

**INQUIRY INTO IMPACT OF TECHNOLOGICAL AND
OTHER CHANGE ON THE FUTURE OF WORK AND
WORKERS IN NEW SOUTH WALES**

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TWU
Carrying Australia

Submission to the “Select Committee on the impact of technological and other change on the future of work and workers in New South Wales”

12 October 2020

**The Transport Workers' Union of New South Wales &
The Transport Workers' Union of Australia**

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This submission is dedicated to Xiaojun Chen and Dede Fredy

Both food delivery workers killed a week prior to this submission



Xiaojun Chen

About the TWU

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. The Transport Workers' Union of New South Wales (TWU NSW), is the largest branch of the TWU and represents workers within the State of NSW.

The TWU represents 70,000 transport workers in Australia today, including 20,000 owner drivers. With over one hundred years' experience in conducting Australia's passenger and 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. This work has included a long history of establishing innovative regulatory systems which have, among many things, helped to ensure that owner drivers, classified as contractors, and all other transport workers have access to fair rights and entitlements.

The TWU is the union which also represents workers in the transport sector of the emerging 'gig-economy' which include rideshare, food delivery and more recently, parcel delivery workers. Since 2018, the TWU has been leading a campaign to ensure that transport workers in the gig-economy are provided access to safe, fair and ethical work standards.

Section 1 - Executive Summary

1. The TWU welcomes the opportunity to contribute to the '*Select Committee on the impact of technological and other change on the future of work and workers in New South Wales*' and endorses the submissions of Unions NSW and the International Transport Workers' Federation to this select committee.
2. The transport sector is experiencing a revolution of work and is at the forefront of dealing with the effects of technological change – the good and the bad. Technological change can, in some cases, improve working conditions, support robust & sustainable forms of economic growth, create jobs, improve productivity, and lift living standards. Unfortunately, as this submission will contend, the cumulative effects of technological change in the transport sector are instead leading to the rapid erosion of working conditions, the expansion of unsustainable business-practices and undermining worker and community safety.
3. Three broad distinct trends are characterising the transformation of the transport sector in NSW as a result of technological change. These are:
 - the transport sector continues to be subject to the most long-established and exploitative type of work seen in the so-called 'gig-economy',
 - technologically driven intensification of work and erosion of standards has created a safety crisis in the transport sector,
 - automation & surveillance technologies are posing huge existential and ethical challenges to transport workers.

Trend 1 - Advanced and most exploitative development of gig work in the transport sector

4. The transport sector has been transformed by two-successive waves of gig-economy restructuring in the rideshare and food delivery sectors. Ridesharing & food delivery were introduced into Australia in 2012 and 2015 respectively and represent some of the earliest and most salient manifestations of the gig economy. The implications of the gig-economy on working conditions have been most prevalent in the transport sector.
5. In preparation for this submission, the TWU has undertaken two separate surveys of the rideshare and food delivery workforce. The results summarised in *Section 2 – 'Gig Survey and Results'* and discussed throughout this submission, demonstrate a deterioration of working conditions for transport workers in the 'gig economy' which is driving working conditions to all-time lows.

6. *Section 3 – ‘Working Standards and Conditions*, will consider these results further and highlight other challenges to working conditions facing rideshare and food delivery workers. It will also foreshadow the coming of a ‘third wave’ of the gig-economy in the transport sector, signalled most markedly by the recent entrance of ‘Amazon Flex’. The introduction of Amazon Flex into the NSW and broader Australian economy threatens to exacerbate the negative effects already caused by the gig economy on working conditions, emphasising the continued need for urgent intervention of the NSW State Government.
7. The broader issue of insecure non-standard forms of employment in the transport sector is another key focus of *Section 3*. This section will highlight the historical challenges faced by ‘Owner Drivers’ in the transport sector and draw parallels to the similar challenges now facing transport workers in the gig economy. New technologies in the emerging ‘gig economy’ are simply normalising these challenges under the guise of innovation.
8. The TWU submits that the issues facing owner drivers and gig transport workers alike are, unfortunately, facilitated by Australia’s outdated industrial relations system which is in need of major reform. The current approach to affording rights and protections to workers in NSW and Australia is founded on an outdated binary-distinction between workers as either ‘independent contractors’ or ‘employees’. As a result, workers in employment-like relationships who are classified as contractors are being denied access to any rights and entitlements, leading to concerning trends among low-leveraged workers in the transport sector. The NSW Government must intervene to ensure that the industrial relations system is overhauled so that rights and entitlements are conferred to workers on the basis of dependency and not arbitrary and outdated employment labels.

Trend 2 – Technological changes is contributing to a ‘safety crisis’ in the transport sector

9. The transport sector claims more lives of both Australian workers and members of the general public than any other sector. In 2018, 62% of all worker fatalities were related to vehicles and 77% of all bystanders fatalities as the result of a workplace incident were also caused by vehicles¹. Poor safety outcomes in the transport sector is nothing new, with governments having long failed to deal with the economic pressures put on transport workers by unsustainable working and contracting practices.

¹https://www.safeworkaustralia.gov.au/system/files/documents/2002/work_related_traumatic_injury_fatalities_report_2018.pdf

10. Section 4 of this submission will focus on the further deterioration of safety outcomes in the transport sector as a result of technological change. Certain forms of technological change, particularly the introduction of automation, surveillance, and the advanced development of the gig economy, are amplifying unsafe and unsustainable work practices.
11. In particular, the gig-economy is driving dangerous and unsustainable practices which are placing Australian transport workers and the public at risk. The results of the *Gig Survey* in Section 2 suggest that rideshare and food delivery workers in the gig-economy are faced with some of the highest rates of serious harassment, serious injury and death in NSW today.
12. Despite having strict obligations under existing safety laws, gig economy companies like Uber, Deliveroo, Ola, Menulog and Didi are failing to meet minimum obligations with respect to work health and safety. For example, among other worrying trends, respondents to the *Gig Survey* in Section 2 reported a failure by companies to provide sufficient basic protective equipment during the COVID-19 pandemic.
13. The safety crisis gripping the transport sector is being compounded by the failure of regulatory frameworks to lift safety standards. While existing safety laws are ostensibly strong, there are huge issues concerning the enforcement of work health and safety legislation. The NSW Government must ensure that the obligations of all companies are clarified in law and that regulators and industry stakeholders, especially trade unions, are empowered to take action in instances of non-compliances.
14. The workers compensation scheme is ill-equipped to deal with the changing nature of work. The increasing prevalence of non-standard forms of work, including those in the gig economy and in other parts of the transport sector, are rendering the entire workers compensation system redundant. Workers in these areas, particularly those with limited financial means, are very unlikely to self-insure and this trend is leaving workers with access to coverage in the event of a workplace injury. The NSW Government must act to expand coverage of workers compensation to all workers in the transport sector.

Trend 3 – Automation & surveillance technologies are posing huge existential and ethical challenges to transport workers

15. Section 5 of the submission will discuss the effects of automation and surveillance technologies in the transport industry, while highlighting the existential and ethical challenges such technologies are presenting to transport workers.
16. Surveillance and monitoring technologies like telematics can assist in creating a safe workplace for drivers and society at large. At the same time, an excessive reliance on such technologies can lead to misguided safety management practices

which can reduce safety overall. The TWU submits that technologies must be used appropriately and the key drivers of poor safety outcomes in the transport sector, such as unsustainable contracting and work practices, must not be ignored.

17. Technologies can also encroach on the privacy of drivers through, for example, constant monitoring and the invasive use of infrared lights to monitor the eye behaviours of drivers. The TWU submits that the interests of safety and implications on privacy must be balanced to ensure workplace surveillance technologies are not introduced without compromising the personal privacy of drivers. The NSW Government must amend workplace surveillance laws to ensure the adequate regulation of the use of surveillance technologies to ensure the interests of all workers are protected from existing and emerging surveillance technologies.
18. The submission will also consider the moral and ethical dilemmas presented by the development of autonomous trucking and drone technologies. Jobs are at threat of being automated in ways which may undermine economic and social value, and do not provide displaced workers pathways to alternative employment. The TWU submits that, should the development of these technologies be allowed to occur without the intervention of the NSW Government, they will have a devastating impact on transport workers and, Australian families who have relied upon traditional transport for decades.

A fairer, safer and sustainable future

19. Technological change presents the NSW and Australian economy a crucial opportunity to build a future for a fairer, sustainable and genuinely innovative transport sector. The inquiry presents an opportunity for Australian policy makers to mitigate the negative implications of technological change for the benefit of all Australians.
20. The TWU has been at the forefront of designing effective, practical and sustainable regulatory solutions for all workers since its establishment. Such work has involved promoting unique regulatory frameworks which have ensured the rights and protections of contractors in dependent patterns of work and have enjoyed bi-partisan support for decades in NSW. Faced with the trends presented by technological change, it is incumbent on the NSW Government to continue this work with the TWU and industry stakeholders.
21. The submission will conclude with a discussion of urgent needed reform to address these issues. The TWU urges the NSW Government to immediately ensure:
 - Recommendation 1. A flexible, innovative and safe system of rates in the transport sector

- Recommendation 2. Clarifying obligations for companies under existing WHS Laws
- Recommendation 3. Ensuring all workers in the transport sector are provided workers compensation
- Recommendation 4. Reform of workplace surveillance laws to ensure that the interests of Workers are protected
- Recommendation 5. Managing automation fairly and sustainably in the transport sector

Section 2 - Gig Survey Results - Snapshot

22. In preparation for this submission, the TWU, with the Delivery Riders Alliance (DRA)² and Rideshare Drivers Network (RDN)³, conducted two separate surveys of the rideshare and food delivery sectors. The results from these surveys are presented below.
23. The surveys provide the latest indicators of pay, safety and working conditions in the food delivery and rideshare sectors. The results demonstrate the continued diminution of pay and standards in the transport sector, which will be discussed in greater detail later in this submission.

Food Delivery Survey

| | |
|--|------------------|
| Food delivery companies worked for: | 67.46% UBEREATS |
| | 49.28% DELIVEROO |
| | 31.58% MENULOG |
| | 31.58% DOORDASH |

Note: Workers surveyed were found to work for multiple companies at the same time.

| | |
|---------------------|-----------------------------|
| Vehicle Type | 39.23% Scooter / Motorcycle |
| | 38.28% Car |
| | 22.49% Bicycle |

| | |
|---------------|---|
| Income | Gross weekly earnings = \$555 per week |
| | Average gross hourly rate = \$17.11 per hour |
| | <u>Actual hourly rate after costs = \$12.85*</u> |

88.72% of workers “have noticed delivery payments have reduced over time”

² The Delivery Riders Alliance (DRA) is a group established by workers and the TWU in order to help advocate represent the interests of food delivery workers in the gig economy.

³ The Rideshare Drivers Network (RDN) is a self-organised group of rideshare drivers seeking to advocate and represent the interests of drivers, which has work closely with the TWU in recent years.

74.02% of workers “struggle to pay bills and buy groceries”

“We hardly making 10\$ per hour. Please help us.”

“They keep decreasing the fee amount of the delivery even now that is corona and they earn more! Also Deliveroo Insurance they decrease some things as well! And Uber insurance is really bad!!!”

Hours worked per week?

34 hours per week on average

Dependency on food delivery work as a main source of income

86.12% of respondents are dependent on food delivery work as a main source of income

Safety

33.65% have been hurt or injured at work

30.77% know someone who has been hurt or injured

82.99% of those injured received no support from the food delivery company they worked for

70.1% of workers said they “worry about being seriously hurt or killed while at work”

COVID Safety

During COVID:

65.38% delivery workers were not provided any safety training

49.04% delivery workers were not provided sufficient & free protective equipment (masks, sanitisers, gloves)

78.37% delivery workers were not provided any paid leave or financial assistance when needing to isolate after being affected by the COVID.

59.62% of delivery workers said that the company they worked for promoted full contact-free delivery

1/5 delivery workers said the food delivery company they worked for took no measures to respond to COVID

“Just send a message before starting the job and send some emails but didn't do nothing effective”

“Promotes contact free delivery but will not answer my questions on how to approach this when their procedure is not a possibility.”

“we need Covid tests for free so that we might not be carriers of the virus. And give home isolation pay for staying at home until results are declared.”

Key issues for food delivery workers

“The new pay structure is worse than our previous agreement. Now we are getting about 40 to 50% less pay for each job”

“Insurance system does not include people injured.”

“Paternity leave or any help (I became father few weeks ago, I asked for any help, but the was not positive answer) Payment for waiting time”

“They keep on hiring individuals when there are not enough jobs for the people who are already working. Below minimum wage per delivery like they have 50% of the wages in the past year or so. Extremely Unsafe in tough weather conditions like rain, windy.”

“Not knowing how the algorithm works at an accurate and detailed enough level to give me confidence when doing the job. e.g. Order priority based on distance from restaurant or delivery speed history or both?”

Mi problema es que las compañías bajan los pagos por viaje a su gusto y nadie puede hacer nada (My problem is that companies lower travel payments to their liking and nobody can do anything)

“Oversupply of riders and not enough work.”

**Harsh or unfair treatment/
terminations**

61.27% of workers said they have “been unfairly treated by a company without being able to defend myself”

“Uber eats me eliminó la cuenta sin dejarme defender” (Uber eats deleted my account without allowing me to defend myself)

**What rights food delivery workers
want**

71.92% of workers think they “should be an employee and not an independent contractor”

86.93% of workers said “Delivery workers should have access to rights like superannuation, sick leave, penalty rates and a minimum wage”

90.15% of workers said “Delivery workers should be able to form a union to collectively represent their interest”

“Guaranteed minimum income to cover if there are few orders available”

“Better pay, safety at work, better support from the companies, clarity.”

“Rider consultation. Paid Sick leave”

“Must have minimum wages applied on drivers, weekend penalties and job security must be applied.”

“Sick leaves and annual leaves”

“The election of safety representatives. Deliveries paid more”

Demographics

AGE:

18 to 24 – 13.94%

25 to 34 – 61.21%

35 to 44 – 18.18%

45+ - 6.67%

GENDER:

Female – 5.45%

Male – 94.55%

RESIDENCY STATUS

Australian Citizen – 16.36%

Permanent Resident – 4.24%

Visa Holder – 79.39%

N=209

**Costs have been estimated and deducted from the survey results. A breakdown of these costs can be found in Part 3 Table 1.1 of this submission.*

Rideshare Drivers Survey

66.31% of drivers have been subject to some form of harassment.

17.14% have been physically assaulted

Almost half (44.4%) of female drivers reported experiencing sexual harassment

40.29% of drivers experienced racial abuse while driving.

“Once we arrived at his home he refused to get out of my car and insisted I was his date. I was physically assaulted and sexually attacked”

“Drunk male getting his junk out in the back”

“Multiple threats with a knife, multiple grabbing & punching”

“Been called a black c@#\$ by passengers while working in QLD even though I told them that I was from Sydney and Australian and the rest shouldn't matter.”

“People say me all the time migrants go back to your country.”

COVID Safety

During COVID:

53.81% rideshare drivers were not provided any safety training

48.57% rideshare drivers were not provided sufficient & free protective equipment (masks, sanitisers, gloves)

74.76% rideshare drivers were not provided any paid leave or financial assistance when needing to isolate after being affected by the COVID.

1/5 rideshare drivers said the rideshare drivers company they worked for took no measures to respond to COVID

“Uber and Didi do provide some protective gear that last 1-2 weeks. After that no more and we drivers got to purchase our own.”

“Some companies promised help but delivered nothing”

Harsh or unfair treatment/ terminations 87.38% have been left negative feedback for something beyond their control (i.e. road conditions, pick-up restrictions)

18.45 % have been suspended without pay and 9.22% have been terminated as a result of a false allegation

56.25% said they’ve “been unfairly treated by a company without being able to defend” themselves

Key issues for rideshare drivers

“Biggest issue is that all the companies are developing different ways of squeezing every single cent from drivers pocket and competing in a race to bottom. I want to see fare treatment for drivers and some regulations or some government body looking over them, what they are doing to drivers.

“Driver cut increased. Take out by Uber too high. Same drop off and driving rules as taxis.”

“Compensation for damage, sick leave and holidays”

“Increase in pay. Too many drivers means it is difficult to make a full time living”

“Improved wages, being treated as an employee with at least super being paid”

“Less commission taken as we cop all of the costs, transparent rides - distance suburb Street and how much we expect to make before accepting the trip”

What rights rideshare drivers want

1. Dispute resolution (83.01)
2. Penalty Rates for nights, weekends and public holidays (72.33%)
3. Access to a minimum Wage (64.08%)
4. Workers Compensation Insurance 64.08%)

80.13% of drivers think they “should be able to form a union to collectively represent their interest”

“Improved wages, being treated as an employee with at least super being paid”

“No minimum guaranteed per hour income”

“Uber should not be allowed to keep registering drivers when the drivers they already have can't make a living.”

“More than the minimum wage. Wage that covers driving expenses that you can live on pay rent/mortgage, Insurance, clothing, food, save for sick and holiday leave, go to dentist/doctor when you need to, afford to go out. Right to negotiate contract”

“Price mechanism, safety, deactivate and blocking of account without justifications and right to unionized”

“I have to keep driving when I feel sick”

Work status 47.62% of drivers think they “should be an employee and not an independent contractor”

Demographics AGE:

18 to 24 – 2.63%

25 to 34 – 17.89%

35 to 44 – 17.37%

45+ - 62.11%

GENDER:

Female – 16.32%

Male – 83.16%

Transgender – 0.53%

RESIDENCY STATUS

Australian Citizen – 80.42%

Permanent Resident – 8.47%

Visa Holder – 11.11%

N= 210

**Costs have been estimated and deducted from the survey results. A breakdown of these costs can be found in Part 3 Table 1.1 of this submission.*

Section 3 - Working Conditions and Standards

24. The transport sector has been greatly affected by technological change, which has manifested in the expansion of the gig economy and facilitating and encouraging insecure patterns of work. It is within the transport sector that the development of the gig economy has been most advanced and, given its particular form, its impact on working conditions and safety has been most concerning.
25. The ‘gig economy’ is a broad term used to describe various kinds of work, across different industries and allows for varying degrees of control, exploitation and dependency. The ‘gig economy’ is generally used to describe work that:
- is mediated through digital interface or app,
 - classifies workers who provide a good or service as ‘independent’ contractors,
 - remunerates these workers through piecemeal rates,
 - does not provide workers access to basic rights and entitlements otherwise granted to workers classified as employees (or contractors with access to collective bargaining).
26. The unique manifestation of ‘gig work’ in the transport sector can be distinguished from other sectors of the gig economy. ‘Gig’ companies ^{4[6]} maintain a high degree of control over how work in this sector is performed. For example, transport workers in the gig economy have no control over price-setting or an ability to determine their terms of engagement and have a strong dependency on app-based companies as the sole source of work. The TWU submits these work arrangements have particularly worrying implications for gig workers in the transport sector and highlight the need for strong regulatory intervention.

“ We need the ability to choose what kind of jobs you want to do and not penalised for not accepting or starting a job ... ”

Anonymous - Uber, Ola, Didi – Jul, 2020

⁴ Wood, A.J., Graham, M., Lehtonvirta, V., & Hjorth, I. (2019). Good gig, bad gig: autonomy and algorithmic control in the global gig economy. *Work, Employment and Society*, 33(1), 56-75.

“ *All the companies demand loyalty and punish the drivers on acceptance rate if a job is 20mins plus to pick up a 3min ride you should be able to say no without it affecting acceptance rate* ”

Gregory – Uber, Ola, Didi – Jul, 2020

27. These work arrangements strongly resemble those of ‘Owner Drivers’ represented by the TWU. As will be discussed, owner drivers have, historically, faced similar challenges because of these dependant work arrangements which will be important to consider in the development of policy to address broader issues in the transport industry. At times, the only difference between the two is the prominence of an ‘app’ in managing and delivering work.
28. The transport sector has been transformed in recent years by two successive waves of gig-based restructuring, the first marked by the introduction of ‘ridesharing’ passenger transport services in 2011 and the second, through the introduction of food delivery services in 2015. These services have rapidly expanded and, today, rideshare alone accounts for a workforce of approximately 80,000⁵ rideshare drivers. The transport sector is currently experiencing a third wave of gig-based restructuring in the parcel delivery sector, marked by the recent entrance of companies like Amazon Flex into NSW and other parts of Australia.
29. As will be discussed, the gig economy has had serious and concerning implications for the working conditions & safety of transport workers in Australia. The TWU expects these implications to become increasingly prevalent should the NSW Government fail to urgently intervene. The TWU urges the committee to consider these trends in the transport sector and act urgently to ensure a strong regulatory response to promote fair competition, working conditions and sustainability.

Rideshare and food delivery sectors

30. Transport workers in the rideshare and food delivery sector are subject to insecure patterns of work, systematic forms of underpayment and are not provided access to minimum work rights or entitlements.

⁵ The number of rideshare drivers is difficult to ascertain provided that worker numbers provided by companies contain considerable overlap through drivers undertaking

31. In preparation for this submission, the TWU has conducted a survey of rideshare and food delivery workers which it submits to the committee for consideration. The results, which were outlined previously in *Section 2* of this submission and are considered below, demonstrate that workers in rideshare and food delivery sectors are now engaged in some of the most dangerous and low paid work in the country.
32. The rideshare and food delivery sectors are dominated by a few key ‘gig’ companies which engage the majority of workers. Many workers use these few apps simultaneously in order to access work. The survey results show that 67.46% of food delivery workers work for Uber Eats, 49.28% for Deliveroo, 31.58% for Menulog, 31.58% for Doordash. In the rideshare sector, 94.29% work for Uber, 62.38% for Didi and 53.33% for Ola

“ Companies operating in monopolistic factor (particularly Uber) paying staff continuously lower wages and continuously onboarding new drivers to drive down the wages and jobs for existing drivers...”

Joseph – UberEats, Menulog, Doordash – Sep, 2020

33. The results are consistent with the fact that both sectors are oligopolistic markets – controlled by a few main companies with undue market power to determine standards and conditions. A Roy Morgan poll earlier this year found that 90% of all rideshare users book rides with Uber, followed by Ola (20%) and Didi (14%).⁶ The concentration of market power has allowed Uber to deteriorate standards in recent years, with repeated cuts to earnings.
34. The survey results demonstrate that transport workers in the gig economy are being paid significantly lower than the national minimum standard. Respondents to both the rideshare and food delivery worker surveys reported earnings well below the Australian national minimum wage for casual workers (\$24.80 per hour). The average food delivery worker reported gross earnings of \$17.11 per hour with the average rideshare driver earning \$23 per hour gross, before tax and other deductions.
35. The effective hourly rate is substantially lower once work expenses like vehicle costs (fuel, insurance, maintenance, depreciation, finance, registration & insurance) phone costs and safety protective equipment are deducted from the gross earnings. Table 1 provides cost estimates prepared by the TWU for a typical

⁶ <http://www.roymorgan.com/findings/8285-rideshare-users-urban-mobility-202002190039>

food delivery worker with a scooter and a rideshare driver with a car⁷. The calculations suggest that work expenses account for roughly 30% of the gross earnings of a food delivery and rideshare drivers. This would place food delivery and rideshare drivers among the lowest paid workers in the country, earning on average \$10.42 and \$12.85 per hour respectively.

“We hardly making 10\$ per hour. Please help us ”

Vishnuvardhan – UberEats, Deliveroo, Menulog, Doordash - Aug, 2020

“Biggest issue is that all the companies are developing different ways of squeezing every single cent from drivers’ pocket and competing in a race to bottom ”

Ramesh – Uber, Ola & Didi – Jul, 2020

⁷ Estimate of vehicle costs are allowed for on the basis of rental costs given the fact that a large number of respondents reported renting vehicles and for simplicity. However, it is worth noting that workers which own their vehicle outright incur other costs which include capital and depreciation costs, registration fees, insurance and vehicle maintenance.

| | | Food Delivery Worker (Scooter) | Rideshare Driver (Car) |
|----------------|---|-----------------------------------|---------------------------|
| Income | Gross earnings | 555.00 | 874 |
| | Average Hours | 34 | 38 |
| | Gross Hourly | \$16.32 | \$23.23 |
| Variable Costs | AVG KM per week ⁸ | 499 | 862 |
| | Fuel cost per km ⁹ | 0.06612 | 0.12312 |
| | Avg Fuel Cost Per Hour | \$0.97 | \$3.12 |
| Fixed costs | Scooter Rental (\$130 per week) ¹⁰ | 6,760.00 | |
| | Car Rental (\$200 per week) ¹¹ | | 10,400.00 |
| | Motorcycle PPE | 1,000.00 | |
| | Phone | 960.00 | 960.00 |
| | Total Annual Fixed Costs | 8,720.00 | 11,360.00 |
| | Hourly Fixed Cost | \$4.93 | \$5.60 |
| Other Costs | GST | \$0.00 | \$1.32 |
| | Avg Hourly Rate | \$10.42 | \$12.85 |

Table 1 – Rideshare and Food Delivery Worker Hourly Earnings After Costs

36. The hourly rates computed in the table above are conservative in the sense that no additional deductions have been made for entitlements which would otherwise be provided to employees. Workers in these sectors are not provide access to superannuation (+9.5%), casual loadings (+25%), workers compensation (+2-3%) and shift-loading and penalty rates including for weekends and public holidays – all of which would further reduce the effective pay rates of food delivery workers and rideshare drivers when compared to those classified as employees.

⁸ Food delivery worker average estimate provided by multiplying average number of orders (83 per week) by average distance travelled per order (6km). The average order number was calculated by dividing the gross earnings by a typical delivery fee (\$7). The average distance travelled per order is based on observations provided by delivery workers

⁹ Avg fuel consumption for a motorcycle of 5.8L/100km used for food delivery worker and passenger vehicle consumption of 10.8L/100km for rideshare driver

¹⁰ Average scooter rental costs based on rates for basic scooter offered by SCOOTERING PTY LTD - a rental provider targeting Food delivery workers in the Sydney region

¹¹ Average car rental costs based on rates average rate of Uber's recommended rental agent in the Sydney region

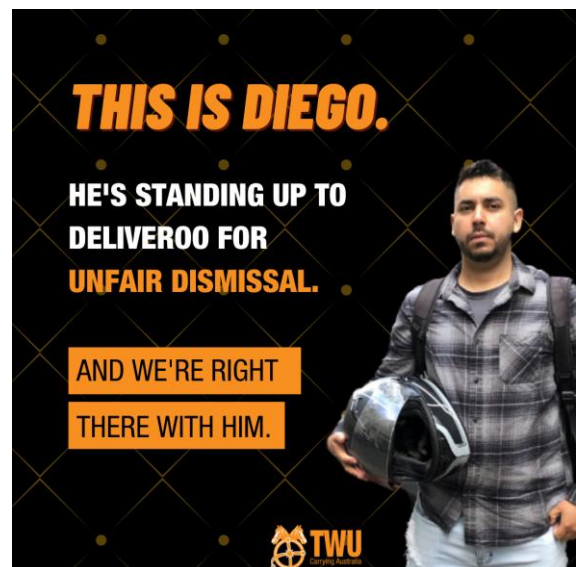
37. Gig economy companies in the transport sector often justify providing low pay and a lack of worker entitlements by arguing that workers on their platforms are engaged in transient, part-time arrangements to 'just earn a little bit of extra cash'. However, the surveys found that over 77% of rideshare drivers and 86% of food delivery workers reported being dependent on gig work as their main source of income. Respondents also reported working long weekly hours, with food delivery workers and rideshare drivers working 38 and 34 hours per week respectively, suggesting more stable and dependent patterns of work than companies may otherwise suggest.
38. The social and human cost associated with full-time work patterns, high dependency on income and systemic underpayment is also borne out in findings that 54.76% of rideshare drivers and 74% of food delivery workers are struggling to 'keep up with bills and buy groceries'. The sad irony of these results is that workers, who are providing food to the Australian community, are, unable to provide food for themselves and their families.
39. To compound these issues, as rideshare and food delivery workers are classified by gig companies as independent contractors, they do not have access to the legal protections available to employees, including unfair dismissal or access to an independent umpire to resolve disputes. This means that workers are significantly more vulnerable to harsh or unfair treatment including termination without warning, procedural fairness or consultation.
40. The survey results show that 9.22% of rideshare drivers reported being deactivated (terminated) as a result of a false allegation, with 18.45% being suspended without pay as a result of a false allegation. 61% of food delivery workers reported being 'unfairly treated by a company' without the ability to defend themselves. 87.38% of rideshare drivers were left negative feedback by customers for factors beyond their control (i.e. poor traffic, app issues).

Case Study – Diego Franco

Diego Franco worked for Deliveroo for three years. Deliveroo was Diego's main source of income – which he relied on to support his young family.

While working as Deliveroo, Diego was recognised as one of the best performing and long-serving delivery workers and flown over to Melbourne to engage in a select committee of Deliveroo delivery workers.

In May 2020, Diego received an email notifying him that he would be terminated within 7 days for allegedly delivering orders too slowly. Diego was provided no prior warning and despite his pleas, Deliveroo refused to review Diego's case or give him another chance. Diego was left 7 days to find a new job, in the middle of the Coronavirus pandemic, with a young daughter to provide for. Unfortunately, Diego's story is all too common at Deliveroo and for gig workers in the transport sector. The TWU is currently running an unfair dismissal case in order to support Diego and countless other delivery workers.



-
41. Relevantly, the gig economy has encouraged a deterioration of working conditions within the transport sector. However, as competition in the unregulated gig economy has intensified, it has also allowed for further deterioration of working conditions within the gig economy. Since the introduction of rideshare in 2011, gig companies in the rideshare and food delivery service, have routinely compromised working conditions to maintain their competitive position in the market. For example, as Table 2 highlights, many food delivery companies paid an hourly rate and provided superior terms and conditions for delivery workers in the early years of their entry into Australia. As competition has intensified, many food delivery companies now pay a variable rate for each food delivery. The survey results indicate that 83% of rideshare drivers and 95% of food delivery workers reported that their earnings have reduced over time.

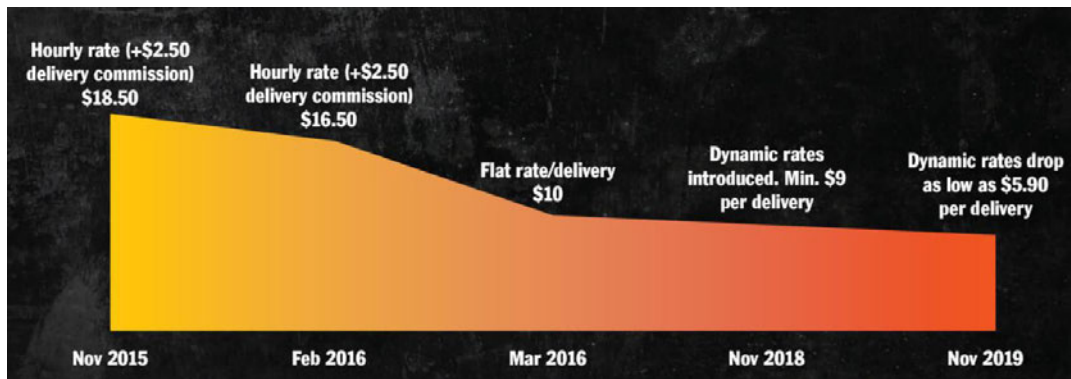


Table 2 – VTHC & TWU Survey of Food Delivery Worker pay standards¹²

42. In recent months, food delivery companies have continued to reduce pay and standards – despite being some of the few companies to profit from the Coronavirus pandemic. In April, Uber Eats implemented a ‘new payment structure’ which saw an estimated 44% reduction in the pay and conditions¹³. This was despite a boom in the revenues of food delivery companies, with consumer spending on food delivery increasing by more than 350% across some areas of Sydney.¹⁴

“With new agreement with uber payment reduced at least by 30% per trip means I earn 30% less every week. Not sufficient to survive in the difficult times. Harsh weather, cold and corona risk. Yet delivery company reducing payment.”

Rakesh – Uber Eats – Jul, 2020

“When I started on a busy night I would get up to \$30 an hour staying online for 3-4 hours. Now I’m barely making \$20”

Alex – UberEats – Sep, 2020

¹² <https://www.twu.com.au/wp-content/uploads/2020/01/Delivery-Riders-snapshot-2-scaled.jpg>

¹³ Results were collected during a survey conducted by workers in April with 337 respondents around the country.

¹⁴ <https://www.smh.com.au/business/the-economy/boom-time-the-council-areas-with-the-biggest-surge-in-food-delivery-20200429-p54o8g.html>

“Uber has decreased driver fee substantially very recently. Its already tough due to covid and uber has made things even more difficult with less earnings”

Muhammad – UberEats – Sep, 2020

43. Finally, as will be discussed, there is a safety crisis in the transport sector, which has intensified by the development of the gig economy. The deterioration of working conditions and unsustainable business practices is having a direct impact on worker and community safety in the transport sector. As gig companies continue to compromise working conditions to maintain their competitive position in an unregulated market, by reducing pay and avoiding minimum legal obligations, workers are being pressured to work longer hours and engage in dangerous road practices. This safety crisis will be the focus of further discussion in the *Section 4* of this submission.

What’s to come? Enter Amazon Flex and the ‘third wave’ of the gig economy

44. The gig economy in the transport sector has been to date, relatively contained to food delivery and passenger transport. However, the recent entrance of ‘Amazon Flex’ to NSW is now expanding the reach of the gig economy to a new frontier, being ‘parcel delivery’ services.

45. In 2018, the road transport sector employed 648,700 people.¹⁵ Across all industries in Australia, there were 119,400 truck drivers, 44,500 couriers and postal drivers and 60,900 delivery drivers. 17% of workers in the Transport, Postal and Warehousing sector were self-employed.

46. In February 2020, Amazon Flex introduced its ‘last-mile’ parcel delivery service in Australia. Amazon’s ‘Flex program’ engages people to perform parcel delivery work in an Uber-style arrangement through an app. While ‘Flex drivers’ are engaged as ‘contractors’, these drivers are made to work in a highly regulated employee-like roster arrangement of four-hour shifts (referred to as ‘blocks’), for which they are paid a lump-sum.

47. Like other transport workers in food delivery and rideshare sectors, ‘Flex drivers’ are not afforded the legal protections provided to other couriers in the transport

¹⁵ <https://australianjobs.employment.gov.au/jobs-industry/transport-postal-and-warehousing>

sector¹⁶. Flex drivers are, similarly, classified as independent contractors and do not have any access to penalty rates, sick or other leave entitlements, minimum rates of pay, superannuation or any other working rights or protections.

48. As a result, Flex drivers face the same challenges. On the one hand, Flex drivers do not enjoy any of the basic protections afforded to a worker classified as an employee. On the other hand, their work arrangements lack the flexibility and control which would otherwise characterise a genuine 'independent' contracting relationship.
49. Amazon Flex has been in operation since 2015 in the US and has been the centre of much scrutiny over poor working conditions for drivers and its broader effects on the transport sector. In 2018, financial analysts at Bernstein estimated that the average Amazon Flex driver earned \$5 to \$11 USD per hour, after on the job expenses were deducted, placing earnings well below the minimum wage¹⁷
50. Studies in the US have also suggested that Amazon Flex is one of the most dangerous last-mile delivery options in the transport sector. In 2019, an investigation of Amazon Flex in the US found 60 instances where drivers had been involved in serious accidents involving 10 deaths, with poor safety management and unsustainable work intensification being key factors reported in many instances.¹⁸
51. Amazon has also been accused of avoiding any liability for crashes among its Amazon Flex drivers through clauses which indemnify it against "all loss or damage to personal property or bodily harm including death". This, in turn, allows Amazon to intensify work negligently and unsafely and absolve itself of liability when safety issues arise as a result.
52. Since the introduction of Amazon Flex in Australia, the TWU has found Amazon is already engaging in the underpayment of workers below national minimum standards and dangerously undermining safety standards. In recent visits to the Amazon Flex distribution centre in Moorebank, TWU NSW organisers spoke to numerous drivers who reported:
 - Earning between \$10-15 per hour on average after costs,
 - Regularly overloading vehicles (commonly personal cars) to a point where driving vision is dangerously obstructed,
 - Delivering packages which require two or more people to carry and transport,

¹⁶ Chapter 6 explanation

¹⁷ <https://www.business-humanrights.org/en/latest-news/usa-amazons-pay-increase-will-not-apply-to-flex-workers-inc-company-comments/>

¹⁸ <https://features.propublica.org/amazon-delivery-crashes/how-amazon-hooked-america-on-fast-delivery-while-avoiding-responsibility-for-crashes/>

- Feeling pressured to engage in dangerous road practices in order to complete an unrealistic amount of deliveries in short windows,
 - Failing to provide sufficient training to workers with all training limited to a short 2-minute training video covering safety, manual handling and use of the app prior to commencement of work.
53. The operation of Amazon Flex, like other gig-like models of work in the transport sector, is often excused on the premise that companies such as Amazon are providing a valuable and new source of employment. In reality, the operation of Amazon Flex does not create jobs but instead replaces existing transport jobs with low-paid and unsafe counterfeits.
54. Prior to the introduction of Amazon Flex in Australia, Amazon outsourced the majority of its last-mile delivery work to established transport operators like Australia Post, CEVA, Toll & Fastway. The expansion of Amazon Flex has only replaced the outsourced component with internal Amazon Flex work. This trend is also consistent with those in the US where the growth of Amazon Flex has seen work increasingly taken away from major transport operators like the United Postal Service and FedEx.¹⁹
55. The transport sector has, historically, experienced some of the most concerning and prevalent forms of underpayment, insecure work and unsustainable contracting practices. To compound this, it is currently experiencing three waves of gig-based restructuring, fuelling the precipitous decline in working conditions and safety standards.
56. Should the NSW Government fail to intervene, this dangerous model of work will soon become the only competitive one, with reputable transport operators forced to follow suit in order to remain commercially viable. The effects on transport workers and other transport operators will be catastrophic.

Working conditions among all 'gig' workers – old and new

57. The challenges and implications resulting from the manifestation of gig work in the transport sector are not new, nor are the contracting arrangements which facilitate such services.
58. Independent contractor arrangements in the context of the transport sector were first scrutinised in relation to 'owner drivers' – workers who own their vehicle and perform transport work under contractor arrangements.

¹⁹ <https://www.investopedia.com/articles/investing/020515/why-amazon-needs-dump-ups-and-fedex-amzn-fdx-ups.asp>

59. Owner Drivers have very similar working arrangements as gig workers, and can be compared as follows:

| Owner-Drivers | Gig Workers |
|---|--|
| Independent contractors | Independent contractors |
| Can hold more than one contract at a time | May work for more than one gig company at a time |
| Own (or provide) their vehicles | Own (or provide) their vehicles |
| Changing workplaces and locations of work | Changing workplaces and locations of work |
| May be paid per delivery | Paid per delivery |

60. Owner drivers were faced with many of the same challenges currently facing gig economy workers including systematic underpayment, poor safety outcomes driven by unsustainable contracting practices and an inability for workers to access minimum legal rights and entitlements.
61. The working arrangements under which owner drivers and gig workers are engaged are characterised by a lack of flexibility and high degree of control and dependency. These workers are often promised the flexibility of small businesses but are afforded very little. They do not have an ability to set their own prices, develop their own clientele, develop a brand, invest significantly in their ‘business’ or have any influence over the terms of their engagement or contract. As will be discussed further in this submission, such workers are also directly and indirectly managed and controlled through algorithms and surveillance systems – albeit with gig economy companies taking such covert methods of control to new bounds.
62. Poor working conditions are the result of unsustainable competitive practices which plague the transport industry. When a company is able to avoid its minimum legal obligations by structuring its engagements with its workers under the guise of independent contracting, it is then able to more effectively control its position in the market by compromising working conditions (such as reducing pay to below the national minimum wage or indemnifying itself against the safety of its workers), leaving other companies compelled to do the same. It is within this

spectrum that competition becomes unsustainable and unsafe – and this is the broad emerging trend in the transport sector.

63. Despite these challenges, there is also, equally, an opportunity for gig companies to raise working conditions and standards and promote fair and safe outcomes in the transport sector. For example, gig economy companies like Doordash and Drive Yello, two gig-based food delivery companies, recently finalised agreements with the TWU aimed at lifting standards for food delivery workers. Traditional transport operators like Toll, Linfox and others have historically worked with the TWU to address industry-wide challenges in the transport sector.
64. While such initiatives are positive, an industry-wide and fair regulatory solution is crucial in order to restrain companies like Deliveroo, Uber, Amazon, Didi and Menulog from compromising working conditions and promoting dangerous models of work to maintain their competitive edge.
65. The TWU has been responding to these broader challenges for over 106 years and submits that the only means of effectively addressing the above challenges is by ensuring that all workers, regardless of their employment classification, have access to an effective regulatory system which can ensure that workers in dependent work arrangements can be afforded minimum work rights and entitlements.
66. In recent decades, NSW Liberal and Labor Governments have made strong inroads in recognising and responding to these challenges – with innovative regulatory solutions that have helped to extend basic work and safety standards to workers in the transport sector, like that enshrined in Chapter 6 of the *Industrial Relations Act NSW 1997* ('Chapter 6').
67. In the decades leading up to 1940, owner drivers in NSW faced various forms of exploitation and abuse provided that they worked in highly dependent employee-like arrangements and under principal contractors with large economic and industrial power to determine their conditions. Recognising this to be the case, governments of various persuasions addressed the owner driver position through legislation as follows:
 - a) the 1940 Industrial Arbitration Act attempted to deal with the matter by deeming certain classes of workers to be employees for the purposes of that and other acts.
 - b) the Industrial Arbitration (Amendment) Act 1979 implemented the recommendations of the Willis Report (commissioned by the Askin Liberal government) in abandoning the “deemed employees” approach in favour of specific provisions dealing with owner drivers.
 - c) those dedicated owner driver provisions were reproduced in the Greiner government’s Industrial Relations Act 1991, along with additional provisions relating to unfair termination and recovery of payments for goodwill; and

d) the Industrial Relations Act 1996 consolidated and streamlined the provisions in Chapter 6 of that Act.

68. While legislative advances like these, have helped to grant basic rights, channels for collective representation and safety nets for owner drivers, there remains much to be done for owner drivers in addition to emerging gig economy transport workers who are not covered by existing state-based legislative frameworks.

“I need an ombudsman to govern the ride share companies so they don’t keep changing rules whenever they wish to”

Gamal - Uber - Jul, 2020

“A governing body who regulates what UberEats can do”

Souzanna – UberEats – Jul, 2020

69. A discussion of the NSW Government’s regulatory options for addressing these immediate issues, through existing and new legislative instruments, will be presented in the final section of this submission. The TWU urges the NSW Government to recognise the urgency of the trends outlined in this section while considering these recommendations.

Section 4 - Safety in the Transport Sector

70. Health and safety in the workplace can be ensured by addressing two central questions; (1) what measures are in place to prevent injury, illness and death at work, and (2) what measures are in place to assist workers to recover from injury and illness at work.
71. With respect to question 1, the health and safety challenges facing transport workers following the first two waves of the gig economy are significant and require urgent attention. The emerging third wave of parcel delivery gig work heightens this urgency. While current work health and safety legislation imposes obligations on 'gig' companies to ensure minimum health and safety standards are upheld within their workplaces, 'gig' companies are routinely avoiding these obligations and SafeWork NSW is not properly enforcing them. The most devastating result of this occurs when a gig worker dies at work.
72. Question 2 offers a more complicated situation. While there are limited options available by way of private health insurance, the Workers Compensation Scheme should be reformed and extended to adequately ensure the just compensation for all workers for injury and the recovery at work.

Work Health and Safety and the Gig Economy

73. Road transport is one of the most dangerous industries in Australia. In 2018, the transport industry contributed the most workplace deaths and the second highest fatality rate of any industry in the country.²⁰ There is no doubt that there is a safety crisis in the transport industry.
74. There are limited statistics available to accurately reflect workplace hazards in the transport-based gig economy. However, we submit that a new safety crisis is emerging in the transport industry, as a result of 'gig' companies exposing gig workers to unacceptable levels of risk and jeopardising the conditions traditional transport workers have secured over decades of organising.
75. Based on the available information the TWU submits four equally worrying trends in the gig economy:
- Extremely dangerous working conditions,
 - A disregard for work health and safety obligations,
 - A lack of enforcement of existing work health and safety laws, and
 - Downward pressure on the safety of non-gig transport workers.

²⁰https://www.safeworkaustralia.gov.au/system/files/documents/2002/work_related_traumatic_injury_fatalities_report_2018.pdf

“I get hit nearly once a week”

Food Delivery Rider – 2020

*“I have been punched in the face, others threatened they would find
out where I live and kill my family”*

Rideshare Driver – 2020

“Extremely Unsafe in tough weather conditions like rain, windy.”

Saadi – UberEats, Deliveroo, Menulog – Sep, 2020

The Model Work Health and Safety Laws

76. Australia has comprehensive Work Health and Safety (**WHS**) legislation for the provision of safe workplaces.
77. Nationally this legislation is based on the Model Work Health and Safety Laws (**Model WHS Laws**), and includes:
- The Model Work Health and Safety Act (**Model WHS Act**),
 - The Model Work Health and Safety Regulations (**Model WHS Regulations**), and
 - The Model Codes of Practice.
78. The Model WHS Laws were designed by a panel of independent experts (**Panel**) on review of the existing WHS legislation in each jurisdiction (**National Review into Model OHS Laws**). The Panel was tasked with recommending the optimal structure and content of new WHS laws.
79. Importantly, the Panel made “a deliberate and ambitious effort” to extend protections beyond the confines of the employee-employer relationship²¹, and:
- Was required to take into account the changing nature of work and employment arrangements,²²

²¹ Regulating work in the gig economy: what are the options?

²² https://www.ag.gov.au/sites/default/files/2020-03/national_review_into_model_ohs_laws_firstreport.pdf iii

- Noted that linking WHS duties to the type of employment relationship was too limited in the context of the changing nature of work,²³ and
- Recommended laws that would accommodate changes in work relationships and emerging hazards without requiring frequent amendment.²⁴

80. The result of the National Review into Model OHS Laws was the Model WHS Laws, first published in April 2010. New South Wales adopted the Model WHS Laws by passing the:

- Work Health and Safety Act 2011 (NSW) (**WHS Act**),
 - Work Health and Safety Regulations 2019 (NSW) (**WHS Regulations**)
- (**WHS Laws**)

81. The WHS Laws successfully extend the protections of the WHS Laws to “workers” who currently perform work for companies in the transport-based gig economy by imposing obligations on a person conducting a business or undertaking (**PCBU**) to their worker. This extends the scope of the WHS Laws to working relationships outside of the familiar employer and employee model. For example, under the WHS Laws:

- The definition of PCBU includes most business operations,²⁵ including businesses such as Amazon Flex, Uber and Deliveroo.
- The definition of worker is any person who carries out work in any capacity for a PCBU.²⁶ It includes contractors and subcontractors,²⁷ such as rideshare or food delivery workers.

82. These broad definitions ensure that transport companies, including ‘gig’ companies, are not able to avoid their work health and safety obligations at any level of the supply chain by lawfully exposing their workers to dangerous workplace hazards on the basis of their employment status (or lack thereof).

83. As discussed, the TWU has a long history of representing and organising owner-drivers in NSW in matters relating to their work health and safety. Despite their unique work arrangements, these workers are considered “workers” for the purposes of WHS, and transport companies rarely contest this.

84. As foreshadowed, owner drivers are contracted under similar arrangements to transport workers in the ‘gig’ economy, albeit without the cloak of innovation and technology placed on them.

²³ https://www.ag.gov.au/sites/default/files/2020-03/national_review_into_model_ohs_laws_firstreport.pdf 60
6.32

²⁴ https://www.ag.gov.au/sites/default/files/2020-03/national_review_into_model_ohs_laws_firstreport.pdf xxii

²⁵ https://www.safeworkaustralia.gov.au/system/files/documents/1702/interpretive_guideline_-_pcbu.pdf

²⁶ S 7 WHS Act

²⁷ S 7 (b) WHS Act

85. Unfortunately, despite the broad and inclusive coverage of WHS Laws, in the TWU's experience, there persists among 'gig' companies the erroneous assumption that the WHS laws do not easily apply to them, because their workplace is unique, or their workers, because their working relationship is not a standard employment relationship.

“Deliveries Companies don't give any support for riders, if something wrong happen with you, you are by yourself, anyone will help you.”

Luiz – UberEats, Deliveroo – Jul, 2020

86. The current WHS Laws clearly apply to transport workers in the gig economy, so there is no need for an amendment to the WHS Laws. However, the TWU submits that there needs to be more effective enforcement of the WHS Laws by the regulator, SafeWork NSW.
87. The TWU also endorses the submission of Unions NSW on the matter of how the WHS Laws apply to non-transport workers in the gig economy.

The Primary Duty of Care

88. The WHS Act requires the PCBU to ensure the health and safety of workers engaged by the person while they are at work (**Primary Duty of Care**).²⁸ The Primary Duty of Care ensures that persons defined as a PCBU have a prescribed and active duty to ensure the provision of things crucial to the health and safety of their workers, including the provision of safe plant and structures, training and instruction, adequate facilities and safe systems of work.²⁹
89. As a result of the intentionally broad definitions of PCBU and worker, 'gig' companies hold the Primary Duty of Care for their workers regardless of their employment status (or lack thereof).
90. Transport workers for 'gig' companies are likely to encounter the same safety risks as transport workers outside of the gig economy, performing repetitive tasks with predictable associated hazards, making the risk they are exposed to reasonably foreseeable. It is therefore reasonable to expect the PCBU to be in a position to identify and minimise work health safety risks by complying with their primary duty of care.

²⁸ s 19(1)

²⁹ s 19(3)

“Tengo mucho dolor de espalda, por las largas distancias,, ya que no nos dan opción de entregar cerca, el pago es muy malo” (I have a lot of back pain, because of the long distances since they do not give us the option to deliver nearby, the payment is very bad)

Edgar – Uber Eats, Deliveroo, Doordash, Menulog – Aug, 2020

91. The TWU submits that ‘gig’ companies are largely failing their Primary Duty. This is evident in the results of the Survey at Section 2 herein. In summary:

- 34% of food delivery workers reported being injured at work
- 31% of food delivery workers reported knowing someone that had been injured at work
- 70% of food delivery workers reported worrying about being injured at work
- 34% of rideshare workers reported being involved in a car accident
- 66% of rideshare drivers reported being harassed
- 17% of rideshare drivers reported being physically assaulted
- 40% of rideshare drivers reported experiencing racial abuse

92. Given transport is one of the most dangerous industries in the country, it is unacceptable that gig companies are attempting to avoid their obligations under the WHS Laws, including their Primary Duty of Care, on the basis that the WHS Laws do not apply to their workers.

93. In the TWU’s experience, ‘gig’ companies consistently argue that their workplaces are unique and, therefore, many of the WHS Laws cannot practically apply to them. However, the nature of gig work, with multiple contract engagements in place and numerous dynamic places of work, does not prevent the application of the WHS Laws including the Primary Duty of Care.

94. Unfortunately, the ultimate outcome of the gig economy’s obsession with presenting itself as unique, and negligently ignoring the WHS Laws, is creating unsafe workplaces and killing workers.

95. Case Study: Gig Companies and the Covid-19 Pandemic

- The systematic failure of ‘gig’ companies to comply with the Primary Duty during the Covid-19 pandemic illustrates how ‘gig’ companies seem unable to fully comply with their obligations, even when scrutiny is particularly high.

- A World Economic Forum report noted that gig workers are among the most precarious and most impacted by Covid-19.³⁰
- The survey presented in Section 2 of this submission also notes that:
 - 65% of food delivery workers were not provided any Covid-19 related training
 - 49% of food delivery workers were not provided free masks, sanitisers or gloves.
 - 54% of rideshare workers were not provided any Covid-19 related training
 - 49% of rideshare workers were not provided free masks, sanitisers or gloves.

“Uber and Didi do provide some protective gear that last 1-2 weeks. After that no more and we drivers got to purchase our own”

Anonymous Rideshare Driver – Uber, Didi – Jul, 2020

“I have to keep driving when I feel sick. Our boss tells us to drive”

Tina – Shebah – Jul, 2020

The Regulation of WHS Laws

96. The agency tasked with enforcing and regulating the WHS Laws is SafeWork NSW.³¹
97. The Australian Work Health and Safety Strategy 2012-2022 (**Australian WHS Strategy**) lists the road transport industry as a priority industry, seeking to minimise the number of workers injured or killed at work. The Australian WHS Strategy makes no specific reference to workers in the ‘gig’ economy despite the safety crisis these workers are experiencing.
98. SafeWork NSW has not published any guidance material on how the gig economy interacts with the WHS Laws, and hardly any enforcement of these laws has taken place, despite obvious breaches regularly occurring as described herein.

³⁰ ‘Gig workers among the hardest hit by the coronavirus pandemic’, <https://www.weforum.org/agenda/2020/04/gig-workers-hardest-hit-coronavirus-pandemic/>

³¹ In NSW a business or undertaking can also be regulated under the Commonwealth jurisdiction by Comcare. Transport-based gig companies are unlikely to currently sit within this system as to do so would require self-insurance status.

99. The TWU also notes the inability of our Officials to easily investigate breaches of the WHS Laws by some gig companies through exercising their right of entry. This is because the nature and structure of gig companies means they may not have a physical office or place of work in NSW in which to exercise this right.

100. The TWU submits that the inaction of SafeWork NSW is putting the safety of gig workers at severe risk. The lack of enforcement is emboldening ‘gig’ companies in their belief that the WHS Laws do not apply to them or their workers, or that their inadequate attempts to comply with the Primary Duty are sufficient, and exposing thousands of workers to unacceptable levels of workplace risk.

“No me siento realmente respaldada por una compañía cuando de mi seguridad se trata y mucho menos en caso de accidente” (I don't really feel supported by a company when it comes to my safety, much less in the event of an accident)

Eliza – UberEats - Sept 2020

101. The TWU recommends SafeWork NSW urgently prepare guidance on the responsibilities of PCBUs in the gig economy and begin actively enforcing the existing WHS Laws.

102. The TWU submits that the Government should allow union officials to participate more directly in the enforcement of WHS Laws. For example, allowing trained union officials to issue improvement notices or providing funding to perform activities in the interest of work health and safety.

Deaths in the transport-based gig economy

103. The results of gig companies failing to comply with WHS Laws, including the Primary Duty of Care, and the lack of enforcement of those laws by SafeWork NSW, can be catastrophic. The profound and devastating impact of an industrial death is far-reaching. The killed worker, often through no fault of their own, is robbed of their chance to live a full life, and the families and friends of the worker carry that suffering forever.

104. We acknowledge and pay tribute to all workers that have died at work in NSW, their friends and their families.

105. When a worker or any other person dies at work the WHS Laws provides a system that seeks to ensure that:

- The incident be reported to SafeWork NSW by the PCBU as soon as they become aware of the death,³²
 - SafeWork NSW investigates the death,³³ and
 - Depending on the outcome of the investigation, SafeWork NSW uses its enforcement powers to:
 - i. Prosecute the PCBU,
 - ii. Issue improvement, prohibition and penalty notices to the PCBU, or
 - iii. Give enforceable undertakings to the PCBU.
106. If SafeWork NSW is not notified of the death, or this notification is delayed, it cannot effectively investigate it or use any of its associated enforcement powers. This undermines the entire system designed to protect workers.
107. In the past two years there have been at least six deaths in the food delivery sector of the gig economy in Australia. However, for reasons submitted below, we expect the real number of deaths to be much greater.
108. Tragically, the TWU was made aware of two more deaths in preparing for this submission:
- Dede Fredy, who died on 27 September 2020 following a collision with a car while working for UberEats, and
 - Xiaojun Chen, who died on 30 September 2020 following a collision with a bus while working for Hungry Panda.
109. These deaths are tragic and they reveal an appalling failure of the system that exists to protect workers and investigate workplace deaths.
110. Gig companies have an obligation to inform SafeWork NSW of any death arising from the conduct of the business.³⁴ In the cases presented above, this was either not done or unreasonably delayed.
- Portier Pacific Pty Ltd, the parent company of UberEats, notified SafeWork NSW of Mr Fredy's death five days after it occurred. UberEats alleges it was only made aware of the death after a friend of Mr Fredy's contacted the company for information about the Partner Support Insurance Policy.³⁵
 - Hungry Panda did not notify SafeWork NSW of Mr Chen's death at all. SafeWork NSW only became aware of the notifiable incident after the TWU made contact to confirm whether the notification had been made.

³² WHS Act ss 38(1)

³³ A notifiable incident that results in a fatality is 'Target Area #1' according to the SafeWork NSW Work Health and Safety Investigation Decision Making Policy D20/076261.

³⁴ WHS Act s 38

³⁵ See paragraph 122.

111. One reason for the above delays is that these ‘gig’ companies do not have policies or systems in place to ensure the safety of their workers are monitored and to respond to hazards or risks which may result in fatalities.
112. The TWU submits that:
- The NSW Government seek the adoption of all 34 recommendations of The Australian Senate Education and Employment References Committee report ‘They never came home – the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia’
 - SafeWork NSW investigate the underreporting of notifiable incidents by gig companies in NSW, with particular emphasis on the underreporting of worker deaths.

Workers Compensation and the Gig Economy

113. The health and safety of all workers, no matter how they are engaged, deserves the protection of the law . While there are concerns with enforcement, as discussed, workers in the gig-economy are not exempt from these protections on the basis of their working arrangements or the unique workplaces within which they work.
114. On the other hand, there are limited avenues or options available to the injured or recovering worker.
115. The NSW government is responsible for the design and operation of its workers compensation scheme. There has been no effort to create nationally consistent legislation across workers compensation jurisdictions.
116. In New South Wales, workers compensation is regulated by three complimentary pieces of legislation:
- *Workers Compensation Act, 1987 (1987 Act)*
 - *Workplace Injury Management and Workers Compensation Act, 1998 (1998 Act)*
 - *Workers Compensation Regulation, 2016 (2016 Regulation)*

(Workers Compensation Scheme)

117. The purpose of the Workers Compensation Scheme is to provide appropriate medical treatment and compensation to persons injured at work³⁶ and facilitate their return work.
118. The Workers Compensation Scheme does not define a worker in the intentionally broad way the WHS Laws do. Because of this, transport workers in

³⁶ <https://www.icare.nsw.gov.au/practitioners-and-providers/gps-and-treating-doctors/understanding-workers-compensation/the-nsw-workers-compensation-system#ref>

the gig economy do not fit within the definitions of worker or deemed worker and instead are considered contractors for the purposes of workers compensation.

“Companies should provide financial assistance when riders are met with accidents”

Sreenath – Deliveroo, Menulog, Doordash – Sep, 2020

119. The vast majority of gig workers cannot access the Workers Compensation Scheme.
120. As the union representative of thousands of owner-drivers in NSW, it is important to note that the issues concerning the application of the Workers Compensation Scheme to contractors is not unique to the gig economy, nor is it a new problem for workers. Owner-drivers that work under similar contractual arrangements to gig economy workers also have no clear legislative basis for accessing the Workers Compensation Scheme.
121. This submission should not be read as a full endorsement of the current Workers Compensation Scheme. Instead, we submit that the Workers Compensation Scheme is currently the best option available to workers (both inside and outside of the gig economy), and that its coverage should be deliberately expanded.

Current Insurance for Gig Workers

122. In the absence of workers compensation, the State Insurance Regulatory Agency (**SIRA**) recommends that contractors hold a sickness and accident or income protection policy.³⁷ Other insurance offerings include comprehensive third-party, public liability and limited cover policies.
123. In the gig economy this means workers may have access to insurance from two sources:
- Policies they individually enter into, or
 - Policies provided by the company.
- In both cases the cost of the policy coverage can be worn by the worker or the company.
124. Importantly, there is no obligation for this type of insurance to actually be taken out, and the main policies on offer provide less coverage than would otherwise be available through the Workers Compensation Scheme.

³⁷ <http://workerstatus.workcover.nsw.gov.au/>

125. The table below outlines the benefits available to an injured worker with no capacity to work.

| | The Workers Compensation Scheme ³⁸ | Deliveroo – Personal Accident and Income Protection Policy ³⁹ | Uber – Partner Support Insurance Policy ⁴⁰ | Amazon Flex |
|--|---|--|---|-------------|
| Weekly payments | Up to 95% of pre-injury average weekly earnings for first 13 weeks, up to 80% thereafter. Maximum of \$2224 per week. | Up to 90% of salary for 104 weeks. Maximum of \$1625 per week. | \$150 per day for a maximum of 30 days. | No coverage |
| Permanent impairment | Up to \$631000 lump sum | Up to \$500000 lump sum | Up to \$400000 lump sum | No coverage |
| Medical, hospital and rehabilitation expenses | Maximum of \$50000 for medical treatment, \$50000 for hospital treatment and \$10000 for ambulance treatment. | Up to \$2000 for out of pocket expenses. | Up to \$5000 for reasonable out of pocket costs. | No coverage |

126. Policies offered by ‘gig’ companies generally only cover the income lost from that company. Given that a majority of ‘gig’ workers perform work for multiple platforms at a time we expect that an income protection policy offered by one company would not adequately ensure the worker maintains sufficient income while injured. The Workers Compensation Scheme considers all income streams.

127. Case Study: Navigating an injury while working for a gig company

- In 2019, Vitor worked part-time in a kitchen and part-time delivering food for Deliveroo and UberEats.

³⁸ https://www.sira.nsw.gov.au/_data/assets/pdf_file/0006/530862/Workers-compensation-benefits-guide.pdf

³⁹ Insurance Cover Summary for Deliveroo Australia Riders: Personal Accident & Income Protection – Marsh Advantage Insurance

⁴⁰ https://image.et.uber.com/lib/fe96127371650c7e75/m/10/Australia+-+Chubb+-+Personal+Accident+Group+Policy+-+Coverage+Summary+-+2019-20.pdf?_ga=2.52731560.1016689695.1597797064-420517628.1592957189&uclid=id=c0e2e550-d1a2-4922-8abc-f2a056d16b2d

- In October 2019, while delivering food for Deliveroo, Vitor was struck by a car and thrown from his bike. The driver of the car did not stop to help him. Vitor was taken to hospital from the scene suffering from a torn ligament in his knee and injuries to his arms. He required surgery and rehabilitation.
- Vitor notified Deliveroo of his injury the day it occurred, but Deliveroo did not provide any information to him about his entitlements.
- It took Vitor contacting them a second time to be provided information about how to make a claim. He only knew to do this because he was friends with a worker that had recently been injured and knew that insurance was available.

“As overseas students we have no idea about our rights and what to expect, and Deliveroo doesn’t tell us”

Vitor – Deliveroo – 2020

- Deliveroo did not contact Vitor again at any point during his dealings with the insurance company, his rehabilitation or his return to work.
- Deliveroo’s insurance at the time provided Vitor 26 weeks of payment, at 90% of his average earnings from Deliveroo. His first payment was received one month after his injury.
- The insurance did not cover Vitor’s income from UberEats or his part time kitchen work and as a result he was earning approximately half of what he was earning before his injury.
- The insurance also did not provide payment for Vitor’s medical expenses, and this was covered by available Compulsory Third Party insurance.
- When the insurance payments from Deliveroo stopped Vitor had his fitness for work assessed by his GP, who recommended a further two weeks off work.
- With no further income protection payments available to him Vitor returned to work, against the wishes of his GP.
- Deliveroo did not facilitate Vitor’s return to work or provide any light duties during this period. The incident was not investigated further by Deliveroo and no changes to the work health and safety policies were considered.

“I was a regular rider to them. It didn’t matter that I had an accident and I had to climb huge amounts of stairs on an injured knee.”

Vitor – Deliveroo – 2020



128. A recent survey commissioned by the Victorian Department of Premier and Cabinet reported the following worrying statistics of insurance coverage in the gig economy:⁴¹
- I. 45.5% of workers report their main platform does not cover them for any type of work-related insurance,
 - II. 39.7% of workers reported their main platform requires them to take out their own insurance,
 - III. More than 20% of workers reported they did not know if their platform provides them with insurance or requires them to take out their own.
129. Despite a willingness to provide some insurance coverage to their injured workers, it is clear from the evidence presented herein that these benefits are significantly worse than what is available from the Workers Compensation Scheme, particularly in regards to the payment for medical, hospital and rehabilitation services and the weekly payment for time off work.
130. These piecemeal insurances, whether provided by the company or individually opted into, only seek to extend the principle of treatment and compensation from the Workers Compensation Scheme to gig workers. They are

fundamentally unable to provide a suitable pathway for injured workers to recover at work.

“Insurance system does not include people injured”

Chiu – EASI – Jul, 2020

131. While the current Workers Compensation Scheme is by no means perfect, it provides payment and insurance for most work-related injuries, and a process for returning to work, at a standard that is consistent across the state.

Recovery at Work

132. SIRA states the Workers Compensation Scheme focuses on “supporting workers to recover at work after an injury”. The preference for recovery *at* work, as opposed to recovery *for* work, is supported by research demonstrating that work promotes recovery and reduces the risk of long-term disability.
133. SIRA states this research shows that:
- IV. For most people with a work-related injury, time off work is not medically necessary
 - V. an unnecessary delay in returning to work is often associated with delayed recovery - the longer a worker is away from work, the less chance they have of ever returning
 - VI. staying active after injury reduces pain symptoms and helps workers return to their usual activities at home and at work sooner
 - VII. working helps workers stay active which is an important part of their treatment and rehabilitation.
134. Recovery at work is best facilitated by support from the employer, company or manager. If the injured worker does not have this support they cannot recover at work, and their successful return to work is jeopardised. There is no capacity for a gig worker to safely recover at work under the current insurance arrangements.
135. We believe that ‘gig’ companies are making no attempt to provide injured workers an ability to recover at work. This is partly due to the Workers Compensation Scheme not applying to them, as they are not required to facilitate the return to work process.

Reforms to the Workers Compensation Scheme

136. In order to achieve the expansion of the Workers Compensation Scheme to protect gig workers there are two distinct approaches. Policy makers could seek to:
- VIII. Classify gig workers as employees so the Workers Compensation Scheme applies to them, or
 - IX. Reform the Workers Compensation Scheme so it applies to all workers, not just employees.
137. The TWU submits the Workers Compensation Scheme should be reformed to require businesses to provide workers compensation to all workers regardless of their method of engagement. While piecemeal insurance offerings may adequately protect the worker from some financial loss as a result of injury, they are fundamentally unable to promote the successful recovery at work in the long-term, and are not consistent with the fair compensation for injury.
138. To best achieve this outcome, the TWU submits the Workers Compensation Scheme should be formally reviewed with the intent of drafting new legislation to expand its coverage to all workers in NSW. Failing this, the TWU submits amendments should be made to section 4 of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) to meet these objectives.

Section 5 - Automation and Surveillance in the Transport Sector

139. Automation and surveillance technologies are presenting unique ethical and existential challenges to workers in the transport sector.
140. The following section will discuss some of these challenges as they relate to the use of ‘Telematics’ technologies, other forms of monitoring and surveillance including those in the emerging gig economy and automation through the development of drone and autonomous trucking technologies.

Telematics in the Traditional Transport Industry

141. Telematic technologies are defined as the “area of technology that deals with sending digital information over long distances using wireless forms of communication”.⁴²
142. Telematics is “technology used to monitor a wide range of information relating to an individual vehicle or an entire fleet. Telematics systems gather data including vehicle location, driver behaviour, engine diagnostics and vehicle activity, and visualize this data on software platforms that help fleet operators manage their resources.”⁴³
143. Telematic technologies provide real time data that provide employers or principals insight into the behaviours of individual transport workers by exchanging data and information to and from their vehicles.
144. Whilst telematic technologies have changed the operation and logistics of various industries, none are as heavily impacted as traditional transport industries, particularly truck driving.
145. Investing in telematics is attractive to fleet owners, as these technologies have the ability to:
- increase driver productivity;
 - reduce compliance and operational costs;
 - improve business profitability;
 - monitor and predict future driver behaviours;
 - monitor fatigue and distractedness of drivers;
 - simplify scheduled maintenance;
 - provide footage and other forms of evidence when an incident occurs;

⁴² Dictionary.cambridge.org. (n.d.). TELEMATICS | meaning in the Cambridge English Dictionary [online] Available at: <https://dictionary.cambridge.org/dictionary/english/telematics>

⁴³ Telectrac Navman. 2020. What Is Telematics. [online] Available at: <<https://www.teletracnavman.com/resources/resource-library/faqs/what-is-telematics>>

- facilitate channels of immediate communication between drivers and fleet owner;
 - access real-time GPS data;
 - allow businesses to optimally organise unloading at storage facilities and docks; and
 - assist businesses in negotiating competitive insurance premiums for fleets that have good telematic driving histories.
146. Telematic systems vary not only in complexity, but also in the types of data amassed and methods used to gather information.
147. Telematic systems in trucks often not only have the ability to provide instant information as to a driver's location, but also their estimated time of arrival to a specified destination, the speed at which they are travelling and the weight and condition of the vehicle they are operating. These quantifications are measured with mathematical diagnostic tools which provide employers or principals insight into the performance of individual drivers.
148. 'Guardian' technologies, commonly known as 'seeing machines' which track the level of fatigue and distraction of drivers are controversial telematic advancements in the transport industry.
149. 'Seeing Machines' use two cameras placed in the cabin of the truck, plane or train, which are pointed at the driver or pilot. The cameras measure the drivers' head pose and orientation, their eyelid closures, pupil diameter and direction of their gaze. This information is analysed to determine how distracted the driver is – whether they are alert, drowsy or inattentive".⁴⁴
150. Whilst in principle, the TWU supports "the inclusion of new technologies and design standards in the transport industry as complementary to improving road safety"⁴⁵, the TWU equally believes that legislation and regulation must also account for the privacy of drivers, particularly when surveillance is unnecessarily intrusive.
151. The TWU is well aware of the inherent dangers of working in the transport industry, reflected in Safe Work Australia's finding that truck drivers are fifteen (15) times more likely to be killed at work than other employees in other industries.
152. It is unacceptable that on average there are fifty-three (53) fatal truck crashes in NSW each year, with on average sixty (60) people killed in these crashes per year.⁴⁶

⁴⁴ Australiaunlimited.com. 2020. *Seeing Machines Making Driving Safer*. [online] Available at: <<https://www.australiaunlimited.com/technology/seeingmachines>>

⁴⁵ Transport Workers 'Union of Australia, Submission to the Senate Standing Committee on Rural and Regional Affairs and Transport, Inquiry into Aspects of Road Safety in Australia ,7

⁴⁶ Transport for NSW, Road Safety, < https://roadsafety.transport.nsw.gov.au/downloads/dynamic/weekly_stats/heavy-truck-fatal-crashes.pdf>.

153. These fatalities in road freight transport too often can be attributed to “unrealistic deadlines and poor industry conditions imposed by major clients. These unfair deadlines and working conditions force drivers to speed, to skip maintenance and to skip rest breaks”.⁴⁷
154. Consequently, the TWU are strong proponents of transport companies prioritising fatigue management plans and establishing safe working conditions.
155. Whilst the TWU recognises the value of some telematic technologies, particularly those which genuinely aim to prevent or reduce crashes or assist with driver fatigue and improve heavy vehicle maintenance and roadworthiness⁴⁸, many telematic systems fall short of this goal.
156. It is erroneous to assume that all telematic systems are appropriate, as many fleet operators seek to introduce invasive telematic systems that do little to ensure safety, rather streamline compliance, optimize vehicle performance and overregulate driving behaviour.
157. In recent years the TWU has filed multiple disputes in the Fair Work Commission pertaining to the introduction of certain telematic technologies.
158. These disputes purported mainly to the trucking industry, after dozens of drivers working for different fleet operators approached the TWU with concerns about workplace surveillance.
159. The sentiment of concerned drivers who have approached the TWU, include:
- seeking clarification about when data can be relied upon by employers in performance or behavioural management;
 - inquiring about what recourse drivers have if they feel technologies are too intrusive;
 - not being told enough about the technologies and how they are used;
 - wanting to know what drivers are to do where they feel there is the potential for negative health impacts; and
 - questioning what drivers are to do when they feel that the telematic technologies are not being used for their intended purposes.
160. The disputes filed by the TWU are significant as they establish precedent for what are considered reasonable and unreasonable technologies. This is particularly important as there are no widespread national telematic regulations, rather workplace surveillance is regulated state by state.

⁴⁷ Transport Workers ‘Union of Australia, Submission to the Senate Standing Committee on Rural and Regional Affairs and Transport, Inquiry into Aspects of Road Safety in Australia ,10

⁴⁸ [Best Practice Review of Heavy Vehicle Telematics and Other Safety Technology](#) Research Paper, July 2018, National Transport Commission, p. 5.

161. *Toll Transport Pty Ltd T/A Toll Shopping v Transport Workers' Union of Australia* [2018] FWC 3573 pertained to the introduction of telematic technologies in liquid and linehaul fleets and illustrates how surveillance methods are adjudicated on a case by case basis.
162. *Toll Transport Pty Ltd T/A Toll Shopping v Transport Workers' Union of Australia* [2018] FWC 3573 related to whether Toll had a right to introduce guardian technologies and DVR cameras into the liquid and linehaul fleet.
163. In this case, Toll sought to introduce “in-cab, real time, fatigue alerting and distraction monitoring system and the DVR Cameras as inward and outward facing vehicle cameras which record footage of the driver and the road. The Guardian technology relies on infrared technology to track driver eye behaviour with audio and seat vibration alarms which sound immediately to alert the driver of fatigue events. Toll is notified of the event in real time.”⁴⁹
164. The Fair Work Commission was tasked with balancing the interests of Toll’s business unit and liquid and linehaul drivers, who were concerned about the health and privacy implications of guardian telematic technologies.
165. Notably, liquid and linehaul drivers were concerned about the biological effects of infrared beams shining on the face and eyes of drivers for periods of ten (10) to twelve (12) hours per shift.
166. Drivers were also concerned about the absence of medical study and data about the effects of guardian technologies for sustained periods on eye health.
167. Liquid and Linehaul drivers disputed that in-cab video recording is unreasonably intrusive when non-driving activities are surveilled, such as a driver taking their allocated meal break.
168. Drivers were apprehensive about cameras that record drivers at all times, as this provided the employer or the principal the capacity to use data and footage captured by in-cab recorders for purposes other than ensuring safe driving practices, such as using footage to “over officiate and discipline drivers”.
169. Whilst Deputy President Clancy handed down a decision in favour of Toll, the issues raised by liquid and linehaul drivers about the efficacy of some telematic technologies is endemic of the transport industry.
170. The TWU submits that workplace surveillance laws must be able to regulate emerging telematic advancements, whilst balancing the interests of business and the privacy of workers.

⁴⁹ *Toll Transport Pty Ltd T/A Toll Shopping v Transport Workers' Union of Australia* [2018] FWC 3573 at 4 < http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FWC/2018/3573.html?context=1;query=%5b2018%5d%20FWC%203573;mask_path=>.

171. Workplace surveillance laws are regulated on a state by state basis, leading to different jurisdictions regulating technological advancements in workplaces differently.
172. New South Wales is regulated by the *Workplace Surveillance Act 2005* (NSW), which provides that employees (including workers engaged under Chapter 6 of the *Industrial Relations Act 1996* NSW) must be provided with at least fourteen (14) days' notice prior to surveillance commencing⁵⁰. The notice must also specify what kind of surveillance is to be carried out, how the surveillance will occur, when it is to commence, whether surveillance will be continuous or intermittent and whether the surveillance is for a limited period⁵¹.
173. Whilst the *Workplace Surveillance Act 2005* (NSW) prohibits surveillance in certain situations (namely in bathrooms, change rooms and using work surveillance when employees are not at work and), the legislation does little to regulate telematic technologies, bar establishing a requirement to give notice to employees.
174. The Australian Capital Territory is regulated by the *Workplace Privacy Act 2011* (ACT), which reflects requirements of the *Workplace Surveillance Act 2005* (NSW).
175. Victoria is regulated by the *Surveillance Devices Act 1999* (Vic), Western Australia by the *Surveillance Devices Act 1998* (WA), South Australia by the *Surveillance Devices Act 2016* (SA) and the Northern Territory by the *Surveillance Devices Act 2007* (NT).
176. Victoria, Western Australia, South Australia and the Northern Territory all limit the use of optical surveillance detecting where an individual is deemed as engaging in 'private activity'.
177. Notably, NSW does not have provisions about optical surveillance in the workplace.
178. The term 'private activity' is defined as "any activity carried on in circumstances that may reasonably be taken to indicate that any of the parties to the activity desires it to be observed only by themselves but does not indicate an activity carried on in any circumstances in which the parties to the activity ought reasonably to expect that the activity may be observed"⁵².
179. Whilst it is unlikely that truck drivers in Victoria, Western Australia, South Australia and the Northern Territory could rely on the term 'private activity' to dispute the introductions of optical surveillance technologies, as illustrated in *Toll Transport Pty Ltd T/A Toll Shopping v Transport Workers' Union of Australia [2018] FWC 3573* as the primary purpose of employment is to

⁵⁰ *Workplace Surveillance Act 2005* (NSW) s 10 (2)

⁵¹ *Workplace Surveillance Act 2005* (NSW) s10 (4)

⁵² *Surveillance Devices Act 1998* (WA) s3.

undertake driving activity, at least these legislative frameworks acknowledge the intrusive nature of optical surveillance devices.

180. The Australian Law Reform Commission (ALRC) reported a ⁵⁴
181. The TWU notes the recommendations of the ALRC that workplace surveillance laws should be consistent between state and territory, which can be achieved through Commonwealth legislation.⁵⁵
182. Further, the ALRC recommends that Workplace Surveillance laws should be technology neutral so that surveillance laws do not have to be reviewed every time a new surveillance device appears.
183. In absence of Commonwealth legislation, the introduction of telematic technologies in transport industries that encroach on an individual's privacy will continue to be moderated and disputed on a case by case basis.
184. This means that transport yards that have high union density have the means by which their grievances about telematic technologies can be aired, as unions can organise and advocate for commonly held concerns.
185. Without the involvement of Unions, transport employees are dependent on whether or not their employers are receptive to discussing telematic advances and the concerns of drivers.
186. The TWU continues to hear that drivers working for various fleet operators feel that employers install telematic systems that are unreasonably intrusive, yet neglect safety obligations by providing unrealistic deadlines, poor workplace culture and half-baked fatigue management plans.
187. Truck drivers also raise concerns with the TWU about the lack of limitations surrounding employers who seek to use telematic technologies and surveillance to micro-manage driver behaviours.
188. Drivers subsequently feel that section 18(a) of the *Workplace Surveillance Act 2005* (NSW), which states “use and disclosure for a legitimate purpose related to the employment of employees of the employer of the legitimate business activities or function of the employer”, is too broad and favours the interests of the employer.
189. Subsequently, the TWU is too often advised that telematic surveillance is a means of constantly assessing driver behaviour and productivity, rather than ensuring greater road safety.

⁵⁴ Australian Law Reform Commission, 'Serious Invasion of Privacy in the Digital Era' <https://www.alrc.gov.au/wp-content/uploads/2019/08/fr123_14_surveillance_devices.pdf>

⁵⁵ Ibid

Surveillance in the Gig-Economy

190. While workers engaged under Chapter 6 of the *Industrial Relations Act 1996 NSW* are afforded rights and protections under the Workplace Surveillance Act 2005 (NSW), transport workers in the gig economy are not. This raises significant concerns regarding the privacy of these workers. This is particularly so given the heavy reliance on smartphone technology by these workers to perform their work.
191. Further, the advent of the gig-economy has led to debate about where the line between public and private information lies and what information platforms that facilitate on demand work should retain.
192. Discourse about limitations of workplace surveillance reflects the importance a society places on individual freedoms.
193. Not only has the on-demand nature of the gig-economy disrupted the traditional understanding of work, but also what is considered reasonable surveillance of workers, particularly when work is facilitated on mobile phone devices.
194. In 2019, Australia was the fourth largest market for smartphone use⁵⁶ worldwide with eighty-five percent (85%) of Australians using smartphone devices⁵⁷.
195. Mobile phones are no longer exclusively call enabling devices, they are multifaceted devices that are integral to people's everyday lives.
196. Considering our high levels of consumption of smartphone technologies nationally, the average Australian has a large digital footprint.
197. Herein lies the tension, what is considered reasonable surveillance of workers who rely on the same smartphone device they use day to day to access platforms that facilitate on-demand work.
198. This is because platform work operates on a take it or leave it basis, as employees are unable to negotiate the terms of employment.

“Mi problema es que las compañías bajan los pagos por viaje a su gusto y nadie puede hacer nada” (My problem is that companies lower their travel payments to their liking and nobody can do anything)

Rodrigo – UberEats, Deliveroo – Jul, 2020

⁵⁶ Vodafone Australia. 2020. How Australians Are Using Their Mobile Phones. [online] Available at: <<https://www.vodafone.com.au/red-wire/australians-using-mobile-phones>>

⁵⁷ Statistics.com. 2020. Forecast Of Mobile Phone Users In Australia. [online] Available at: <<https://www.statistics.com/statistics/274677/forecast-of-mobile-phone-users-inaustralia/>>

199. This power imbalance has led to major gig-work platforms introducing predatory terms allowing platforms full discretion to mine and retain the data of workers and customers alike.
200. Despite this surveillance overreach, potential workers cannot proceed to register for platform work without accepting these terms and conditions.
201. This means that exploitative terms and employment are legally worked into the arrangements as platform operators know that people will still seek gig-economy work.
202. Examples of encroachment upon personal data is evidenced through the practices of Deliveroo. Deliveroo requires workers to download their app, as work is facilitated and organised through this interface. “The app constantly records information about the device and worker, such as what kinds of routes the worker takes to a location, how often they use the application, how long they wait in a restaurant, and how long they wait outside the customer’s house.”⁵⁸
203. There are also various examples of workers incidentally finding out that platform gathered information they were unaware of, such as a Deliveroo driver calling “the company while making the delivery to inform that his battery is running low – only to find out that the company already aware of his battery condition.”⁵⁹
204. Another example of exploitation of personal surveillance is in 2015, Uber reportedly updated its privacy policy allowing the company to track the location of drivers and customers when they were not accessing the platform.
205. Uber purportedly was able to track the location of customers and drivers even when their phones were turned off. This location data was passed onto third parties.⁶⁰
206. It is reported that this practice ceased in 2017 when updated privacy policies were introduced. Uber is yet to justify why the business felt it entitled to trace the movements of workers and customers at any given time.
207. Whilst “companies benefit greatly from collecting such detailed records as it allows businesses to quickly respond to changes in environments (increasing the price of an Uber ride when demand is high) and to demand strict efficiency from their workers (monitoring how long it takes ... to get from point A to point B)”⁶¹,

⁵⁸ Privacy International. 2020. Case Study: The Gig Economy And Exploitation. [online] Available at: <<https://privacyinternational.org/case-study/751/case-study-gig-economy-and-exploitation>>

⁵⁹ Ibid

⁶⁰ New Uber Policy tracks users even when phone turned off, Geelong Advertiser, 30 June 2015).

⁶¹ Privacy International. 2020. Case Study: The Gig Economy And Exploitation. [online] Available at: <<https://privacyinternational.org/case-study/751/case-study-gig-economy-and-exploitation>>

this is a clear example of surveillance overreach of not only workers, but also of consumers.

208. In the view of the TWU, there is a need for the NSW Government to amend Schedule 1 of the *Workplace Surveillance Act 2005* (NSW) or broaden the scope of Chapter 6 of the Industrial Relations Act 1996 (NSW) to include rideshare and food delivery workers. The NSW Government should also establish a framework that can limit surveillance of gig-economy workers or find alternative ways to regulate the on-demand industry.
209. Further, it is imperative that gig-economy platforms do not have full discretion to mine and retain personal data as there is little to no accountability as to what platforms do with this information.

“*Basic data on the delivery requests should be public, the app should be open source*”

Raphael – UberEats, Doordash, EASI – Jul, 2020

210. In October 2016, Uber concealed a global data breach where the information of fifty-seven million (57,000,000) drivers and customers was breached.
211. The compromised data included the “names, email addresses and phone numbers... [as well as] the personal information of about 7 million drivers, including some 600,000 U.S. driver’s license numbers”.⁶²
212. Whilst Uber was obligated to report the data breach to United States Regulators, the data breach was concealed for over one (1) year with Uber opting to pay hackers one-hundred thousand dollars (\$100,000) to delete the data and not divulge the breach. If not for Bloomberg discovering the breach, Uber would remain silent about the data breach.
213. This scenario illustrates the indifference platforms have to the privacy of workers and consumers, rather they are concerned about their commercial interests.
214. This breach as well as the lack of transparency about what data is retained by Uber has led to a legal bid filed by two UK drivers and the Drivers and Couriers Union in the Amsterdam District Court. The applicants “are demanding to see the huge amounts of data the ride-share company collects on them and how this is

⁶² Bloomberg.com. 2020. Bloomberg - Are You A Robot?. [online] Available at: <<https://www.bloomberg.com/news/articles/2017-11-21/uber-concealed-cyberattack-that-exposed-57-million-people-s-data>>

used to exert management control, including through automated decision-making that inevitably shapes their jobs”.⁶³

215. If successful, the case could lead to increased transparency about not only what information Uber takes from the devices of workers and customers, but also how automated decision making occurs in Uber’s operations.
216. Depending on the success of this case, gaining insight into what information Uber as the industry leader retains will provide insight into the operation of other gig-economy platforms.
217. The TWU notes the need for platforms to provide transparent information about what data is being accessed and retained from both workers and customers at any given time.

Algorithmic Management & Control

218. As foreshadowed, transport workers in the gig economy are not currently afforded the same protections as employees in the event they are terminated without warning, procedural fairness or consultation. These workers are routinely terminated on the basis of poor performance without being provided an opportunity to respond.
219. Further, gig companies consistently maintain they provide flexible working arrangements whereby a worker has control over how they perform work. However, this does not eventuate in reality or practice.
220. Unlike traditional employers which facilitate performance reviews at regular intervals, gig companies analyse workers’ performance through automated data analytics, meaning every time a worker completes a task their performance is assessed.
221. Proliferation of gig economy work has led to automation of human resourcing processes, which are being replaced by customer reviews, data collection and automated systems.
222. Algorithmic management of workers creates ambiguity as to who makes decisions with respect to how the workers perform their work, what rights the worker has and to whom workers are to raise workplace concerns.

“*(We need) transparency of work allocation algorithms*”

⁶³The Guardian. 2020. *Uber Drivers To Launch Legal Bid To Uncover App's Algorithm*. [online] Available at: <<https://www.theguardian.com/technology/2020/jul/20/uber-drivers-to-launch-legal-bid-to-uncover-apps-algorithm>>

223. Further, many platforms have not integrated a way for workers to respond to allegations of poor performance.
224. This lack of due process often leaves workers powerless and fearful of receiving sub-par reviews.
225. This means that customers now act as managers, as they alert platforms of performance issues.
226. Research shows that “Deliveroo, Foodora and UberEATS are a few examples of food-delivery platforms which deploy algorithmic surveillance as the crux of their organisational processes. Operating on heuristics data captured from workers’ personal smartphones, algorithms for these platforms are used to determine the allocation, remuneration, chastisement and sometimes even the termination of human labour.”⁶⁴
227. This impersonal means of managing workers means there are fewer opportunities to respond to allegations of poor performance and discretion is not afforded to individual situations.
-

“Not knowing how the algorithm works at an accurate and detailed enough level to give me confidence when doing the job. e.g. Order priority based on distance from restaurant or delivery speed history or both?”

Ashley – Deliveroo – Sep, 2020

“En el caso de Deliveroo las estadísticas nos tienen como esclavos, no puedo tomar un fin de semana de descanso por que mis estadísticas son afectadas y no podría trabajar las próximas semanas” (With Deliveroo, the statistics make us slaves, I cannot take a weekend off because my statistics are affected, and I could not work the next few weeks)”

Paulo - UberEats, Deliveroo – Sep, 2019

⁶⁴ SAGE Journals. 2020. Algorithmic Surveillance In The Gig Economy: The Organization Of Work Through Lefebvrian Conceived Space - Gemma Newlands, 2020. [online] Available at: <<https://journals.sagepub.com/doi/full/10.1177/0170840620937900>>

228. Whilst there is little transparency as to internal procedure and how automation is used, the TWU's understanding of worker performance is shaped around the following three factors:

- how many rides or food deliveries a worker accepts;
- proportion of satisfied rating of either passengers or clients; and
- the drivers' or riders' rate of cancellation.

229. Whilst performance management indicators and dispute resolution processes vary platform to platform, the common thread between platforms is that most collect these key point indicators.

230. Often platforms do not notify workers of complaints or negative feedback received until the point of deactivating a platform workers account, rendering them unable to access work with the provider.

231. This effectively renders the worker dismissed from the workplace.

“*Uber has banned me without reason*”

Jesus – UberEats – Sept, 2020

232. The TWU gained further understanding into the automation of human resourcing in the gig-economy, since commencing the unfair dismissal case of *Diego Franco v Deliveroo Australia Pty Ltd* in the Fair Work Commission.

233. Diego Franco worked on the Deliveroo platform from April 2017 to support his wife and young child.

234. Around March 2020, Mr Franco commenced working for another food delivery service, Doordash, to supplement the income he was receiving working for Deliveroo.

235. Mr Franco attributed the drop of income around this period to the influx of delivery riders and drivers signing up to work on platforms due to the effects of COVID-19 on employment, as well as a reduction of delivery requests from Deliveroo which generally occurs within the Summer period in Sydney.

236. On 23 April 2020, Mr Franco received an email from Deliveroo notifying him that a number of orders delivered were taking significantly longer to reach Deliveroo customers. The email stated that Mr Franco was to be reminded that orders should be completed in a reasonable time period. The email continued to

state that Mr Franco breached the 2019 Supplier Agreement by failing to complete orders in a reasonable time period and as such, he would be terminated in seven (7) days.

237. Of note, the termination email was automated and did not invite Mr Franco to respond to the allegations, rather the auto generated email stated that Mr Franco was welcome to continue working as normal for the next seven (7) days, until deactivation occurred.
238. The email did not provide an individual contact person to speak to, did not show cause, did not provide specific information about complaints, did not stipulate what Deliveroo considered a “reasonable time period” nor what information Deliveroo relied upon to deem Mr Franco in breach of the Supplier Agreement.
239. Prior to receiving this email, Mr Franco did not receive any emails, correspondence or counselling regarding his performance, nor did he receive any indication as to what a “reasonable time period” meant.
240. Mr Franco responded to the email, stating that he worked for Deliveroo for three years and it was a mutually productive relationship. Mr Franco asked for leniency, as his income had dropped during the pandemic and consequently, he was required to work for other companies to supplement his income with Deliveroo to provide food and other necessities for his wife and infant child.
241. Within twenty-four (24) hours, Mr Franco received a response from a Deliveroo Support worker stating that the reason for the termination was explained in the email and subsequently Deliveroo did not wish to engage Mr Franco’s services.
242. Considering the lack of counselling or performance management prior to termination, the TWU is of the view that the dismissal was harsh, unjust and unreasonable.
243. TWU Assistant National Secretary, Nick McIntosh criticised the indifference of Deliveroo to their workforce, stating “Diego and thousands of food delivery riders like him have been hailed as the heroes of the pandemic, allowing restaurants to stay open and people to self-isolate...but this is really a lie if he can be sacked by an anonymous email stating in seven days he will be booted off the app”.⁶⁵
244. Similarly, the TWU has been approached by dozens of members working for Amazon Flex who were deactivated from the platform.
245. Some members advised that they were deactivated from the account as their background checks were taking longer than usual to progress due to the business operating out of America.

⁶⁵ Bonyhady, N., 2020. 'Booted Off The App': Deliveroo Driver Challenges Dismissal. [online] The Sydney Morning Herald. Available at: <<https://www.smh.com.au/politics/federal/booted-off-the-app-deliveroo-driver-challenges-dismissal-20200526-p54wig.html>>

246. The TWU is in receipt of copies of the automated termination letters received by these drivers.
247. The termination letters states that the driver should consider the email as notice of termination and that as per the Terms of Service, the driver's account will be suspended effective immediately.
248. Other drivers approached the TWU claiming that they were deactivated off the platform as they failed to update driver records. These drivers advise that they had in fact updated their records, however as they were not offered a right of reply, they were unable to access work either way.
249. Many drivers who raised complaints with the TWU about Amazon Flex claim that they have attempted to escalate their claims through email, however they are yet to receive responses weeks after their initial emails disputing deactivation.
250. Consequently, workers state that they “feel alone with the company, you feel like you are self-employed because you don’t have bosses but at the same time ... [the platform] is your boss, you can’t see anybody but you work for a company” [25].
251. Gig-economy workers represented by the TWU continue to raise concerns about:
- a lack of reporting structure;
 - lack of interpersonal management;
 - the indifference shown to workers who raise concerns through email support;
 - the absence of a right of reply when deactivation occurs; and
 - workers being anxious about automated performance management at all times.
252. It is the view of the TWU that platforms exploit the classification of workers as not having a traditional employee and employer relationship to obfuscate their responsibility of providing engaging human resourcing.
253. In comparison to a traditional transport worker engaged in an employer employee relation, dismissal would be considered unfair where an employee was terminated on the basis of an allegation which was not investigated.
254. Automation of human resourcing only furthers the power imbalance between the worker and the platform and makes workers feel that their safety and interests are not accounted for.
255. This sentiment is illustrated by the Transport Workers Union of Australia (TWU Australia) and Rideshare Drivers Co-Operative surveyed over one thousand

(1000) rideshare drivers⁶⁶ in 2018 about their experience and working conditions in the gig-economy.

256. Most respondents worked for Uber and Ola, however other platforms such as Didi and Taxify were also represented.
257. Of the respondents, nine-hundred and sixty-nine (969) occurrences of harassment and assault were reported.⁶⁷
258. Thirty-seven percent (37%) of these incidents involved threats being made, six percent (6%) of drivers were subject to sexual assault and ten percent (10%) of occurrences involved physical assault.⁶⁸
259. Drivers reported that where drivers reported incidents, rideshare platforms often failed to deactivate the alleged perpetrators account.⁶⁹
260. Further, drivers reported not having a right of reply to false passenger reports as one of their biggest concerns about the industry, particularly when these reports lead to a driver's account being deactivated.⁷⁰
261. The automation of human resourcing and performance management is contributing to an unsafe workplace for workers who feel they do not have the means of raising unsafe incidents.
262. Whilst the TWU recognises that automation can be a useful tool for efficiency, particularly communicating with platform workers who work on a transient basis, it is unconscionable for automation to act as the primary form of communication within a workforce.
263. The TWU submits that gig-economy platforms should be transparent with workers about how data is collected and used to calculate and manage the performance of workers.
264. Further, platforms should be obligated to follow protocols consistent with traditional industries when it comes to counselling, performance management and dismissal.
265. Until there is an industry review of workplace laws and the burgeoning reliance upon code and automation to manage employees, unions will advocate on a case-by-case basis to highlight the disparity between workplace processes afforded to employees in comparison to platform workers.

⁶⁶ SAGE Journals. 2020. Algorithmic Surveillance In The Gig Economy: The Organization Of Work Through Lefebvrian Conceived Space - Gemma Newlands, 2020. [online] Available at: <<https://journals.sagepub.com/doi/full/10.1177/0170840620937900>>

⁶⁷ SAGE Journals. 2020. Algorithmic Surveillance In The Gig Economy: The Organization Of Work Through Lefebvrian Conceived Space - Gemma Newlands, 2020. [online] Available at: <<https://journals.sagepub.com/doi/full/10.1177/0170840620937900>>

⁶⁸ SAGE Journals. 2020. Algorithmic Surveillance In The Gig Economy: The Organization Of Work Through Lefebvrian Conceived Space - Gemma Newlands, 2020. [online] Available at: <<https://journals.sagepub.com/doi/full/10.1177/0170840620937900>>

⁶⁹ SAGE Journals. 2020. Algorithmic Surveillance In The Gig Economy: The Organization Of Work Through Lefebvrian Conceived Space - Gemma Newlands, 2020. [online] Available at: <<https://journals.sagepub.com/doi/full/10.1177/0170840620937900>>

⁷⁰ SAGE Journals. 2020. Algorithmic Surveillance In The Gig Economy: The Organization Of Work Through Lefebvrian Conceived Space - Gemma Newlands, 2020. [online] Available at: <<https://journals.sagepub.com/doi/full/10.1177/0170840620937900>>

Autonomous Trucking Technologies

266. Whilst autonomous driving technologies advancements are heralded, there are many issues and challenges that are posed by automation.
267. Whilst no one can provide a decisive answer as to how autonomous truck driving technologies will operate into the future, the gradual introduction of autonomous features in human operated trucks prove that the concept of a wholly automated vehicle is not farfetched.
268. “The chair of the Australian Trucking Association, Geoff Crouch, concedes the transition to self-driving vehicles “won’t occur in one leap”. Instead he describes a gradual process starting with the autonomous braking technology being rolled out across the industry, and a trial this year in Western Australia of “platooning”, which would see the lead truck in a convoy control the other through vehicle-to-vehicle communication to synchronise speed and braking.”⁷¹
269. “Trucks that drive themselves are already rolling out around the world. Self-driving trucks successfully made deliveries in Nevada and Colorado in 2017. Rio Tinto has 73 autonomous mining trucks hauling iron ore 24 hours a day in Australia. Europe saw its first convoys of self-driving trucks cross the continent in 2016. In 2016 Uber bought the self-driving truck company Otto for \$680 million and now employs 500 engineers to perfect the technology. Google spun off its self-driving car company Waymo, which is working on self-driving trucks with the big truck manufacturers Daimler and Volvo.”⁷²
270. Whilst autonomous driving technologies are slowly encroaching on traditional transport industries, the challenges these developments pose are largely ignored as many consider driverless trucks to be fanciful.
271. Autonomous trucking technologies pose ethical and socio-technological challenges relating to how these technologies are governed and how ethical and moral questions are grasped and weighed by automated machinery through code.
272. Whilst scientists and engineers continue advancing autonomous driving vehicles, claiming that these technologies will revolutionize transport work, significant complexities arise from these technologies.
273. To many transport providers, autonomous trucking technologies are attractive prospects. as developers promise to deliver machines that improve efficiency, by:

⁷¹ Opray, M., 2020. *Drones And Driverless Trucks: Can Australian Truckies Stave Off Job Threat?*. [online] the Guardian. Available at: <<https://www.theguardian.com/sustainable-business/2017/may/29/drones-and-driverless-trucks-can-australian-truckies-stave-off-job-threat>>

⁷² Evonomics. 2020. *Self-Driving Vehicles: What Will Happen To Truck Drivers?* - Evonomics. [online] Available at: <<https://evonomics.com/what-will-happen-to-truck-drivers-ask-factory-workers-andrew-yang/>>

- creating vehicles that optimize accelerations and braking commands which in turn improve fuel efficiency;
- developing fully automated vehicles that do not require human labour, meaning vehicles operate extended hours allowing businesses to reduce their fleet size;
- establishing a fleet that is not reliant on human management and resourcing, meaning fleet operators have the means of cutting down on middle management, human resource and management departments, etc;
- increased equipment utilization;
- improvement in road freight and long-distance delivery times, as there is no need for autonomous technologies to abide by fatigue management plans; and
- reduced operating costs through the shedding of transport workers.

274. Whilst the prospect of autonomous driving vehicles is attractive to fleet operators, there are many unresolved concerns about these advancements that require attention.

275. Firstly, the TWU recognises the impact that job losses will have on particularly the truck driving industry. For the most part, the members that the TWU encounters have driven for decades and approach truck driving as a profession.

276. Whilst the advent of autonomous truck driving technologies has the means of establishing the need for new highly skilled jobs, the shedding of truck drivers will devastate hard working Australians who made personal sacrifices for themselves and their families.

277. Autonomous trucking technologies will have a vast impact on the lives of former truck drivers and their families, who are no longer required to undertake driving responsibilities.

278. Often, if truck drivers have worked in the same industry their entire working lives, it is difficult to upskill and gain alternative meaningful employment.

279. The introduction of automated driving vehicles will lead to mass scale unemployment of predominantly men, many of which are in the latter half of their working lives.

280. Whilst developments in autonomous trucking technologies will create a market for new jobs such as robotic and computer system engineers, supply chain management, transport planning, logistics analytics and transport freight forwarding, it is unreasonable to expect that former truck drivers can migrate into these roles.

281. Whilst nay-sayers contend that there will always be a need for in-cab truck operators to be present, despite automated vehicle technology advancements, many studies and projections predict that the truck driving roles will be decimated in the near future.
282. A 2015 PWC report into ‘Future-proofing Australia’s Workforce by Growing Skills in Science, Technology, Engineering and Maths’ found that there is an eighty percent (80%) chance that Australia’s 94,946 professional drivers of road and rail vehicles would be replaced by autonomous technologies within the next two (2) decades.⁷³
283. Further, the introduction of automated driving technologies will have flow on effects for other sectors.
284. Automation has the potential to devastate local markets and regional economies, as many workers “serve the needs of truck drivers at truck stops, diners, motels and other businesses around the country...if one assumed that each trucker spends only \$5k a year on consumption on the road (about \$100 per week)...[this would lead to] beyond the hundreds of thousands of additional job loses”.⁷⁴
285. “Associated industries may also be affected, for example occupations that deal directly with the cause and effect of accidents such as insurers, crash repairs, road rule enforcement officers (including some police officers and council parking infringement officers), accident and emergency workers and crash investigation workers. Business involved in the supply of vehicles to the market (manufacturers, car dealerships) could also be affected if the overall size of the vehicle market decreases due to greater use of shared mobility at the expense of private vehicle ownership”.⁷⁵
286. Further, there are widely held concerns as to how automated vehicles might respond to ethically challenging situations, commonly known as the ‘Trolley Problem’.
287. The Trolley Problem relates to a hypothetical scenario where the automated vehicle must choose between continuing travelling on course and colliding with a greater number of people or diverting off the intended path and injuring less people.
288. As well as the people on the path of collision, the vehicle must also account for the safety of the driver, the contents of the truck and the surrounding environment.

⁷³ Pwc.com.au. 2020. [online] Available at: <<https://www.pwc.com.au/pdf/a-smart-move-pwc-stem-report-april-2015.pdf>>

⁷⁴ Evonomics. 2020. Self-Driving Vehicles: What Will Happen To Truck Drivers? - Evonomics. [online] Available at: <<https://evonomics.com/what-will-happen-to-truck-drivers-ask-factory-workers-andrew-yang/>>

⁷⁵ Opray, M., 2020. Drones And Driverless Trucks: Can Australian Truckies Stave Off Job Threat?. [online] the Guardian. Available at: <<https://www.theguardian.com/sustainable-business/2017/may/29/drones-and-driverless-trucks-can-australian-truckies-stave-off-job-threat>> [Accessed 30 August]

289. This ethical dilemma concerns many as there is little transparency about what automated vehicle algorithms account for when formulating a response to a dangerous situation.
290. Further, humans are able to understand and respond to a variety of events whilst driving, whereas one cannot wholly program responses to potential accidents and dangerous situations into software. Often difficult situations require human ingenuity and foresight to respond accordingly.
291. Consequently, there is a need not only for autonomous driving technologies to advance responses to potentially dangerous situations, but equally assure the public that autonomous vehicles can be trusted not to unnecessarily endanger others on the road.
292. Further to the ethical considerations of widespread job losses and Trolley Problems, there are operational challenges posed by automated vehicles in Australia. These concerns include, but are not limited to:
- road infrastructure in regional and remote areas not being adequate for automated driving vehicles (e.g. a lack of lane marking, quality of signage, poor road layout and single carriageways);
 - regional and remote areas lacking cellular connectivity which prevent automated technologies operating (e.g. platooning systems);
 - making distinctions between private and public roadways;
 - recognizing geographic borders;
 - adapting to extreme weather conditions (particularly with hail, snow and fog where visibility is limited);
 - how automated vehicles respond to traffic mixes (e.g. cyclists and pedestrians);
 - the potential for cyber-security breaches to occur, namely the serious capacity for this technology to be hijacked by terrorism or some random lunatic particularly as these are machines carting thousands of litres of fuel, tens of tonnes worth of product that could plough through a house; and
 - how insurance companies will calculate and attribute risk to new technologies and new risks that come with this technological advancement.
293. Automated guided vehicle advancements are not only being made in long distance road transport, but also within factories and distribution centres through the performance of “pallet transport, storage and retrieval from racks faster and more efficiently, leading to reduced operational costs”.⁷⁶

⁷⁶ MHD Supply Chain Solution. (2019). “Reduce Operational Cost with AGVS.” MHD Materials Handling, Sep/Oct 2019.

294. The TWU submits that autonomous driving technologies should not be perceived as far removed technologies that will not impact industries within this lifetime, as technological developments within the road and transport industries are occurring at an exponential rate.
295. Consequently, the TWU submits that the established legislative and regulatory systems must be reviewed to prepare for the emergence of autonomous trucking technologies and ensure that the risks and challenges which they present to workers are effectively mitigated.

Delivery Drones

296. Originally innovated as remotely guided aerial military devices, drones have gained popularity as consumer electronics used for non-combative purposes.
297. Since entering the consumer market, drones have become somewhat of an accessible novelty which are inexpensive, but also allow civilians to enter airspace with technologies that were previously exclusively used for military purposes.
298. Drones range from inexpensive entry level devices to considerably more expensive devices which are often used professionally. The professional grade drones often have extended flight time and do not require to be grounded often.
299. Drones used for professional purposes are currently used in various industries completing tasks such as:
- wildlife monitoring;
 - mapping and surveying;
 - assisting with photography and videography;
 - assisting with search and rescue work, particularly in disaster areas;
 - used as a tool with security work;
 - carrying out dangerous work-related activities;
 - coming into contact with hazardous material;
 - used for counterintelligence operations;
 - being used to scale dangerous terrain; and
 - being used in agricultural industries.
300. Given the multitude of reasons that drones are used in Australia, Governments have struggled to definitively regulate how and for what purposes drone technologies can be used, leading to confusion about how drones are regulated.

301. The definition of a drone relied upon here is an “unmanned aerial vehicle that may be remotely piloted by a human pilot, or autonomously operated. While current popular literature implies that drones are configured as quad-copters or hexa-copters, this document should be read with the implicit understanding that drones could also be fixed-wing unmanned aircraft”.⁷⁷
302. Whilst this technology is at the infancy stage, an emerging trend and area of potential development is the use of drones to undertake deliveries of freight.
303. In 2013, Amazon CEO Jeff Bezos announced his plans to trial an Amazon Air Traffic Management Plan in order to find a commercially viable way of using airspace to transport Amazon packages to customers using drones or drone like technology.
304. In 2019, Amazon executive Jeff Wilke announced at Amazon’s re:MARS Conference that “Amazon Air Prime” would be commercially available “in a matter of months”.⁷⁸
305. Amazon did not provide any further information as to where Amazon Air Prime would be available, how the rollout operations was to occur and what price point the delivery service would be available for.
306. No further information is provided on Amazon Air Prime’s website about the rollout and operations of drone delivery.
307. Whilst drone delivery services are yet to roll out as of August 2020, Amazon’s announcement has sparked interest in emerging technological developments in the transport industry.
308. Amazon Prime Air is a package delivery service that transports up to five (5) pounds, equating to two point two-five kilograms (2.25kg) packages to purchasers within thirty (30) minutes via drone.
309. This alternative delivery service continues to be tested in Amazon Prime Air Development Centres in the United State, the United Kingdom, Austria, France and Israel.⁷⁹
310. When unveiled at the Amazon’s re: MARS Conference, the latest model of the Prime Air Delivery drone was exhibited. The drone was described as a “hybrid

⁷⁷ www.engineersaustralia.org.au. (n.d.). The buzz about drones: how it could benefit transport in the future | Engineers Australia. [online] Available at: <<https://www.engineersaustralia.org.au/News/buzz-about-drones-how-it-could-benefit-transport-future#:~:text=Facilitating%20tasks%20normally%20carried%20out>>

⁷⁸ [1] D’Onfro, J. (n.d.). Amazon’s New Delivery Drone Will Start Shipping Packages “In A Matter Of Months.” [online] Forbes. Available at: <<https://www.forbes.com/sites/jilliandonfro/2019/06/05/amazon-new-delivery-drone-remars-warehouse-robots-alex-prediction/#1a801810145f>>

⁷⁹ Amazon.com. (2019). Amazon.com: Prime Air. [online] Available at: <<https://www.amazon.com/Amazon-Prime-Air/b?ie=UTF8&node=8037720011>>

aircraft that's capable of vertical take-off and landing as well as sustained forward flight".⁸⁰

311. "The new drone uses a combination of thermal cameras, depth cameras, and sonar to detect hazards. With the help of machine learning models, onboard computers can automatically identify obstacles and navigate around them. "From paragliders, power lines, to the corgi in your backyard, this drone has safety covered".⁸¹

³¹² Drone devices are also being tested and "utilised in warehouses for stocktaking purposes and inventory management These fully autonomous drones can be connected to AGVs or operate separately to scan up to 10,000 full pallets a day".⁸²

313. Whilst the use of drones to transport freight is still a novel ideal, multinational corporation seek to explore ways of making this form of transport commercially viable into the future.

314. The TWU fears that continued investment and development of artificial intelligence technologies and/or semi-automated technologies has the potential to decimate transport industries that are the lifeblood for thousands of families across New South Wales.

315. The TWU notes that traditional transport industries can be complimented by technological development, particularly when the goal is to advance safety, protect drivers and the public at large and assist with dangerous tasks. These developments are in stark contrast with advancements in drone technologies, where the ultimate task completed by a worker is replaced by a device that is either remotely operated or fully autonomous in operation.

316. Considering the heavy investments being made worldwide in developing and testing drone technologies, the TWU recognises the responsibility of the NSW Government to respond to technological advancements promptly. Considering the complexity involved in regulating a technology that relates to airspace, affects privacy and is yet to be tested in New South Wales, the TWU fears that once this technology is implemented, the Government's response will be lagging. Consequently, the TWU submits that the established legislative and regulatory systems must be reviewed to prepare for the emergence of drone technologies undertaking transport services.

⁸⁰ Vincent, J. and Chaim Gartenberg (2019). Here's Amazon's new transforming Prime Air delivery drone. [online] The Verge. Available at: <<https://www.theverge.com/2019/6/5/18654044/amazon-prime-air-delivery-drone-new-design-safety-transforming-flight-video>>

⁸¹ Vincent, J. and Chaim Gartenberg (2019). Here's Amazon's new transforming Prime Air delivery drone. [online] The Verge. Available at: <<https://www.theverge.com/2019/6/5/18654044/amazon-prime-air-delivery-drone-new-design-safety-transforming-flight-video>>

⁸² MHD Supply Chain Solution. (2019). "Reduce Operational Cost with AGVS." MHD Materials Handling, Sep/Oct 2019.

Section 6 - Other considerations

Anti-Competitive Behavior under the Competition and Consumer Act 2010 (Cth)

317. The *Competition and Consumer Act 2010* (Cth) legislates conduct in trade or commerce of traditional industry and the gig-economy.
318. The *Competition and Consumer Act 2010* (Cth) regulates conduct which is considered anti-competitive. In doing so, the *Competition and Consumer Act 2010* (Cth) both prohibits and establishes a criminal offence for individuals and businesses that engage in cartel conduct.
319. Cartels exist where “businesses agree to act together instead of competing against one another. This agreement is designed to drive up profits of cartel members while maintaining the illusion of competition.”⁸³
320. Common forms of cartels include price fixing, bid rigging, market sharing and output controls
321. Cartel behaviour is prohibited in Australia as they artificially inflate prices for consumers, hinder consumer confidence, limit innovation and make it harder for new businesses and ventures to compete in the market.
322. As most gig workers are engaged as independent contractors, they cannot rely on the conditions stipulated in the National Employment Standards under the *Fair Work Act 2009* (Cth) and Industry Awards.
323. With the current cartel framework, workers who seek to unionise to negotiate working conditions, rates of pay and minimum standards are at risk of being considered as engaging in cartel behaviours.
324. Whilst the Australian Competition and Consumer Commission has jurisdiction to investigate cartels and their operations, these powers are namely to compel people of companies to provide evidence of cartel behaviours, to pursue warrants and to report behaviours to the Australian Federal Police.
325. Consequently, the TWU recommends that gig-economy workers are provided assurance that they will not be implicated in cartel behaviours.

The NSW Education System – Adjusting for the Future of Work

326. Workers who are affected by automation are faced with significant challenges in trying to transition to new forms of employment or industries. As discussed in earlier sections of this submission, the transport sector is being

⁸³ Australian Competition and Consumer Commission, *Cartel Conduct - How it Affects you and your Business*. [online] Australian Competition and Consumer Commission. Available at: <https://www.accc.gov.au/system/files/Cartel%20conduct%20how%20it%20affects%20your%20business.pdf>.

particularly affected by automation through the emergence of drone delivery and autonomous trucking technologies.

327. Ensuring effective, accessible and free education and training for workers who are affected by automation is important to managing these changes sustainably and minimise the negative impacts of automation. Workers in the transport sector require support in accessing such training in order to ensure that automation is able to increase productivity without leading to increasing unemployment.
328. The Vocational Education and Training (VET) system in NSW is heavily underfunded and the NSW education system requires support to ensure that workers affected by automation are able to effectively and easily reskill.
329. The TWU notes the submission made by Unions NSW and supports their proposals in full.

The Application of Taxation Laws in the Gig Economy

330. Taxation is a crucial source of income for NSW which allows the Government to provide funding for infrastructure, health, education and welfare services.
331. The gig economy is mainly made up of large multi-national corporations are evading their obligations under State and Federal taxation laws by circumventing their obligations under payroll tax and paying minimal income tax. Provided these companies are foreign-owned, there are also high-rates of profit repatriation which undermines investment in NSW.
332. At the same time, workers working for platforms are more likely to be dependent on Government support given that these companies engage in systematic forms of underpayment, fail to provide adequate (if any) insurance, do not provide superannuation and a range of other entitlements.
333. The NSW Government must act to ensure that Gig Economy companies are unable to circumvent their obligations to tax.
334. The TWU notes the submission made by Unions NSW in this regard and supports their proposals in full.

Section 7 - Recommendations

335. Technological change has the potential to provide profound benefits to the transport sector and broader NSW economy. Technologies like telematics, GPS and the use of data can support safety outcomes and help improve productivity. Flexible work arrangements and digitally mediated work systems can also provide new opportunities to workers to access work and are of particular benefit to workers who value flexibility. The TWU is committed to working with industry and Government to ensure the full potential of these benefits are realised.
336. As this submission has demonstrated, the potential benefits of technological change are currently being overshadowed by the issues which technologies are presenting to workers and the wider transport sector. Technological change, in its current unregulated and emerging form, is presenting serious challenges to the safety and working conditions of workers and creating unsustainable and dangerous business practices.
337. As this submission has outlined, the concerning effects of technological change can be summarised into three broad trends in the transport sector:
- X. *Trend 1.* The advanced development of the gig economy in the transport sector is creating a race to the bottom in working conditions. Traditional transport jobs and sustainable transport operators are being undermined by, at times, a façade of flexibility and technological innovation.
 - XI. *Trend 2.* Technological change is acting as a catalyst to unsafe work practices, heightening the safety crisis in Australia's most dangerous industry. The human, economic and social cost of the loss of lives on our roads and the disruption to the transport industry far outweighs the questionable benefits which certain forms technological change may otherwise provide.
 - XII. *Trend 3.* Automation, surveillance and the use of data are presenting existential and ethical challenges to workers. Jobs are at threat of being automated in ways which may undermine economic and social value, and do not provide displaced workers pathways to alternative employment. The use of surveillance and data is intensifying work unsustainably and presenting privacy concerns for workers. An excessive reliance on technologies to improve safety is detracting from the key determinants (rates, work pressures and contracting practices) of poor safety outcomes in the transport sectors and leading to misguided safety management practices.
338. The NSW Government has the opportunity to reclaim technological change and shape it for the better. NSW must ensure that the issues presented in this submission do not detract from the benefits which technology in all forms can provide to the NSW economy and general public.

339. The TWU submits that the following recommendations provide a roadmap to do so:

Recommendation 1: A Flexible, Innovative and Safe System of Rates in the Transport Sector. To be implemented either through:

- Option A – Amending Chapter 6 to broaden its scope and improve its effectiveness
- Option B – A ‘New System’ covering all forms of work across all industries

Recommendation 2. Clarifying obligations for companies under existing WHS Laws

Recommendation 3. Ensuring all workers in the transport sector are provided workers compensation

Recommendation 4. Reform of Workplace Surveillance Laws to Ensure that the interests of Workers are Protected

Recommendation 5. Managing automation fairly and sustainably in the transport sector

Recommendation 1. A Flexible, Innovative and Safe System of Rates in the Transport Sector

340. As this submission has demonstrated, the introduction of apps and other technologies to monitor, manage and organise transport workers through contractor classifications, has led to a rapid deterioration of working conditions among the rideshare and food delivery sectors. Companies like Amazon Flex are now threatening to vastly expand the scope of these deleterious effects throughout the transport sector. The deterioration will continue to reduce the basic dignity and living standards of transport workers and compound the safety crisis which continues to grip the industry unless action is taken to respond to these challenges.

341. It is also noted in this submission that these challenges are not necessarily new. Owner drivers, like gig workers, in the transport sector have long faced similar issues with unsustainable contracting practices, a lack of bargaining power, limited access to industrial rights and highly dependent work arrangements combining to undermine safety and conditions. While inroads have been made in addressing these issues from the perspective of owner drivers (as will be discussed shortly), much work remains to be done.

342. The main issue for both owner drivers and gig workers is that workers in dependent arrangements cannot be afforded appropriate rights under our outdated industrial relations system. NSW must move beyond a system which provides rights and basic protections to workers on the basis of a binary and arbitrary categorisation of workers as ‘employees’, with the full-suite of industrial rights, or ‘independent contractors’, with none. Work arrangements are and always will be on a spectrum of varying degrees of dependency, and it is the metric of ‘dependency’ which should ultimately be the determinant to the rights a worker is afforded.

343. Before considering these recommendations, the TWU submits that the common law concept of employment should not be jettisoned. A majority of workers fall within the common law definition of employment and are, in turn, entitled to rights and protections under the *Fair Work Act 2009* (Cth). The introduction of a separate classification of employee or worker would not be effective, as it would invite corporations to devise new arrangements and platforms of work that fall outside that classification. It may also result in employees who are currently correctly classified to be reclassified into an inferior class of workers. Finally, a separate classification is likely to lead to greater uncertainty and potentially unpredictable outcomes from courts and tribunals, which could result in the legislature having to amend the definition of work. As follows, it would be most preferable to allow a tribunal to determine forms of work based on varying degrees of dependency.

344. The TWU recommends the NSW Government act to ensure:

- a system which can provide workers in dependent arrangements, like owner drivers and gig workers in the transport sector, access to the rights they deserve while promoting fair, sustainable and safe competitive practices. This system must include:
 - A tribunal which is empowered to inquire into work arrangements falling outside the category of employment and determine what rights and entitlements are appropriate to those arrangements.
 - A tribunal which has the ability to determine the extent of rights and entitlements categories of workers should receive, depending on the degree or level of dependency. Creation of minimum rights which are enforceable will ensure workers receive fair and appropriate remuneration for the work they perform, and proper cost recovery for capital expenses and costs incurred in performing work.
 - A tribunal which has the capacity to resolve (including where necessary through binding decisions) transport supply chain / contract networks disputes, including those in relation to the unfair terminations of engagement.

- The ability for all workers to join and be represented by their union in the creation of such standards and access to collective bargaining.
- Legally enforceable obligations on all supply chain and contracting parties to ensure that minimum standards are upheld.

345. The NSW Government can implement the above system by two means. The first option, is for the NSW Government to seek an expansion of the provisions of ‘Chapter 6’ of the *Industrial Relations Act 1996* (IR Act) to improve deficiencies within the Act and broaden its scope to include rideshare and food delivery workers. The other option is for the NSW Government to create a new system which provides coverage to all workers in dependent arrangements, not just those in the transport sector.

Option A – Amending Chapter 6 to broaden its scope and improve its effectiveness

346. The current system protecting owner drivers in NSW, colloquially known as ‘Chapter 6’ named after the chapter of the IR Act 1996 that governs these protections, had its origins in 1959 when the *Industrial Arbitration Act 1940* (IA Act) was amended to deem certain categories of owner drivers as employees and thus bring them under the scope of the IA Act. Since 1940, Liberal and Labor State Governments have worked with the TWU to improve and broaden of the scope of this Act to ensure that owner drivers who were classified as contractors and engaged in dependent work arrangements, were afforded appropriate rights and protections.

347. The protections that Chapter 6 provides are as follows:

- Dispute Resolution Conciliation and Arbitration power – through the TWU, any owner driver or group of owner drivers (or principal contractor) can lodge a dispute in the NSW Industrial Relations Commission (NSW IRC) which will be conciliated and if necessary arbitrated.
- The capacity for the NSW IRC to establish minimum pay and conditions based on cost recovery known as ‘contract determinations’ (broadly analogous to industry awards) which can cover the entire state, an industry, a company or even a single carrier. It should be noted the NSW IRC has the power to make these contract determinations on the basis of an application by either party using its arbitration powers.

- The capacity for the NSW IRC to approve ‘contract agreements’ (broadly analogous to enterprise agreements) which provide pay and conditions and can be enforced through the NSW IRC or a Court.
- Remedy unfair terminations of contract (broadly analogous to employee unfair dismissals) - the NSW IRC is able to find that an owner driver has had their contract unfairly terminated and can reinstate the contract, compensate the owner driver for loss or both; and
- The establishment of the Contract of Carriage Tribunal which has the power to award an owner driver an amount of ‘goodwill’ following their dismissal by a principal contractor.

348. Many of the strengths of the system are self-evident, redressing many of the power imbalances owner drivers face and providing them with legislative protections. In particular, Chapter 6 provides a floor in terms of pay and conditions for owner drivers that keeps the market operating sustainably, provides stability to market players and ensures competition does not occur through a race-to-the-bottom of working conditions and standards. Often the simple knowledge that an independent body has the power to arbitrate a dispute, make a contract determination or remedy an unfair dismissal prevents disputes from occurring in the first place. The conciliation power of the NSW IRC also provides an important first step to resolve many industrial disputes without the need to arbitrate and thus is a quick and cost-effective way of dealing with disputes.

349. The limitations of Chapter 6 are important to note in considering how this system may be improved and its scope expanded. These limitations are as follows:

- XIII. A Lack of Client Accountability- In the transport sector major clients have the power to dictate pay and conditions of principal contractors and owner drivers through tendering processes. For example, major retailers have been increasingly outsourcing work to gig economy companies without any oversight of safety and working conditions. Chapter 6 does not provide the ability to force the client to ensure compliance with such minimum standards.
- XIV. Scope and Definitional Issues - ‘principal contractor’ and ‘owner driver’ have very distinct and limiting meanings which means the system is unable to cover all non-employee drivers. Further certain types of owner drivers are excluded, such as those delivering bread and mail. While these arise from historical anomalies, it nonetheless means that groups of owner drivers who face the same issues as others are not afforded the same protections.

- XV. Does not Facilitate Collective Bargaining – while the system specifically allows for owner drivers to collectively bargain, outside of its industrial dispute power the NSW IRC does not have an inherent ability to assist parties in facilitating collective bargaining. While a party could instead apply for a contract determination that would have a similar effect, this is a much more time-consuming process requiring evidence and arbitration. Similarly, owner drivers do not have the right to take protected industrial action in order to pursue claims and the NSW IRC has in the past found that principal contractors have been within their rights to dismiss owner drivers who have taken such industrial action in relation to their claims.
- XVI. Enforcement – there is no real enforcement arm in NSW outside of the union that has the power or resources to investigate and prosecute breaches of any industrial instruments. This has led to chronic underpayments in certain industries.
350. Should the NSW Government seek to provide the framework for a system outlined in Recommendation 1 by amending Chapter 6, then it is imperative that all these issues be addressed in full. The TWU is committed to working with the NSW Government in amending Chapter 6 to ensure a new and fit-for-purpose system which can respond to the contemporary challenges facing all transport workers.

Option B – A ‘New System’ covering all forms of work across all industries.

351. The previous option focuses squarely on a solution for transport workers. The TWU submits that all work is on a spectrum of dependency and issues facing workers in dependent work arrangements, within and outside of the gig economy, are not confined to the transport sector. While Chapter 6 presents a convenient and proven means of addressing the particularly serious issues which technological change is creating in the transport sector, the TWU encourages the NSW Government to broaden the scope of this approach to all work.

Recommendation 2. Clarifying obligations for companies under existing WHS law & strengthening enforcement

352. The safety crisis in the transport sector must in the first instance be addressed by recognising the role which competitive pressures and a lack of working standards play in encouraging dangerous work practices. Technological change has been a catalyst in undermining working standards and compounding this safety crisis.
353. In addition to this, Section 4 of this submission discussed the limitations of existing WHS Laws – namely, that there is a lack of enforcement of safety

obligations in the gig economy and broader unregulated sections of the transport sector. There is a need for all industry stakeholders to act to urgently address these issues.

354. The TWU recommends the NSW Government act to ensure:
- SafeWork NSW prepare guidance on the responsibilities of PCBUs in the gig economy and begin actively enforcing the WHS Laws.
 - Union officials are provided the ability to participate more directly in the enforcement of WHS Laws by:
 - i. Allowing trained union officials to issue improvement notices to companies breaching their obligations under the WHS Act.
 - ii. Providing funding to trade unions to perform enforcement activities in the interest of work health and safety.
 - The adoption of all 34 recommendations of The Australian Senate Education and Employment References Committee report ‘They never came home – the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia’
 - SafeWork NSW investigate the underreporting of notifiable incidents by gig companies in NSW, with particular emphasis on the underreporting of worker deaths.

Recommendation 3. Ensuring all workers in the transport sector are provided workers compensation

355. The rise of gig and other non-standard forms of employment in the transport sector is leaving a growing section of the workforce without access to workers compensation. This is arguably the largest failing of the NSW Workers Compensation scheme today.
356. The current NSW system rests on the incorrect assumption that workers not classified as employees will take out their own workers compensation policy. In reality, workers will not do so, particularly when issues of low pay among such sections of the workforce are taken into consideration.
357. The TWU recommends the NSW Government act to ensure:
- a. the Workers Compensation Scheme should be reformed to require businesses to provide workers compensation to all workers regardless of their method of engagement
 - b. the TWU submits the Workers Compensation Scheme should be formally reviewed with the intent of drafting new legislation to expand its coverage to all workers in NSW.

- c. Failing this, the TWU submits amendments should be made to section 4 of the Workplace Injury Management and Workers Compensation Act 1998 (NSW) to meet these objectives.

Recommendation 4. Reform of Workplace Surveillance Laws to Ensure that the Interests of Workers are Protected

358. Surveillance technologies are presenting numerous challenges to workers health and privacy. Existing NSW laws are failing to adequately protect workers' interests with regards to the introduction of both existing and emerging surveillance technologies.
359. Discussed in *Section 5* of this submission was the unique challenges which technologies like telematics are presenting to road transport workers such as truck drivers. The TWU supports telematics to the extent which it can help improve driver safety, yet an overreliance on telematics can lead transport companies to ignore the key determinants of safety (i.e. work pressures & contracting practices). Workers have also presented concerns about how technologies like telematics are covertly used for other purposes (performance managing and disciplinary functions), privacy issues associated with continual monitoring equipment and the lack of research concerning the health impacts of such technologies, particularly with respects to radiation emitted through infra-red signals.
360. The gig economy is a focal point for some of the more worrying and emergent workplace surveillance trends in the transport sector. Companies are readily using data collected through numerous technological interfaces to track and code personal and work data on a workers and consumers. Little clarity is being provided about the intended use of such data, and major companies such as Uber have been already embroiled in serious breaches of personal data.
361. Most concerningly, gig-economy companies are now leading the charge in 'automating' the human resource management process in this entirety. Gig economy companies are taking surveillance data and handing over the management functions to algorithms which in turn determine job allocation, remuneration, chastisement and termination of workers. In the process, workers livelihoods and safety are being unconscionably determined in a manner which raises a plethora of ethical dilemmas for the future of work altogether.
362. The TWU recommends the NSW Government act to amend Workplace Surveillance Laws to ensure:
- Transport workers in the gig economy are protected by either inclusion in Schedule 1 of the *Workplace Surveillance Act 2005* (NSW) or Chapter 6 of the *Industrial Relations Act 1996* (NSW).

- Technological neutrality so that surveillance laws effectively cover new and emerging technologies,
- Companies must provide transparent information about what data is being accessed and retained from both workers and customers at any given time, and how data is collected and used to calculate and manage the performance of workers,
- Companies should be obligated to follow protocols consistent with traditional industries when it comes to counselling, performance management and dismissal.

Recommendation 5. Managing automation technology in the transport sector

363. NSW should expect the development of drone and autonomous trucking technologies in the transport sector to continue to grow exponentially in the coming years. As it does so, NSW must turn to address the various issues which automation presents to Australian workers and the broader Australian public.

364. Automation will displace jobs in the coming years where transition to alternative forms of employment will be hard to ensure. The use of such technologies on our roads and in our skies will also present a range of environmental, infrastructural and safety issues. Unique ethical dilemmas are also raised regarding the ability of algorithmically driven machines to make life and death decisions on our roads.

365. The TWU recommends the NSW Government act to ensure:

- established legislative and regulatory systems must be reviewed to prepare for the emergence automation and ensure that the risks and challenges which they present to workers are effectively mitigated.