different ways. Lessons exist and those that are most powerful all emphasise the need to put the rights of working people and communities at the heart of all decisions.

The International Labour Organisation (ILO), the United Nations’ labour body, has been active in trying to tackle the new economy and Safe Rates. In 2015, the ILO (comprised of governments, employers and trade unions from around the world) passed resolutions to ensure passenger safety and driver rights when it came to ride-sharing apps like Uber and safety of all communities in supporting the Australian Safe Rates legislative model (dealing with issues including unsafe payment structures and client pressure).²¹ Individual nations have also taken up the fight for fairness in the new economy, with the Transport London notably banning ridesharing company Uber in 2016 due to a lack of corporate responsibility.²²

Further, there are examples from Europe of workplaces embracing new technologies, as government and employer support have been built into their industrial and social systems to ensure that workers are the key concern during any process of change.²³

f. any related matters.

Humans must be at the core of the future of work. Allowing artificial intelligence to make important judgments raises many well-documented ethical, and legal, issues.²⁴

In the transport industry, analysis of ‘crash optimisation’ algorithms in automated vehicles that decide who will get killed in the event of an unavoidable crash highlights that leaving these decisions to technology and its programmers is unacceptable. There is a need to regulate this space early and decisively in Australia to ensure that we are not led down this dangerous and morally hazardous path. Humans must be in control of these critical decisions. Appropriate and enforceable ethical guidelines, similar to those explored in Europe, will be critical.²⁵

²⁰ Kaine, S. and Rawling, M., ‘Comprehensive Campaigning’ in the NSW Transport Industry: Bridging the Divide Between Regulation and Union Organizing’ (2010) Journal of Industrial Relations, v.52, no.2, p. 188.

²¹ <http://www.itfglobal.org/en/news-events/news/2015/october/un-body-backs-safe-rates-and-demands-governments-protect-driver-and-passenger-rights-against-uber/>

²² <https://www.theaustralian.com.au/business/technology/twu-calls-for-urgent-uber-review-after-london-ban/news-story/a89ecd5e450d0492953dcb46c8b8243b>

²³ Goodman, P. S., ‘The Robots are Coming, and Sweden is Fine’ (17 December 2017) The New York Times.

²⁴ Chalmers, J. and Quigley, M., ‘Changing Jobs – The Fair Go in the Machine Age’ (2017), p.49.

²⁵ <https://theconversation.com/at-last-the-worlds-first-ethical-guidelines-for-driverless-cars-83227>