

**INQUIRY INTO APPLICATION OF THE CONTRACTOR
AND EMPLOYMENT AGENT PROVISIONS IN THE
PAYROLL TAX ACT 2007**

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Submission

Inquiry into the application of
the contractor and
employment agent provisions
in the Payroll Tax Act 2007

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Our purpose

To enable the pursuit of a good life for everyone

Contents

Executive summary	2
About Hireup	3
Background: gig work in the care sector	4
Why have platforms become so popular in the care sector?	5
Working conditions for contractors on gig platforms	5
How gig platform arrangements work in the care sector	6
Addressing the Terms of Reference	7
(a) the provisions in Division 7 of Part 3 of the Payroll Tax Act 2007 on contractors	7
(b) the provisions in Division 8 of Part 3 of the Payroll Tax Act 2007 on employment agents	7
(e) the applicability of the contractor and employment agent provisions in the Payroll Tax Act 2007 on particular industries including the on-demand and gig economy	7
Contractor provisions and the gig economy	7
Employment agent provisions and the gig economy	9
(c) revenue rulings and Commissioner's practice notes issued by Revenue NSW addressing the contractor and employment agencies provisions in the Payroll Tax Act 2007	9
(d) decisions of courts in cases involving the application of the contractor and employment agencies provisions in the Payroll Tax Act 2007	11
(f) other related matters	13
Recommendations	14
Appendix A: Support worker interactions with online platforms when delivering care services	15
Appendix B: Examples of control by care sector contracting platforms and dependence of support workers on the platforms	17

Executive summary

As a platform employer of support workers in the care sector, Hireup has seen contracted gig work in the sector skyrocket in recent years. The ability to use flexible platform technology to find support services through a flexible contractor workforce — instead of employed workers — is attractive due to the possibility of reducing costs and therefore the price of services.

However, there are real questions to answer about which costs are being reduced through these arrangements, and whether this leads to fair or desired outcomes.

Payroll tax settings, particularly those that intend to capture certain types of contracting, have not kept pace with this technology-driven change. The *Payroll Tax Act 2007* ('the Act') is outdated and, in terms of gig platform work, not fit-for-purpose.

Right now, the application of payroll tax to contractor-based gig platform businesses is as effective as catching water with a sieve — there are loopholes that make perfectly legal avoidance relatively straightforward for such platforms.

The current payroll tax system unfairly favours gig platform businesses by allowing those who act as payroll departments for 'independent contractors' to bypass this tax. This submission will also demonstrate how these platforms, in the care sector context, play a much more integrated and significant role in relation to their workforces and their wages, than the oft-claimed roles of being merely a marketplace or payment processor.

The ability to avoid payroll tax reduces contractor platforms' overhead costs and creates an uneven competitive playing field, which is particularly damaging to competition in the highly regulated and funding-constrained care sector. It also incentivises contracting and undermines employment, and the benefits and rights it confers on employees.

Crucially, it reduces a key tax revenue base for NSW, with annual losses that we estimate at greater than \$100 million. Reform is needed before the state finds an ever-growing cohort of contractor-based platform arrangements able to evade payroll tax obligations.

Mandating payroll tax contributions from these platforms will ensure fair competition and ensure that all businesses contribute to essential public services.

We believe this inquiry is a standout opportunity for NSW to wrestle with the complexities of tech-driven operating models that have emerged in recent years, and help to close loopholes that undermine fair markets. We also believe that, where these complexities create challenges to amending the system, the care sector is the most appropriate and straightforward place to start, due to the nature of the work.

To be clear, we make these recommendations because we believe in fairness. This is about equal rules that cover all for-profit businesses. It's about creating a level playing field on which to compete, and a sustainable care sector focused on quality.

As a result, our recommendations are:

1. Review the evidence and make a Committee finding that the substance of the relationship between care sector contractor platforms and support workers should be considered to be employment (for the purposes of payroll tax).
2. Amend the Act to clarify and strengthen the contractor provisions to ensure that care sector platform contracting arrangements are liable for the payment of payroll tax.
3. Amend the Act to ensure that labour hire-style arrangements through care sector contractor platforms are captured by the employment agent provisions of the Act.
4. If the Committee does not recommend legislative amendments that would ensure payroll tax is levied on care sector contractor platforms, then the Committee should recommend that the Chief Commissioner of State Revenue reviews care sector contractor platforms specifically, in order to make a revenue ruling targeted to platforms in the sector.
5. Amend the Act to ensure that gig platforms that declare themselves in contracts to be payment or collection agents are not automatically excluded from payroll tax obligations.

About Hireup

Hireup is a national provider of disability and aged care support services, registered with the NDIS. Through a secure online platform, Hireup provides people with the tools to find, hire and manage their own support workers who fit their needs and share their interests, enabling the principles of choice and control that underpin the NDIS.

From the outset, Hireup chose to be a for-purpose, for-profit service provider, facilitating the flexibility of choice, while always seeking ways in which to better our high-quality service offering and attract the best support workers as an employer of choice. Our purpose is to enable the pursuit of a good life for everyone.

As an online platform for support work, Hireup is a rarity: we operate a contractor-free model and directly employ our support workers. This allows Hireup to offer its support workers a range of entitlements such as above-award wages, superannuation, workers compensation insurance and return to work services for anyone injured on the job. In the past year, more than 10,000 employed support workers provided support through the platform nationwide.

Background: gig work in the care sector

As Hireup's expertise lies within the care sector, mostly in the NDIS and in aged care, we will give our understanding of gig platform arrangements within these sectors.

According to a McKell Institute report released in April 2023, it is estimated that around 250,000 individuals operate as gig workers across Australia.¹ The report does note, however, that there is no official data to quantify the true breadth or extent of work in the Australian platform sector (the Australian Bureau of Statistics is still in the early stages of developing a dataset for digital platform workers). Based on population size, this would mean New South Wales would have around 80,000 gig economy workers of McKell's estimated 250,000. Given that gig economy workers tend to operate in more densely populated areas and continuing growth of platforms, an estimate well exceeding 100,000 people is probably more likely to reflect the current market reality.

While the true number of gig workers operating across Australia may be underrepresented, what is evident in the care sector is a rapid increase in the number of workers acting as so-called 'independent contractors' under the banner of an online platform. Platforms exert significant control over these workers, yet most insist they are merely intermediaries with little or no obligation owing to their workers, or to legislated obligations such as payroll tax.

Due to the nature of direct funding to individuals for care and support services, it is now a straightforward process for recipients, such as NDIS participants, to directly engage individual support workers using those funds. This is commonly arranged by engaging workers as independent contractors/sole traders, sometimes in a direct arrangement, but often via a contract facilitated through an online 'gig' platform.

The ability to contract workers, instead of employing them, can be attractive due to the possibility of reducing costs and therefore the price of services. Cheaper services mean more hours of support can be purchased. However, these lower costs are often directly derived by avoiding paying for the entitlements, conditions, and protections of employment — for example, penalty rates, superannuation, or payroll tax.

This is one of the incentives that has led to the huge popularity of digital labour or gig platforms, which provide a connection point for participants and workers, as well as providing the service contract between them, all communications, shift bookings, and invoicing and payments related to the work performed on those shifts.

There are now up to 20 such platforms in the care sector, and there are likely to be 50,000 - 70,000 support workers engaging in work in this manner in the care sector nationwide (for example, the single largest platform claims 21,000 active workers).

Most, if not all, of these platforms are private, for-profit companies. We estimate that, collectively, platforms offering support workers to NDIS participants have raised more than \$200 million of private investment between them, and some platforms have

¹ <https://mckellinstitute.org.au/wp-content/uploads/2023/03/McKell-Tough-Gig-Report.pdf>

company valuations of more than \$100 million. Platforms are no longer small, innovative start-ups, uncertain of their future — platforms have grown to be very large, very dominant forms of care sector service delivery. And they are here to stay.

Why have platforms become so popular in the care sector?

Platforms present many positive elements — for clients, platforms are a way of fully embracing the ideals of choice and control, and person-centred care. They assemble a large, diverse cohort of support workers from which participants can find the specific people who best fit their needs and meet their interests. From there, platforms offer a flexible, efficient way to book services that can be done from anywhere, on a host of different devices, and with in-built accessibility features.

Platforms can empower clients to achieve the full autonomy and dignity that was historically missing from aged care and disability services, as well as helping to form better connections to their local communities through local support workers.

For workers, too, platforms present the option of greater flexibility in working arrangements, as well as the same level of choice as clients in terms of who they work with. Platforms allow workers to make choices about their work that are not commonly available in care sectors, while presenting easy systems of arranging shifts at the tap of a keyboard or a smartphone. Workers can arrange shifts to suit their availability and lifestyle, as well as creating new connections and support relationships locally, in their own communities.

Working conditions for contractors on gig platforms

Almost all care and support work platforms, and the workers providing services on them, currently operate virtually unregulated by industrial relations laws and minimum working standards. There are limited external safety and quality oversight checks on services, and no set working conditions or standards for the workforce (though this may change in future after the commencement of the Federal Government's 'employee-like' reforms in the *Closing Loopholes No. 2 Act 2024*).

This phenomenon has always been challenging, but it has been magnified by the rapid rise of platforms, which generate hundreds of millions of dollars in revenue from NDIS and aged care funding by engaging and deploying tens of thousands of 'independent contractor' support workers. The platforms are perceived to represent all of the benefits of a large organisation, yet in reality they have very few of the usual obligations to workers or clients.

Under this growing contracting model, there are compelling marketing messages to workers: 'be your own boss' and 'set your own rates'. But in reality, there is often no minimum wage, no penalty rates, no workers compensation if an injury occurs, no superannuation, and no organisational liability or support if an incident occurs.

The platforms profit by taking a cut from the hourly rate of the platform's workers, but bypass most of the regulation that would normally govern delivery of care and support

services, as well as employment. Meanwhile, responsible providers and employers are burdened with the weight of regulation and oversight, which leaves them unable to compete on price. The competitive playing field thus becomes skewed in favour of contractor operating models, which avoid “overheads” such as payroll tax.

How gig platform arrangements work in the care sector

There is often a misconception that platforms using contractors should not be liable for employment-related obligations such as payroll tax, because their terms and contracts state that the platform is not a party to anything that happens during the work that was organised through the platform. This perspective can be likened to the old parable, ‘The Emperor Has No Clothes’, where people believed a naked emperor was wearing clothes simply because the emperor declared he was, and people dared not question him — even though they could see he was naked.

Simply because some platforms declare they are not involved in the arrangements between workers and clients, or the delivery of care services, does not make that the truth. We believe the acceptance of this doubtful claim may be due to lack of information and transparency about how platforms operate in the care sectors — and we would like to provide that missing information in this submission.

As a platform that fully accepts we are part of the delivery of care services, we can affirm that platforms in the care sector are involved in almost every step of the journey and the arrangements for both the worker and the client in relation to the receipt of the services, save for the physical undertaking of the service itself — which is exactly the same for any traditional, ‘bricks and mortar’ home care business. In traditional home care organisations, individual employees carry out the service themselves, but that does not mean the home care organisation has no role in it.

We have provided two appendices to this submission that illustrate these issues in detail, and starkly demonstrate the integration of care sector platforms and their workforces:

1. **Appendix A** provides a detailed description of each step of a support worker’s journey on a typical care and support work platform, from sign-up through to booking support shifts through to being paid their wages. We believe this illustrates the very strong connection between platforms and the support services arranged and delivered through them in the care sectors.
2. **Appendix B** provides examples of control by care sector contracting platforms and dependence of support workers on the platforms.

We invite the Committee to review these appendices to understand, in detail, how intertwined are care sector platforms and their workers.

Addressing the Terms of Reference

(a) the provisions in Division 7 of Part 3 of the Payroll Tax Act 2007 on contractors

(b) the provisions in Division 8 of Part 3 of the Payroll Tax Act 2007 on employment agents

(e) the applicability of the contractor and employment agent provisions in the Payroll Tax Act 2007 on particular industries including the on-demand and gig economy

Contractor provisions and the gig economy

When the *Payroll Tax Act 2007* ('the Act') commenced, the modern online gig economy, with well-known corporate brands such as Uber and Airtasker, was still years away. More significantly, the contractor provisions in the Act are essentially the same as they were when they were inserted by amendment into the legislation that preceded the current Act (the *Pay-roll Tax Act 1971*) — forty years ago, in 1985.

The obvious concern this raises is that the way contracting is utilised in the modern digital economy has changed irrevocably, even within the last decade, yet payroll tax laws to deal with the contracts that characterise this form of work have barely changed in forty years. To say these provisions are likely to be out of date or not fit-for-purpose would be an understatement.

With a focus on care sector gig economy platforms and the interactions between the platforms and workers, we believe that while the contractor provisions have the potential to be used in their current form to capture care sector platforms for payroll liability, it is likely not clear enough to be definitive. This means a ruling of liability would likely be subject to legal challenge, and may not be effective in achieving the coverage intended by the provisions. We submit that the Committee should find that the provisions should be clarified and strengthened to ensure that these care sector platform contracting arrangements are liable for payroll tax.

One critical challenge created by the current outdated laws is that, to be fully satisfied that they apply, it might be perceived that there is a need to demonstrate more *intentional* action or involvement than most gig platforms are set up to deliver. In fact, this is the great trick of the modern gig platform: because of the ease of the use of technology, platforms can give the appearance of being "just a marketplace" where a buyer and a seller meet to exchange money for services. The platform can provide just *enough* support and services to workers and customers to be perceived as safe and alike to a more traditional organisation, but without crossing the technical legal lines of certain obligations those traditional organisations face, like payroll tax.

This is possible because the laws are no longer fit-for-purpose, they are defeated by the ways in which technology can alter the contracting arrangements. If the status quo is accepted, it will be harder to establish that gig platforms meet the test for the liability of payroll tax — or at least, it is likely open to interpretation.

These platforms sometimes describe their position as merely “horizontal” in the marketplace, where they are nothing but a facilitator: a bystander in the transaction between a worker and the worker’s client. Such platforms would argue they don’t actively “procure” a worker on behalf of clients; they simply allow parties to join the platform and find each other and enter into independent contracts.

However, care sector platforms often stipulate many of the terms within those very contracts, and stipulate that workers adhere to a raft of service delivery policies and obligations, while in addition requiring workers to agree to their own contract with the platform, in the form of ‘terms of use’ — terms which are often upwards of 10,000 words in length, highly detailed and prescriptive.

Given the information presented in this submission and its appendices, we believe it is clear that gig platforms in the care sector are far more involved than they would like to admit — in fact, they appear much closer to being an employer than they are to being a marketplace. The mere facts that care sector platforms (1) derive much of their income by taking a cut from every single paid hour of their workers’ labour and (2) operate as the single source payroll for all workers’ wages on the platform, let alone numerous other employer-like features, are strong indicators demonstrating that such a platform should be liable for payroll tax in the same way an employer would be.

Further, in evidence given to the NSW select committee inquiry, *‘Impact of technological and other change on the future of work and workers in New South Wales,’*² Revenue NSW stated that they consider the ‘substance and totality of the relationship’ to determine whether a payroll tax liability exists, regardless of whether a worker is classified as a contractor. Using these grounds, we believe the Committee should find that the evidence indicates the totality of the relationship of care sector platforms to support workers is one of employment (for the purposes of payroll tax).

We submit the Committee should find that the intention of the Act, and of payroll tax collection generally, is that contracts of the sort created through care sector platforms should be captured as relevant for the purposes of payroll tax. A question for the Committee is then whether the Act requires amendment to clarify this finding — and given the varying interpretations in court decisions to date, we submit that amendments should be made to the Act to clarify the capture of these platform relationships.

2

<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2591/Report%20No%201%20-%20Select%20Committee%20-%20The%20gig%20economy%20-%20First%20report.pdf>

Employment agent provisions and the gig economy

In addition to individual clients and workers connecting through care sector platforms, a number of these platforms also offer their workers for hire by other organisations, in what appears to be the manner described under the employment agent provisions in the Act. This occurs where the platform offers its contractor support workforce as staff to more traditional disability or aged care service providers, very alike to labour hire agreements — except the platform does not directly employ the workforce.

The service provider is given access to search, review and contact the platform's workforce, and can reach agreement with individual platform workers who then work on behalf of the service provider to serve the provider's clients. All elements of the procurement of these workers, communications with them, shift arrangements and bookings, measures for regulatory compliance such as incident reporting, as well as invoicing and wage payments, are carried out using the platform. The platform generally deducts a fee from both the provider and the worker as part of this arrangement.

It is unclear if these arrangements would be fully captured by the current employment agent provisions of the Act, but we submit that they are captured by the *intent* of the provisions and, if need be, the Act should be amended to incorporate these new types of gig platform-derived labour hire into the payroll tax system.

(c) revenue rulings and Commissioner's practice notes issued by Revenue NSW addressing the contractor and employment agencies provisions in the Payroll Tax Act 2007

There are no published revenue rulings related to gig economy platforms, however we believe there could be scope for the Commissioner to make a ruling relating to care sector gig platforms — with reasoning similar to the ruling, 'PTA 041 Payroll Tax Act- Relevant Contracts - Medical Centres'.³ In that ruling, the Commissioner describes the ways in which medical centres engage with practitioners, patients and the public to provide access to medical services.

For example, the ruling states that:

If a medical centre engages a practitioner to practise from its medical centre or holds out to the public that it provides patients with access to medical services of a practitioner, it is likely the relevant contract provisions will apply to the contract with the practitioner unless an exception (that is an exemption) applies.

In comparison, the similarities are clear: care sector platforms engage support workers to practise "from the platform", as such, and platforms hold out to the public that they

³ <https://www.revenue.nsw.gov.au/help-centre/resources-library/rulings/payroll/pta-041>

provide clients with access to support services of a support worker. A quick scan of care sector platform advertising shows advertising phrases proving this point, such as:

- *'<platform name> is home to verified support workers who love what they do'*
- *'<platform name> is where you find support for your child...'*
- *'whether you're wanting to increase your independence, create new experiences, or just need a friend, our diverse range of social carers are ready to support you in every way, shape and form'*
- *'get support with your daily living needs on <platform name>'*
- *'<platform name> has lower fees compared to traditional providers and provides you with the ability to choose your own support worker'*

These self-descriptions from care platforms about what they offer and why they exist — to provide support services, not merely to provide technology or a marketplace — belie the true relationship between the platforms and their workers.

If considering applying revenue rulings broadly to *all* gig platforms, it is first important to understand that gig platforms that operate in different sectors are usually quite distinct. This may result in different outcomes in terms of the applicability of payroll tax obligations — which is why we advocate for a sector-by-sector approach, starting with the care sector.

The broad spectrum of platforms — differences that matter

Platforms facilitate three-way relationships between the platform, client, and worker, and these exist across a spectrum depending on the platform and the sector:

- At one end of the spectrum, platforms such as Airtasker facilitate a service user to engage a contractor to perform a specific, one-off task, or 'odd job' — often reliant on certain skills, such as a carpenter or painter. This is akin to 'classified' ads in newspapers in years gone by. In this example, the worker is unlikely to be perceived as employed by either the platform or the service user.
- Towards the middle of the spectrum are platforms offering ridesharing and food delivery. Court cases have already proven how murky work status can be in this area, and certainly the workers are entirely dependent on the platforms for their work, albeit that workers can choose when and where to work. In terms of the nature of the work from the client/rider point of view, it is probably instructive that you'll almost never see the same rideshare driver twice — a very different proposition to that of the care sector.
- At the other end of the spectrum are platforms offering services related to person-to-person care and support, whether that be aged care or disability support. Clearly, support work is not the same as landscaping or delivering food, for example. Support work is not task-based and it is not intended to be a one-off interaction between the client and the worker. Instead, this work is paid by the hour (not paid for individual tasks), directed jointly by the client and platform, and intended to be re-engaged on an ongoing basis. Note: while a

contractor worker can technically choose when they work, they are still very much directed by when the client wants or needs support, which makes this arrangement more alike to casual employment rather than contracting. As personal trust and safety is critical to good support, the best support relationships are in fact ongoing and long-term, not one-off.

Given these differences, we submit that, if the Committee does not recommend legislative amendments that would ensure payroll tax is levied on care sector gig platform businesses, then it would be prudent for the Committee to recommend that the Commissioner reviews **care sector platforms** specifically, rather than all gig platforms at once, with a view to making a revenue ruling targeted to the sector. As demonstrated in this submission, the care sector is the perfect starting place for applying the contractor provisions to gig economy platform businesses.

(d) decisions of courts in cases involving the application of the contractor and employment agencies provisions in the Payroll Tax Act 2007

A recent example of a case related to the gig economy, though not identical to care sector platforms, is that of *Uber Australia Pty Ltd v Chief Commissioner of State Revenue [2024] NSWSC 1124* in the Supreme Court of NSW. Uber is a rideshare gig platform, so some of the features of its operations resemble care sector gig platforms, but many features are very different.

The key similarities are that the work is arranged using technology, via the platform, where both the worker and the client sign up to the platform, and all payments are processed through the platform.

Key differences include:

- Rideshare platforms deduct a fee per ride; care platforms deduct fees based on a percentage cut from the hourly wage rate of every single hour of work performed by a platform worker.
- Rideshare platforms do not invoice or “chase invoices” from riders (in fact often riders pay in advance); care platforms create and distribute invoices to clients on behalf of workers, and many will also pursue clients for payment of those invoices on behalf of their workers.
- Rideshare platforms allocate/offer rides to drivers; on care platforms most shifts are booked through direct communication between a worker and client.
- On rideshare platforms, there is no ongoing relationship between a rider and driver; on care platforms the relationship between a worker and client is a crucial aspect, and many support relationships will last for multiple years. While in rideshare the point is getting from A to B, but in the care sector the point is finding a person in whom you can place your trust on a recurring basis, and

who will likely enter your home and become intimately involved in your everyday life as your support worker.

- On rideshare platforms, the rider does not direct the driver how to drive (although they are expected to follow road rules); on care platforms both the client and the platform can direct support workers in numerous ways in how to perform their work, with many obligations and expectations of the worker.
- Rideshare platforms do not provide numerous additional features to support the working relationship between drivers and riders, apart from ratings and communications when arranging a trip; as described in the appendices, care platforms provide many critical elements, and impose many obligations on the worker and client, related to undertaking a support shift, much like an employer.

Therefore, we caution against a perception that this case is representative of how the Act might apply to all types of gig economy platforms. As described above, platforms exist across a spectrum in different sectors and for different purposes, and it is crucial for the purposes of payroll tax to understand those differences.

In the Uber case, the contracts were found to be relevant contracts for the purposes of payroll tax, however the Court found that payments Uber made to drivers were not wages, as defined in the Act. This decision was the result of a very technical reading of the Act, and it found that 'Uber is a mere "payment collection agent"', rather than an entity paying wages. We note that the Chief Commissioner for State Revenue has lodged an appeal against this decision.

The Court's interpretation should be troubling to the Committee, because it opens the door to any gig platform stipulating in its terms that it is merely a "payment agent" between two independent parties, regardless of the depth of arrangements and relationships between the parties and the platform. In the decision, any reasonable person would agree the rider is paying the driver, and that part of the platform's role is to process the payment, but how is that materially different to the way that any service is purchased, technically?

This cannot be the only, simplistic basis on which we decide if a payment is considered wages. In the care sector, for example, some platforms already describe themselves as payment or collection agents, and some even have separate but related entities set up to do just this — even in circumstances where clearly the platform performs many roles: it issues invoices to clients, pursues them, receives their payment, deducts the platform's fee as a percentage of the hourly earnings of the worker, and then pays the worker exactly as an employer would: according to the number of hours they worked. (For further details on the many additional interventions and integrations of care sector platforms, please see the appendices.)

It appears this could already be a strategy to place distance between a platform and the payment of workers' wages, and thereby avoid payroll tax obligations.

We recommend the Committee consider amendments to the Act to ensure that gig platforms that simply declare themselves in contracts to be “payment agents” are not automatically excluded from payroll tax obligations. Otherwise, this quite simple process has the potential to become a significant loophole to avoid payroll tax.

(f) other related matters

What are the costs of inaction?

Care platforms advertise their ability to be cheaper than “traditional” providers of support services, often referring to the “lower overheads” that they face. These lower overheads often stem almost entirely from reductions in costs related to employment and the guaranteed conditions of employees. This includes costs and benefits such as superannuation payments, penalty rates, workers compensation and return to work costs, the costs of ensuring employees’ workplace conditions such as work health and safety protections — and, of course, the cost of payroll tax.

The negative consequences of the unequal application of payroll tax liabilities are felt keenly by employers, workers, and the state of NSW as a whole:

1. For employers, the non-application of payroll tax to gig platforms in NSW gives those platforms an advantage over employers of 5.45% of wages costs — and in the care sector the vast majority of costs are simply labour-related costs, so this advantage is significant. This undermines the competitive playing field in the care sector, which is a highly regulated and price-limited government-funded market run on tight margins, further adding to the pressure on employers in competition with gig platforms. A level competitive market, in which providers face a similar cost base, will help employers maintain viability and ensure this critical market competes on the more valuable proposition of service quality, rather than on finding novel ways to offer the lowest price.
2. For workers, the impact is that the non-application of payroll tax for contractors simply incentivises more contracting. If more and more care sector jobs that were previously carried out by employees become available only to contractors, then the entitlements, rights and working conditions of employment will be lost for those workers. Cut-price contracting undermines employment. It’s a matter for the state as to what kind of workforce it wishes to incentivise, but if this “low overhead” gig platform operating model is to be sanctioned, we submit there is a strong risk of employers turning to this model as a way of avoiding payroll tax obligations (and other costs) and increasing their price competitiveness, or simply increasing profits. Given platforms are based on technology, they are essentially able to be replicated or purchased, so there are few barriers to the proliferation of these arrangements.
3. For NSW, payroll tax is the single largest taxation revenue source. All citizens are in some way impacted by lost or unpaid payroll tax revenue, as public

infrastructure and services will need to be funded through other means — or fewer projects and services will be funded at all, to the detriment of all. This is an example of 'socialising losses while privatising profits', an activity that states should seek to stamp out. For NSW, these yearly losses could stretch into the hundreds of millions of dollars.

For example, by extrapolating Hireup's own experience of average payroll tax costs (per worker) to the conservative gig workforce figure in NSW of 80,000 people, we estimate the annual revenue loss to NSW could total at least **\$136 million**. While this is an imperfect and simplistic calculation with many variables, it is instructive to the scale of the potential losses experienced by the state through the gig economy, due to outdated laws that are no longer fit for purpose.

For these reasons, we believe the Committee must make recommendations for legislative amendments to clarify and strengthen the NSW payroll tax regime to ensure care sector gig platforms pay their fair share.

Recommendations

1. Review the evidence and make a Committee finding that the substance of the relationship between care sector contractor platforms and support workers should be considered to be employment (for the purposes of payroll tax).
2. Amend the Act to clarify and strengthen the contractor provisions to ensure that care sector platform contracting arrangements are liable for the payment of payroll tax.
3. Amend the Act to ensure that labour hire-style arrangements through care sector contractor platforms are captured by the employment agent provisions of the Act.
4. If the Committee does not recommend legislative amendments that would ensure payroll tax is levied on care sector contractor platforms, then the Committee should recommend that the Chief Commissioner of State Revenue reviews care sector contractor platforms specifically, in order to make a revenue ruling targeted to platforms in the sector.
5. Amend the Act to ensure that gig platforms that declare themselves in contracts to be payment or collection agents are not automatically excluded from payroll tax obligations.

Appendix A: Support worker interactions with online platforms when delivering care services

With platform intervention in almost every step of the process of a person's journey as a platform support worker, there appears to be a clear employee-like relationship between the worker and the contracting platform. When the only element that does not involve the platform is the work itself (at which point, in the care sector, the client exerts control and direction over how the work is carried out; not the worker), it mirrors what happens in traditional employment arrangements.

Below is a general example of a contractor worker's interactions with an aged care or disability support work contracting platform:

1. A worker **applies to the platform's website** to be a support worker by submitting personal details, identity documents, relevant checks (police and other screening checks if required), any training qualifications if required, and referees.
2. The platform conducts **extensive verification** — identical to the process followed by all responsible employers.
3. If verified by the platform, it may **contact the worker directly** and **contact the worker's referees**. (However, even though they carry it out, most platforms do not accept full legal responsibility in their Terms of Use for this 'verification'.)
4. The worker formally agrees to the **platform's terms of use**.
5. The worker is **approved by the platform** to begin to work using the platform.
6. The worker **uploads a profile to the platform's** website to advertise their support services and appear in searches conducted by prospective clients.
7. The worker receives a **message (communication) through the platform's software** from a prospective client regarding potential to be engaged for support work, or sends a message to a prospective client who has posted their needs on the platform.
8. The client and worker then communicate through the **platform's messaging software** about support requirements, compatibility, and availability.
9. (A worker and client may also agree to meet in person to decide their personal compatibility before booking a shift.)

10. Through the platform, the worker and client **book a support shift** for a specific time and date (and, if the platform allows the rate to be negotiable, an hourly pay rate is agreed).

Note: Platforms argue they do not control or direct activities on the shift, nor do they allocate tasks. That is because, in the vast majority of cases, the individual client does. Platforms rely on this convenient fact to claim these relationships are not delivering services, where in fact, they are identical to any 'traditional' home care employer that allocates staff but allows tasks, activities and duties to be agreed on by the individuals.

11. The support shift is undertaken, and during the shift the platform also **provides insurances** such as personal accident and public indemnity.
12. The worker and client **confirm the shift** through the platform that the shift has been finalised (with any additional agreed costs such as vehicle use) — and **inform the platform** if any incidents have taken place.
13. The platform **invoices** the client for the agreed shift cost based on the hours worked and the worker's pay rate, plus the platform's fees. Often the platform itself will pursue the invoice if it is unpaid.
14. The client **pays** the platform.
15. The platform **deducts its fees** — often this can be in two parts: (1) from the client's payment, and (2) from the wages of the worker.
16. Finally, the platform **pays the worker** their resulting **gross wage**.
17. If an incident occurs on shift, the platform may have an incident reporting system for either party to contact (however, platforms generally do not accept responsibility to remedy any incidents, which can be profoundly confusing for users).

This is not the end of the platform's involvement. Steps 10-17 are repeated for each and every support shift, which tend to last months or years.

Beyond the above, platforms offer or provide a range of services that are usually the responsibility of an employer. This includes:

18. **Training**, often via online modules.
19. **Complaints investigation and handling** — this extends to control over whether the worker will be permitted to remain on the platform, or banned.

20. **Ratings and reviews** of workers is becoming an increasingly common form of algorithmic control over how prominent a workers profile might be. This can disincentivise raising genuine workplace problems.
21. **Engagement with sector regulators** on behalf of the 'community' of contractors.
22. Much like (21), platforms may engage in government **advocacy** to seek changes on behalf of their workers and clients.

Appendix B: Examples of control by care sector contracting platforms and dependence of support workers on the platforms

Factor	Type	Description
Basis of payment	Control	<p>Where work is paid by the hour for a worker's labour, and not paid to a worker for an agreed outcome or result, it is more likely to be a relationship of employment, in which the worker is directed in the general or specific nature of their work.</p> <p>In care work, the 'director' of the work may be a support worker's employer as a disability service provider, or platform, or it may be a care recipient who is the client. In both cases, the support worker is not engaged to complete a task to achieve a specific outcome; they are paid for the time of their labour as they support a person with disability to conduct their life or activities as that person chooses.</p>
Invoicing and wage payments	Control & Dependence	<p>In the usual course of an independent contractor's work, the contractor would send an invoice for the completion of their job directly to the client who engaged them. However, on platforms in the care sector, the platform takes all responsibility for the monetary transactions of the client and the worker — in the same way that an employer would. The platform directly sends invoices to the clients, collects their payment, and then distributes the agreed amount to the worker as their wages (after first taking a fee for the platform).</p> <p>This demonstrates both control by the platform, with its role at the critical juncture of a worker being paid for their labour, as well as dependency of the worker on the platform for their income to be received.</p>
Hourly pay rate intervention	Control	<p>Where a platform sets the hourly wage rate, or sets a minimum hourly wage rate, the platform overrides the independence of the worker to set their desired payment rate. Furthermore, if there is a need to 'protect a worker from</p>

		charging below minimum wage' — which the care platforms do — then that indicates a power dynamic in which such workers are clearly not truly empowered independent contractors in a marketplace; instead they are much more like employees, with low leverage and power.
Insurance arranged & provided	Control & Dependence	Where a platform arranges the insurances that a worker is covered by, without any direct involvement or choice of the worker, the platform is acting with a level of control similar to that of an employer; while the worker is dependent on the platform for critical insurance coverage. Support worker platforms routinely cover their workers with the platform's chosen public liability, professional indemnity, and a low level of personal accident insurance. The platform has complete control over the insurance cover provided and the worker does not directly pay for their own insurances.
Communication tools	Control & Dependence	<p>Where the platform controls the means of communication between workers and clients (i.e. messaging software conducted through the platform), the worker is entirely dependent on this mediated communications tool in order to contact clients and gain or arrange work. The worker is dependent on the platform for the first and subsequent points of contact with a prospective client, indicating an employee-like relationship.</p> <p>Further, use of the platform's messaging system may provide for a level of control by the platform, as the platform can access and review messages and intervene or survey parties using the service at any time, much like an employer might have an agreed power to control and view the contents of technology provided by the employer to employees.</p>
Booking arrangements	Control & Dependence	Similar to communication tools, the entirety of the process of a client booking a worker (and a worker accepting a booking) is mediated through the host platform. The platform controls the manner of the arrangements, and the client directs the time and location of the work. The person with the least control in this situation is the worker, indicating an employee-like relationship.
Restrictive platform usage terms and conditions	Control	<p>Examples include:</p> <ul style="list-style-type: none"> • Non-negotiable contract terms between workers and clients — these direct contracts between workers and clients are not as independent as platforms make them out to be, with many mandatory clauses stipulated by the platform. • Restraint of trade clauses — for example, prohibiting contractors from working with clients outside the platform if their original contact was through the platform, or fining contractors for doing so.

		<ul style="list-style-type: none"> • Reputational damage clauses — where contractors must agree to represent the platform in a non-damaging manner, the contractor is given responsibility for the platform's reputation even though the contractor is supposedly an 'independent small business'. • Prohibition of sub-contracting — independent contractors should, in theory, be empowered to subcontract their work if they so choose. • Compliance with platform policies in relation to the work (beyond applicable government regulations). • Questionable grounds for suspending/deactivating an account (aside from matters such as breaking a law or a high-risk safety/health breach) — platforms may exert significant control by unilaterally suspending a contractor's access to the platform for any reason and with no recourse.
Treatment of records	Dependence	Platforms generally have ownership of and rights over a worker's work data, including work history, invoicing and payment history. A true independent contractor would have ownership and personal possession of their own work records.
Search result algorithms	Control	Platforms can use algorithms to control the order in which workers appear in search results. Algorithms will weight things such as training, experience, responsiveness to messages, ratings of previous work and other 'achievements'. Algorithms may put to the top of search results workers that have performed well, receive good reviews or have completed additional training. In this way platform algorithms are fulfilling the role of a human resources team, identifying high performing and well regarded employees and promoting them.