

**REPORT ON PROCEEDINGS BEFORE**

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

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

**CORRECTED**

**At Macquarie Room, Parliament House, Sydney on Monday, 9 November 2020**

**The Committee met at 9:00 am**

**PRESENT**

The Hon. Daniel Mookhey (Chair)

The Hon. Mark Banasiak (Deputy Chair)

The Hon. Greg Donnelly

The Hon. Wes Fang

The Hon. Courtney Houssos

The Hon. Natasha Maclaren-Jones

The Hon. Shayne Mallard

The Hon. Mark Pearson

The Hon. Adam Searle

Mr David Shoebridge



**The CHAIR:** Welcome to the first hearing of the Select Committee on the impact of technological and other change on the future of work and workers in New South Wales. I acknowledge the Gadigal people, who are the traditional custodians of this land. I also pay respect to the Elders past, present and emerging of the Eora nation and extend that respect to other Aboriginal people present. Today is the first of several hearings we plan to hold for this inquiry. We will hear from a panel of delivery and rideshare drivers as well as from Ms Lihong Wei, the widow of Mr Xiaojun Chen, a food delivery worker who was fatally hit while working. Other witnesses include representatives of Unions NSW, Ola Australia, Business NSW and the Department of Premier and Cabinet.

Before we commence, I make some brief comments about the procedures for today's hearing. Today's hearing is open to the public and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. Parliament House is now open to the public. All visitors, including witnesses, are reminded that they must have their temperature checked and register their attendance in the building via the Service NSW app. Please see the secretariat if you need any assistance with this and please remember to maintain appropriate physical distancing at all times. In accordance with the broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I would also remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of the evidence at the hearing.

I urge witnesses to be careful about the comments they make to the media or others after they complete their evidence as such comments would not be protected by parliamentary privilege if another person decided to take action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat. All witnesses have a right to procedural fairness, according to the procedural fairness resolution adopted by the House in 2018. There may be some questions that a witness could only ask if they had more time or with certain documents to hand. In those circumstances, witnesses are advised that they can take a question on notice and provide an answer within 21 days. I remind everyone here today that the Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. I therefore request that witnesses focus on the issues raised by the inquiry's terms of reference and avoid naming individuals unnecessarily. Finally, could everyone turn their mobile phones to silent for the duration of the hearing. I now welcome our first witnesses.

**STEVE KHOUW**, Food Delivery Worker, sworn and examined

**DIEGO FRANCO**, Food Delivery Worker, affirmed and examined

**ESTEBAN SALAZAR**, Food Delivery Worker, sworn and examined

**MALCOLM MACKENZIE**, Rideshare Driver, affirmed and examined

**The CHAIR:** Would each of the witnesses like to make a short opening statement ?

**Mr MACKENZIE:** Okay. My name is Malcolm Mackenzie. I live in the southern suburbs of Sydney. I have a work history in the IT industry. I have driven 3½ years for the ridesharing companies. I am co-secretary of the Rideshare Driver Network, a not-for-profit incorporated association. We provide support and advocacy for rideshare drivers. We connect with our drivers through social media. I would like to highlight some discussion points that I hope to cover today. These include drivers at risk, termination from the platform, physical and verbal attacks, and bullying from the rideshare company. There is no identifiable, fair way for drivers to address unfair treatment. They become unhappy and disillusioned. In the case of a termination, it is soul destroying and they give up. Rideshare drivers are low paid workers. They struggle to pay bills and do not pay themselves superannuation, workers insurance and do not provide for leave. Rideshare company contracts are unfair. Flexibility is a myth. I believe drivers are controlled and that this leads to less competition. I would like to discuss the implications of a document that I have given to one of the officers here. I would like to table that document.

**The CHAIR:** Sure. We will circulate it.

**Mr MACKENZIE:** Thank you.

**The CHAIR:** Mr Salazar, would you like to make an opening statement?

**Mr SALAZAR:** Of course. I arrived in Australia in March. I have worked for Uber Eats since April. On 20 September 2020 at 9.00 a.m., I was doing a delivery run around Surry Hills. It was raining heavily, which caused me to slip on the tracks of an oncoming light rail tram. The tram collided with the right side of my body. Since the accident, I have been experiencing pain in my back and my knees. Uber Eats covered me for the time of work of 30 days through their insurer, Chubb. Since then I have been without any income. I also have to attend some medical expenses on my own. I hope delivery riders like me, who experience a very high risk on the roads, can have suitable and adequate insurance.

**Mr FRANCO:** My name is Diego Franco. I have been working in the food delivery industry for about four years now. In April this year and in the middle of the biggest pandemic and health crisis in the world, I was sacked by one of the biggest companies in the sector, Deliveroo. They sacked me without any consideration for all the three years that I have been providing good service without any complaints at all. I do think that this is happening not just with me. That happened with just one email and I was sacked. They did not have any consideration. What I strongly believe is that something must be done to stop those companies from doing something like that with me and with others, because in this field we have no protection, superannuation or minimum wage. They can do that in a blink and we have no income to provide to our families. I strongly believe that something must be done to stop those companies.

**Mr KHOUW:** Good morning. I am actually an engineer. I am almost 61 years old, but by night and most weekends I am a food delivery rider on bicycle. I started riding about three years ago for the likes of Uber Eats, Deliveroo and DoorDash. I did it because of my emphasis on health and wellbeing. Fitness is everything to me. But also at the time I was thinking of studying a doctorate in my research in the gig economy. Nothing beats method acting or being immersed in the actual economy and getting down into ground zero. On the surface the gig economy is a wonderful thing. You get a lot of flexibility, variety of work, exposure to entrepreneurship, supplemental income, et cetera. But let me tell you that there is a behind-the-scenes human interest story there. What I find and see, if you look at the demography, is significantly mainly 20-something-year-old people who are desperate for full-time employment so they have no choice, or students. A significant number of these people are overseas students trying to survive for their daily living and to send money back to their family abroad.

Just to let you know, last month—only just last month—Dede Fredy, a rider for Uber Eats from Indonesia, and Xiaojun Chen, a rider for Hungry Panda, they died in a road accident separately. Dede left a wife with a small son and Xiaojun has a wife and two kids back in China—I think an eight-year-old and a 15-year-old. The gig economy may be good stuff, but there is a human interest behind it, as you can understand. There is a community in the restaurant fast food businesses and the local community, and there is a national consequence

if this inquiry goes anywhere. Also, the last thing I want to let you know is that it is a rising trend in women in their thirties and forties seeking flexible work and they are entering the food delivery riding sector.

I can only speak to you about my experience in food delivery on a bicycle and I have seen worker exploitation in so many subtleties. I have seen unilateral extortions by companies in determining the way in which we work, especially relating to fair income to give workers, and I have seen lip services when it comes to health and safety. This is where I want to focus on actually in this inquiry, if you allow me, because together with other concerned workers, we have started negotiating first with Deliveroo to set up health and safety workgroups across Sydney according to New South Wales work, health and safety legislation and we wanted to try to elect health and safety representatives. That was exactly 12 months ago—that long. A frustrating experience it was at Deliveroo; a frustrating process. Today we are not done still. I can tell you more if you are willing to ask me a question on this. I am happy to share. Thank you.

**The CHAIR:** Thank you Mr Khouw. I am going to open to questions now. We have resolved that we will keep the questions free flowing between all members and we will keep some order as to how we ask those questions. I might start with the first question to you, Mr Salazar. You found yourself injured when you were hit by a tram did you say in your opening statement?

**Mr SALAZAR:** Yes.

**The CHAIR:** That took place earlier this year?

**Mr SALAZAR:** Excuse me?

**The CHAIR:** That took place earlier this year?

**Mr SALAZAR:** Yeah, I arrived in Australia in March and I have been working for Uber Eats as a rider on my bike since April and the accident happened on 20 September at 9.00 a.m.

**The CHAIR:** Are you an Australian resident or citizen?

**Mr SALAZAR:** No, I am Columbian. I am holding a student visa currently.

**The CHAIR:** Therefore, you are responsible for your own health insurance?

**Mr SALAZAR:** Yes.

**The CHAIR:** You do not have access to public health insurance in Australia?

**Mr SALAZAR:** No, I have international health care insurance for international students with Bupa.

**The CHAIR:** You said that you had access to 30 days of income support under Uber Eats' insurance policy.

**Mr SALAZAR:** Yeah. Uber Eats have insurance with Chubb and they cover you for 30 days for the days that you are off work, but they do not cover you for any expenses related with medical treatment and also with the accident itself. If something material gets damaged, they will not respond for that debt.

**The CHAIR:** How have you been paying for your medical bills?

**Mr SALAZAR:** Some of them I have luckily been covered by my health care insurance as an international student but some of them I have to assume, like attend to them on my own, unfortunately.

**The CHAIR:** How much has that been for you?

**Mr SALAZAR:** Around \$300 to \$400.

**The CHAIR:** And you have no other income support right now?

**Mr SALAZAR:** No, unfortunately, no.

**The CHAIR:** So how are you supporting yourself?

**Mr SALAZAR:** I am just saving money and surviving with that.

**The CHAIR:** Are you getting any assistance from Uber Eats about returning to work or suitable duties or anything similar?

**Mr SALAZAR:** No. I did send them a couple of emails asking for this and they replied to me but they replied with different information than I was asking for. I even emphasise it again, through emails, what I was asking for and they just evade my questions.

**Mr DAVID SHOEBRIDGE:** Thank you all for your evidence and thank you for the work you do to keep this society running. I think it is important to acknowledge at the outset the critical work that you do. Mr Salazar, have you gone to see a lawyer about whether or not you have any rights?

**Mr SALAZAR:** No, not yet. I am planning to do in the near future.

**Mr DAVID SHOEBRIDGE:** Has Uber Eats reached out to you and offered you any additional assistance?

**Mr SALAZAR:** No sir, just they have mentioned that I should just contact the insurance. That is all the contact I have had.

**Mr DAVID SHOEBRIDGE:** After that, after sending you to the insurance company—

**Mr SALAZAR:** I sent them some emails asking for more support, considering that the support I was receiving by Chubb was over and they just replied with different things that I did not ask for, like sending me to Chubb again.

**Mr DAVID SHOEBRIDGE:** Mr Salazar, if, after this hearing, you could find those emails and provide them to the Committee, the staff here will help.

**Mr SALAZAR:** Yes, I can do that.

**Mr DAVID SHOEBRIDGE:** Have you spoken with anyone from Uber Eats? Have they had someone call you up and ask how you are going?

**Mr SALAZAR:** No. Just in the very early times of my process, when I was doing the claim to Chubb, I received a call from a person from Uber Eats that was recording all the evidence related with my accident and since then I have not received any call from them just to check how I am doing.

**Mr DAVID SHOEBRIDGE:** They have not had welfare reach out to you, they have not asked you how you are going, just to explore your evidence for insurance purposes.

**Mr SALAZAR:** No, sir.

**Mr DAVID SHOEBRIDGE:** Mr Franco, you spoke about the summary termination.

**Mr FRANCO:** Yes.

**Mr DAVID SHOEBRIDGE:** Was there any sense of you had a right to contest it or test why it was happening to you? What happened?

**Mr FRANCO:** Sorry, I could not hear the last sentence.

**Mr DAVID SHOEBRIDGE:** When you were basically terminated, did they offer you the opportunity to put your case forward, to put some evidence to them? What happened?

**Mr FRANCO:** Actually I have tried. I sent back some emails to the manager at the time but she just said, "We advised you about the issue that was happening", which in the case was they allegedly say that I was taking too long to reach the customers, but it did not happen. I did not receive those emails. That was the main issue about the whole thing.

**Mr DAVID SHOEBRIDGE:** How long had you been working for them?

**Mr FRANCO:** Almost three years.

**Mr DAVID SHOEBRIDGE:** How long from the time they first told you that there was a problem to when they terminated you?

**Mr FRANCO:** Seven days; they gave me seven days and then just terminated my access to the app.

**Mr DAVID SHOEBRIDGE:** What happened to you economically then?

**Mr FRANCO:** Well Deliveroo was my main source of income, pretty much since I have arrived here in Australia in December 2016. So that affects me a lot, myself and my family because at this time we have a small baby. Mainly my wife has to take care of the baby and I am pretty much the only provider for the family.

**Mr DAVID SHOEBRIDGE:** My last question before I hand it over is to you Mr Mackenzie. You have heard Mr Salazar say that he gets injured and he is dropped like a gun. You have heard Mr Franco say that there are seven days and then a three-year relationship is terminated with no procedural fairness. Is this a common story?

**Mr MACKENZIE:** Yes, it is and it is reflected in the stories of rideshare drivers. I do have an account and the material I have handed over to you refers to a termination of someone who I have befriended since his altercation with a rideshare company. It is relating to a fellow who I will just refer to as "Rodney". First of all, he is a very happy, larger than life character who loves rideshare driving. "Malcolm, I love my job; I love my job." This is after we have tried everything. I met with him about a month ago and he is morose and so unhappy. I do not think he could work for that rideshare company again.

What I will do, I will refer to Rodney's story. Rodney had to pick up a passenger. It seemed to go okay. There was some disagreement over something not particularly important, but at the end of the trip the rider made a report about Rodney's apparent drunkenness. Rodney is a man who does not drink ever. He does not take drugs. I have seen a dozen testimonies or letters of support to Rodney stating that he does not drink. They have never seen him drink. Rodney is a children's entertainer. He is a Father Christmas, an easter bunny, larger than life; a really happy-go-lucky guy. So this accusation was absolutely toxic to him. He just could not believe it had happened, the accusation being made.

He was given an opportunity to respond. I would have given you more material, Rodney's response, but he basically said he just cannot believe that this has been said. "I don't drink; I've told you I don't drink." There were no further opportunities to give information. The half dozen letters of support of Rodney's character were not received by Uber, they would not allow them to be submitted. The final word from Uber is there:

Thank you for your patience and cooperation over the past few days. We have looked into the matter further and as a result of our review, we will be ending our partnership with you effective as of this email. It was not a swift decision, as we value each and every driver who chooses to partner with Uber. As we have mentioned previously, we have received a report from one of your riders that you may have been under the influence of an illicit substance, alcohol while on a trip.

The initial report of course was as to his drunkenness through the consumption of alcohol and then that altered to perhaps being under the influence of an illicit substance. The end result, as you can see, is that he has been terminated. There is a very favourable letter of support from a friend of Rodney's, a family friend of over 30 years attesting to never seeing him consume alcohol and to be a man of great merit and prepared to support the community when it was needed. I am really upset that he has been affected in this way.

**Mr DAVID SHOEBRIDGE:** And this is the new end; your account is deactivated. You are not even sacked as such; the app is turned off.

**Mr MACKENZIE:** That is right, you are blocked access. In fact, there are very specific instructions about how that termination is fulfilled because you are directed to delete the app from your phone and not to contact them.

**The Hon. MARK BANASIAK:** A few questions for you, Mr Mackenzie. You spoke about physical and verbal attacks in your opening statement. Is that relating to attacks from customers or the companies?

**Mr MACKENZIE:** Physical attacks are from customers, riders under the influence of alcohol typically, less clearly under the influence of drugs, perhaps mental conditions in combination with those. We have to deal with people under all of these influences. A lot of the drivers have difficulties with language, may not be able to express themselves well in defence of their situation. In the event of an attack, if a rider gets in early enough, it may be possible for a rider under the influence acting aggressively to initiate a termination of a driver and the driver has very little comeback unless he has some other means of recording what has happened.

**The Hon. MARK BANASIAK:** Rideshare drivers do not have to have cameras. If they had cameras, would that assist in not necessarily fixing the whole problem but acting as a deterrent? Taxidriviers have to have cameras, so should that also be a requirement for rideshare drivers?

**Mr MACKENZIE:** Absolutely. It is funny you should mention that because I have a friend who has a broken camera. Just to assert that the camera was operating was enough to help manage a rider's behaviour.

**The Hon. MARK BANASIAK:** Will you talk us through the last page in the document that you have given us—it is a work allocation algorithm. Some things are highlighted or underlined in red, "work performance", "fraud probability score" and "cancellation history". I assume this is how work is allocated to you or is this some sort of rating score of you as a driver?

**Mr MACKENZIE:** This is a document that was tabled at another inquiry in the United Kingdom. It has been passed to me by another activist. I bring it here because the rideshare companies assert that jobs are dispatched on the basis of proximity—that the closest driver is getting the jobs. But as you can see here, there are many other factors that are being brought into that dispatching decision. There are some references there that are particularly disturbing in relation to fraud probability score, for instance, work performance. How are these things calculated? What are the sources of information? How can a driver have these values rectified? How is it possible

for them to know that they have these slurs upon their character and have their ability to work and have jobs dispatched to them affected? Someone perhaps who has taken an investment decision in a \$30,000 motor car might have a reasonable expectation that they would have an even chance of having jobs dispatched to them. I am wondering if that fraud probability score is also driven by perhaps credit scores from other agencies. I just do not know. But there it is in that document.

**The Hon. MARK BANASIAK:** We might ask Ola this afternoon. You spoke about flexibility in your opening statement and you said you do not believe there is flexibility; you think that is a bit of a myth. Can you talk us through that because some of the other witnesses have said that it does give flexibility? Where do you see that flexibility not existing?

**Mr MACKENZIE:** There is flexibility, there is literally flexibility because you choose when to work, you can choose the jobs that you get but it is conditional, highly conditional. If you want to make money you have got to work the peaks. If you do not work the peaks, you might be drawing a job an hour. If you work the off-peak period you might be drawing a job an hour. If you are working the peaks, you are getting multiple jobs per hour. You are able to make money. So you have to work those peaks. You are drawn into working for those peaks by the offer of surge pricing, quest bonuses where a series of three jobs have to be performed in a row in order to get a bonus. It sounds like there is a bit of a carrot out there, it is not really directing them, but these things motivate drivers and keep them engaged in the platform.

Also, during these periods of peak there is a five-time multiplier bonus and these multiplier bonuses drive points towards your benefit scheme. The benefit schemes give you a very key piece of information when jobs are dispatched to you. It gives you the right to see what the job is, what the job request is. You see where the rider wants to be picked up but you see where the rider wants to go to. It is conditional on you achieving these points targets. If you do not get the points targets then you are driving blind. There are also other metrics that have to meet in order to keep that right to not operate blind and to understand what is being offered to you.

These are the cancellation rate, the star rating and the acceptance rate. All of these measures have to be met. The tolerance to rejecting a job, cancelling a job, letting a job pass through is small. Even for attaining the right, to get the right to understand what is being offered to you, it is easy to lose it by failing in achieving some of these other metrics. You are being performance managed and it is also leading to giving you a benefit that should be something that you have without a condition placed on it. It is necessary to do your work. Why are these conditions placed on it? It should not be that way.

The drivers are motivated to engage and achieve these targets, achieve the required metrics so they can see what is being offered to them. I say that is not a truly flexible arrangement when they have to work like that. I could have printed something off one of the social media platforms. A driver who must have—

**Mr DAVID SHOEBRIDGE:** Mr Mackenzie, we do have limited time.

**The Hon. NATASHA MACLAREN-JONES:** Thank you very much. Following on from your comments relating to flexibility—and this might be more for the food delivery workers—I understand that allows you to choose how long you work and what times throughout the day. If you had to work a minimum amount of hours how would that impact on the work that you would be doing. Let us say a minimum of four hours. How would that impact on your ability and the flexibility that you currently have or previously had in the work you were doing?

**Mr SALAZAR:** I think Mr Mackenzie can tell you right. We are flexible in the way that we can log into the app at any time, but if we actually want to make some money we always have to work in the peak times. We are practically forced to work in the peak times if we want to make reasonable money, otherwise we would always have to work different times, but we have to realise that we will get paid less than if we work in the peak hours.

**The Hon. NATASHA MACLAREN-JONES:** If you had to do a minimum of four-hour blocks, how would that impact?

**Mr SALAZAR:** A minimum of four hours—well, it depends on which four hours I am going to choose during the day, but I think four hours is probably not enough.

**The Hon. NATASHA MACLAREN-JONES:** Any other comments?

**Mr KHOUW:** Ms Maclaren-Jones, may I just add that it is not as simple as it seems, if you were to make provision for only four hour's work, because as Mr Mackenzie had eluded to before, there are only certain periods in the days and weekends where you can make money and that is during the peak period. Those four

hours, everyone will clamber to do those four hours and there will be an over-supply of riders. I do not think that is a good solution or a practical solution.

**The Hon. NATASHA MACLAREN-JONES:** Mr Salazar, you said in your opening remarks that you were injured in the morning. Is that correct?

**Mr SALAZAR:** Yes.

**The Hon. NATASHA MACLAREN-JONES:** And you were hit by light rail?

**Mr SALAZAR:** Light rail tram, yes.

**The Hon. NATASHA MACLAREN-JONES:** Could you clarify if you were working at that time?

**Mr SALAZAR:** Yeah, I was on a trip.

**The Hon. NATASHA MACLAREN-JONES:** You were on a trip, thank you.

**The Hon. ADAM SEARLE:** A question to each of the drivers. When you are engaged, are you guaranteed any minimum amount of payment, either per hour or per week?

**Mr SALAZAR:** No. We accept the orders that we received in the app and considering the amount of orders we accept and we can deal with, we get paid for that. So if we do not get any orders, we do not get paid anything.

**Mr FRANCO:** We work basically on production. If we do not produce, we do not get paid.

**The Hon. ADAM SEARLE:** You are not guaranteed any minimum hours of work or hours of pay?

**Mr FRANCO:** No.

**Mr MACKENZIE:** No.

**Mr SALAZAR:** If you excuse me, I would make a comment related to that. Considering the COVID pandemic, the orders that we were receiving were decreased drastically because many people see doing Uber Eats is a contingency and so the less orders you get, the less money you can make, which was very difficult for us in COVID times, just for that.

**The Hon. ADAM SEARLE:** Is that a common experience for the rest of you?

**Mr FRANCO:** Yes, basically in this pandemic crisis, there was an increase on demand, a high increase of demand because people are at home mostly and they know there should be more riders. More people have lost their jobs in other industries as waiters and people that lost their jobs are now working for delivery companies, so they have all what they want. They have a high demand of orders because customers are just at home and they have many people willing to work on these jobs because they do not have any other option. So what do they do, they make more money because of the high demand and they also pay less for us because there are too many people willing to work on these companies, so they are earning both sides.

**The Hon. ADAM SEARLE:** Did you get paid any superannuation when you got paid?

**Mr FRANCO:** Not at all.

**Mr SALAZAR:** Not at all.

**The Hon. ADAM SEARLE:** What about paid leave? Do you get paid annual leave? What about if you are sick and you cannot attend work? Do you get sick leave?

**Mr SALAZAR:** No.

**Mr FRANCO:** No.

**Mr DAVID SHOEBRIDGE:** There was shaking of heads throughout the whole of that.

**Mr KHOUW:** We are treated as independent.

**Mr MACKENZIE:** The contracts specifically exclude us from identifying as workers, employees or independent contractors. We are consumers of software services.

**The Hon. ADAM SEARLE:** Do you have a copy of that documentation you could share with us?

**Mr MACKENZIE:** I would like to know why this inquiry cannot source a document, but I would be happy to go through with it.

**The CHAIR:** It would be helpful if you are in a position to provide it.

**The Hon. ADAM SEARLE:** If you can, that would be great; if not, we will investigate it.

**The Hon. GREG DONNELLY:** We can de-identify it if you want, the name of the individual.

**Mr MACKENZIE:** Okay.

**The Hon. MARK PEARSON:** Could I ask a question in relation to one of the answers here?

**The CHAIR:** Yes.

**The Hon. MARK PEARSON:** During the COVID crisis you said that they started to reduce the payment, the fee, the hourly rate, or whatever it is, or how much you would be paid for the job. Was that discussed with you, that there is now going to be a reduction? How did you find out, or just suddenly did you not get paid the same amount of money?

**Mr FRANCO:** Because in each order, we would know based on the distance of the order, how much money we are making on that specific distance. When they were paying, let us say, 10 bucks for a trip for two kilometres, they were paying now eight or even or less than that.

**The Hon. MARK PEARSON:** But there was no discussion about this?

**Mr FRANCO:** Not at all.

**Mr KHOUW:** Mr Pearson, may I also add, the way how it works, how we are contracted to deliver food, it is really based on the app. That is how the company controls the workers. The app is on everything. If you do not have access to it you cannot work. That is one way of how to stop workers. They do not literally like if we make too much noise. The thing with the app is that you have got to understand that it is unilateral. They can change the rate of how much we earn for delivery any time they want. They can change the contract any time they want; we have no say.

**The Hon. MARK PEARSON:** When you started work with this company, and this question is for all of you, did you ever see that written in a contract, "From time to time we will adjust your rate"?

**Mr KHOUW:** The earlier contract three years ago does not have that provision, that they can unilaterally adjust the contract, but as time goes by I guess they have become quite smart and they put them in. We have no choice; we have to either accept it or get taken off the app—no choice. That's how it works.

**The Hon. ADAM SEARLE:** I think we heard that when you were injured you did not get any workers compensation payments. Was that right? Will you talk us through that?

**Mr SALAZAR:** I received some financial relief from Uber Eats health insurance just for the days that I was off work, which is a maximum of 30 days. I had to prove that I was actually on trip and working; otherwise they would not give me any money. If I was sick for other circumstances then I would not be able to apply for that benefit. I had to suffer the injury when I was on trip.

**Mr MACKENZIE:** That insurance contract is a personal accidental injury contract. It is not a workers compensation contract.

**The Hon. ADAM SEARLE:** No, so does it cover the medicals and the rehabilitation?

**Mr SALAZAR:** Exactly, that is right. It does not cover medical expenses and it does not cover any property that was damaged during the incident.

**The CHAIR:** Does it provide any death benefit to your family?

**Mr SALAZAR:** I think there is some death benefit, yes.

**Mr MACKENZIE:** Yes, there is.

**The Hon. ADAM SEARLE:** But it would not be the same as in a workers compensation scheme.

**Mr MACKENZIE:** No. I can provide the—

**The Hon. ADAM SEARLE:** If you could provide us with some further details around that, that would be very important to help us understand how rideshare workers are treated differently—and it seems less favourably—than directly employed persons. My last question is around safety while you are at work. What steps did your rideshare platform take to make sure that you were safe and that you had the right equipment while performing your work?

**Mr FRANCO:** In my experience, basically none. What they provide is just the thermal bag to grab the food.

**Mr SALAZAR:** I do not think they offer any safety equipment. All of the safety equipment has to be bought by us, and they do not actually check on us. They trust us.

**The Hon. ADAM SEARLE:** Is that your experience also?

**Mr KHOUW:** Yes. At the onset of COVID-19 they started offering rebates if we were to buy our own personal protective equipment [PPE]. It was just a one-off, but we are at the front line. I delivered to hotels where they sequestered overseas visitors. We have to apply PPE and antibacterial hand gel all the time, so we finished those in no time. We had to pay for it ourselves but they give us a rebate. It was only a one-off, so that is what I meant by lip-service.

**The Hon. SHAYNE MALLARD:** I am following up on some of the line of questioning from Mr Searle. I want to explore with the drivers your understanding of your relationship with the parent company. To do that, would you tell us how you engaged with them at the beginning? How did you get the job and what engagement with them was there? Maybe Mr Salazar could explain it.

**Mr SALAZAR:** As I mentioned before, I arrived in March. As soon as I arrived in Australia I started to present all of my documentation to get my Uber Eats account activated.

**The Hon. SHAYNE MALLARD:** So you applied online to Uber Eats.

**Mr SALAZAR:** I applied online as soon as I arrived. I needed documents such as my student card, for example, to get my account approved. They also asked me for a police check, a visa check and I had to present some ID as well.

**The Hon. SHAYNE MALLARD:** Sorry, can I just unpack this? It is important for me to understand your relationship from the beginning. Was that communication by email?

**Mr SALAZAR:** Through the app. Once you download the app, you can sign it through the app.

**The Hon. SHAYNE MALLARD:** Is the app available to anyone, or do they give you access to the app?

**Mr SALAZAR:** They give you access so that you can upload the documents. As soon as your documents are approved, they communicate with you through an email that your account has been activated.

**The Hon. SHAYNE MALLARD:** Do they explain to you the legal relationship that you have with them—that you are not an employee but a contractor?

**Mr SALAZAR:** I think there is probably some explanation, but the thing is that most of the people in the streets that deliver for Uber Eats are international students. Most of us do not have very good English skills. It is very difficult for us to know all of the policies related to our contracts. It was very difficult for me, for example, when I had the accident. I had to go to a doctor and I did not know that I was not covered by workers compensation. It was very harsh to realise that I was not covered by workers compensation like any other worker in this country. I had to do a different process and realised that I was not covered properly.

**The Hon. SHAYNE MALLARD:** That goes to the issue of the contract. I have heard from Mr Khouw that that can be varied, like our American Express cards and everything else. Obviously that condition is in the contract. Do they email you the contract or do they give you access to the contract on the app?

**Mr SALAZAR:** To be honest, I do not remember very clearly.

**Mr MACKENZIE:** You can access it through the app.

**The Hon. SHAYNE MALLARD:** But you have to sign it.

**Mr MACKENZIE:** If you access it on a mobile phone device, logging on is acceptance. It is very hard to read that contract on a mobile phone.

**Mr DAVID SHOEBRIDGE:** Did anybody go through the contract? Did any of you read it?

**The Hon. SHAYNE MALLARD:** I was about to ask that. Did you get advice?

**Mr MACKENZIE:** No, it is up to us to go through it.

**Mr KHOUW:** What was the question again?

**Mr DAVID SHOEBRIDGE:** Did any of you read through that very long, detailed contract?

**Mr KHOUW:** Yes, I did. I am an engineer so I look at the fine detail, but I do not agree with it. In fact, I wrote letters to Deliveroo and to Uber Eats saying that I do not agree with it. But they said that if I do not sign it then I cannot access the app.

**The Hon. SHAYNE MALLARD:** But it is never spelt out clearly to you that you are not an employee with the rights of employees. You are a contractor or subcontractor.

**Mr KHOUW:** No. On notice, I can give you a copy of my contract.

**The Hon. SHAYNE MALLARD:** Yes, thank you.

**Mr KHOUW:** It is a roundabout, legalistic way of calling it. They try to blur the difference between employees, workers and independent contractors. This is just for making business.

**The Hon. WES FANG:** Can I just get one point of clarification? Mr Khouw, you said that you read the contract in detail. You made notes and emailed the company about your concerns.

**Mr KHOUW:** Yes.

**The Hon. WES FANG:** Can I confirm that after that you then agreed to the contract, even though you had raised concerns and they were rejected? Is that correct?

**Mr KHOUW:** I rejected the contract but I had to agree on the app. Yes, under protest. They did not reject me.

**The Hon. WES FANG:** My point is that the questions are around whether the contract is onerous and people are rejecting it. But you have read the contract, made notes and emailed the company with your concerns. Yet even after they have effectively said that that is the contract, you then accepted it.

**Mr KHOUW:** Yes.

**The Hon. WES FANG:** So in your instance, you have actually gone through the contract and accepted it. I find that extraordinary.

**Mr KHOUW:** But I have no choice.

**Mr MACKENZIE:** If I could just respond to that point: I am quite clear that the contract specifies that we are not workers, contractors or employees and that we have a consumer relationship with the company. That is in relation to one company as I am only familiar with one contract. At the time that I engaged with the rideshare company I went through the contract quickly and thought, "I'm just going to go with this. There's a lot of people doing it and I'm going to go with it." You are quite enthusiastic at first to work for them. It is great. It is relieving a situation at home and there is money coming in. You then start looking at the contract and think, "Oh, okay. It's actually quite onerous." We are in a difficult situation. It took me 12 months to properly understand what I had signed up to.

**The Hon. GREG DONNELLY:** Thank you for coming along, gentlemen. The evidence that you are providing today is very important and significant. The fact of the matter is that there is not a whole lot of formal information on the record about these arrangements with people who are working in the delivery industry anywhere, be it rideshare or food delivery. Getting as much detailed information onto the record as possible about these arrangements—I will call them contractual arrangements for the sake of brevity—is very important. Can I say that if you are prepared to provide to the Committee examples of these contracts, and names can be removed or redacted so we do not know who they are, necessarily, on those contracts, I am sure we would most welcome those contracts so that we can examine them in some detail.

**Mr KHOUW:** Okay.

**The Hon. GREG DONNELLY:** That is just a general statement. You can liaise with the Chair and the secretariat after the hearing today. Mr Salazar, I may have misunderstood the name. After your accident to which you referred, I thought you referred to the word "Chubb".

**Mr SALAZAR:** Yes.

**The Hon. GREG DONNELLY:** That is a company?

**Mr SALAZAR:** That is an insurance company.

**The Hon. GREG DONNELLY:** For the record, that is C-H-U-B-B?

**The Hon. SHAYNE MALLARD:** It is the safe company.

**Mr SALAZAR:** They are an insurance company. They have a policy with Uber when some of the riders experience an injury at work. They will insurance you.

**The Hon. GREG DONNELLY:** So Chubb is an insurer, as you understand it.

**Mr SALAZAR:** Yes.

**The Hon. GREG DONNELLY:** Okay. That is fine. Thank you. Mr Mackenzie, can I just go to your document that you initially provided to us. Can I take you to the second-last page of the document which has in handwriting at the top "Rider Report"?

**Mr MACKENZIE:** Yes.

**The Hon. GREG DONNELLY:** Could you just explain this? That is from where? Is that related to a particular company?

**Mr MACKENZIE:** It is related to a particular company.

**The Hon. GREG DONNELLY:** Are you in a position to nominate that company, or would you prefer not to?

**Mr MACKENZIE:** It is Uber.

**The Hon. GREG DONNELLY:** Can I just ask you a couple of questions in regard to this?

**Mr MACKENZIE:** Sure.

**The Hon. GREG DONNELLY:** This has been forwarded to you as a person who has been active in this area, working with Uber drivers. Is this just an example that you presented to us today?

**Mr MACKENZIE:** Yes, it is. It is an example of the language and how a report from a customer can be relayed to a driver.

**The Hon. GREG DONNELLY:** Indeed. That is what I would like to take it. With respect to the first paragraph under the word "conversation" at the top—

**Mr MACKENZIE:** Yes.

**The Hon. GREG DONNELLY:** —it talks about "We've received". So "we", that is presumably Uber has received—

**Mr MACKENZIE:** Yes.

**The Hon. GREG DONNELLY:** —a report from one of your riders.

**Mr MACKENZIE:** Yes.

**The Hon. GREG DONNELLY:** There is no identification of that rider per se?

**Mr MACKENZIE:** That is right and it is a painful experience for a driver because the support people will engage with you and leave you guessing as to which one it might have been. It is excruciating.

**The Hon. GREG DONNELLY:** Thank you for that. It then goes on to say that they felt unsafe with your driving. That is quite a general statement, is it not, "unsafe"?

**Mr MACKENZIE:** That is right.

**The Hon. GREG DONNELLY:** It then goes on to say, in addition to the unsafe allegation, that you appeared to be sleepy or tired. This is Uber receiving some communication from an anonymous driver—

**Mr MACKENZIE:** Rider.

**The Hon. GREG DONNELLY:** Sorry, rider, rather.

**Mr MACKENZIE:** Yes.

**The Hon. GREG DONNELLY:** That there was a sense of feeling unsafe with respect to the trip.

**Mr MACKENZIE:** Yes.

**The Hon. GREG DONNELLY:** And the appearance of the driver being sleepy or tired, which can be dangerous. They are sort of editor-ising it. Then it goes on to say, "We just want to reach out", which is a very generous thing of Uber to want to do to the driver, obviously—to talk with the driver. Can I take you to the second

paragraph? Sorry, first of all, in regard to challenging those types of statements, which are effectively allegations—

**Mr MACKENZIE:** Yes.

**The Hon. GREG DONNELLY:** —that relate to, broadly speaking, work performance or performance of the service being delivered, does the nominated individual have recourse to challenge that? In other words, is there a procedure called a grievance procedure whereby they can challenge what has been put to them?

**Mr MACKENZIE:** Yes. You can make a response to this, but the feeling is that it has no effect on the outcome and the problem with this—

**The Hon. GREG DONNELLY:** Sorry, why do you say that?

**Mr MACKENZIE:** Because that they will either go tone-deaf or they will make no response, or they will make a response saying, "This is the end of the matter." You keep responding and saying, "I don't believe this is true. This is untrue. This is a false allegation." In fact, this sort of allegation is a trigger for a rider getting a refund. At times they are rewarded for making a report like this.

**The Hon. GREG DONNELLY:** Okay. Thank you for that. And finally, because my time is running out, then the next paragraph says, "Please note: If the feedback from your riders suggests that there is further violation of our community guidelines, it may lead to"—so in effect, what we are looking at here is a first and final warning that has been given to the driver—

**Mr MACKENZIE:** Yep.

**The Hon. GREG DONNELLY:** —who has no way of effectively contesting the allegation—

**Mr MACKENZIE:** Yes.

**The Hon. GREG DONNELLY:** —as I understand it. Just help me understand this: What are the community guidelines? How can we get a copy of those?

**Mr MACKENZIE:** I could provide them.

**The Hon. GREG DONNELLY:** Okay. On notice, would you be in a position to provide those guidelines if you are agreeable to do so?

**Mr MACKENZIE:** I will because I want to address these matters.

**The Hon. GREG DONNELLY:** I do not want to place pressure on you but they will be very helpful. Finally, it says in regard to community guidelines, "It may lead to the deactivation of your account", which effectively is a termination of the arrangement.

**Mr MACKENZIE:** That is right.

**The Hon. GREG DONNELLY:** So we have a first and final warning.

**Mr MACKENZIE:** Yes.

**The Hon. GREG DONNELLY:** No recourse to contest the allegation and then effectively being told that if there is a further, dare I say, report or so-called violation, it is all over, red rover. Is that right?

**Mr MACKENZIE:** That is right.

**The Hon. GREG DONNELLY:** Thank you.

**The CHAIR:** Mr Mallard, do you have one last question you wished to ask?

**The Hon. SHAYNE MALLARD:** I think it has escaped me now.

**The CHAIR:** Mr Pearson, do you want to go ahead, quickly?

**The Hon. MARK PEARSON:** Yes. Just for clarification, could you elucidate on part of your statement? You said that there was unilateral extortion. That is a fairly strong allegation. Can you give us a bit more detail about that?

**Mr KHOUW:** Yes, sure. I already alluded to it. Well, the fact is that the contracts in just about all of these companies, it is a moving goalpost. They can unilaterally change it and we have no choice. If we disagree with it, we do not have access to the app or we get suspended, or we get terminated, basically. There is no other

way if you want to stay on, and if you get terminated you have to go through the onboarding's process again. Sometimes it takes weeks and months. One guy took three months to get onboard.

**The Hon. MARK PEARSON:** I am sorry, what do you mean by "onboard"? Re-employed, re-engaged?

**Mr KHOUW:** Onboarding is starting a relationship with the company so you can start working as a worker/rider. It is an online process about which Mr Mallard was asking before. Nobody wants to get onboard again because, again, it is another unilateral thing. They have certain criteria—police records and things like that. I understand that but at the end of the day they decide whether you go on or not. It is usually based on supply and demand in the prevailing time. You may not get on and you have to wait for three months. Then you get on, maybe, you see. So nobody wants to be out of a contract. Mr Fang asked me question before about why did I accept the contract, despite my objection, but I have got no choice. To stay on, I have to do it, and not just me. For me I just want to stay within the industry so I understand it better, but some of these people—the other two witnesses here—it is their life. It is their main source of income. They have no choice. That is why I called it extortion. That is what it is. What else can you call it?

**The Hon. MARK PEARSON:** Thank you very much.

**The CHAIR:** I am just conscious that we have two minutes left. Mr Mallard has a quick question.

**The Hon. SHAYNE MALLARD:** Yes, just a quick question. We have to make recommendations out of this inquiry. Obviously, some would be looking at the nature of your contractual arrangements with these companies who employ you or subcontract you, but one of the things that I just thought of is: Would it have been more helpful if you had a plain English version of the contract—very clear, plain English?

**Mr DAVID SHOEBRIDGE:** It would be more helpful if it was not exploitative.

**The CHAIR:** The question was addressed to the witness.

**The Hon. ADAM SEARLE:** Save that for the deliberative.

**The Hon. SHAYNE MALLARD:** It is the nature of the situation so I am just asking the question. Would a plain English contract help?

**Mr KHOUW:** I will put that on notice. I will provide you the ones that I have. No issue.

**The Hon. SHAYNE MALLARD:** Does it have a plain English version?

**The CHAIR:** I want to exercise my Chair's prerogative just to get my two questions in. Firstly, and very quickly, would you like the opportunity to join a union and collectively bargain?

**The Hon. SHAYNE MALLARD:** Conflict of interest.

**Mr DAVID SHOEBRIDGE:** He did not say which union.

**Mr MACKENZIE:** Yes. I am prepared to join, yes.

**The CHAIR:** Is that a right that you think is common across your networks?

**Mr MACKENZIE:** Yes.

**The Hon. SHAYNE MALLARD:** Run it in front of the union bosses too.

**Mr MACKENZIE:** I do not believe—

**The CHAIR:** It is a brave person who heckles the Chair. Go forward. Is that the case?

**Mr MACKENZIE:** I do not think that the union can act on our behalf in the way it can for other employees, for instance, or other subcontractors. I think it is somewhat limited. I think that the Australian Competition and Consumer Commission made a recommendation to allow collective bargaining in 2021.

**The CHAIR:** Sorry, Mr Mackenzie, we are short on time. I understand that you have a view, but I want to hear from everybody else about that question. Is that something that you think is desirable?

**Mr MACKENZIE:** Yes, it is.

**The CHAIR:** Mr Salazar, would you like to collectively bargain through a union or otherwise?

**Mr SALAZAR:** I do not understand. Could you put it in different words?

**The CHAIR:** If you do not understand the question then it is probably best that we move on.

**Mr DAVID SHOEBRIDGE:** Would you like to join a union so that you are not so isolated and could join with your other drivers?

**Mr SALAZAR:** Of course, I would love to.

**The CHAIR:** Mr Franco or Mr Khouw?

**Mr FRANCO:** Yes.

**Mr KHOUW:** No, because I feel that there is a role for the union in this matter, but it is a moving goalpost. It is a disruptive economy, so the unions cannot keep up. What I would like to have is what we have done. We set up what we called the Delivery Riders Alliance—an association of us riders. After all, we are supposed to be independent contractors.

**The Hon. SHAYNE MALLARD:** It is not the answer you wanted, was it, Mr Chair?

**The CHAIR:** No, it is fine. We are happy to hear people's views. Mr Khouw, finally—and very shortly, because we are now running into the next witness witnesses' time—you made reference to an attempt to organise some work groups under the Work Health and Safety Act, and you were talking about some aspects of how that process in your eyes has been frustrated. In two minutes, can you quickly take us through that story?

**Mr KHOUW:** Absolutely. We started the process with Deliveroo in November last year, and it was a hard slog because they were not interested in getting any work groups going or in the idea of having health and safety as part of their modus operandi. Again, we were talking about the union just now, we asked the Transport Workers' Union [TWU] to help us out, because they have so much experience in this matter, and they came to the rescue. So that is their role there. There were continuous negotiations back and forth only to end up at the Fair Work Commission and the need for some kind of court order—one thing led to another, and now we have work groups but according to the way the delivery companies wanted. It is not practical, but we have no choice. That is the decision.

Right now we are trying to elect a health and safety representative in these work groups. The issue at hand is delivery companies want to take control over the election process. The legislation is very clear—it is up to the workers to decide how we conduct an election. This is where there is inconsistency, and this is what I am trying to share with you—it is a disruptive economy. You need to think ahead all the time about how to deal with this. In terms of health and safety, the delivery companies use the privacy Act as an excuse for not providing us the names and details of the workers in each of these work groups. We cannot conduct an election unless we know who is going to be in that election. But the legislation is very clear that they must provide us with reasonable resources so that we can do this. The reason why I think that they want to take control of the election is because this is how they are. They are very controlling in some ways, because they are worried about their own business profitability.

**The CHAIR:** On notice, please provide any additional detail that you would like to give. Sadly our time in this session of the hearing has come to an end. We very much appreciate your time and your evidence. You have taken a multitude of questions on notice and you have 21 days to provide the answers. We thank you for your appearance and we thank you for your time.

**(The witnesses withdrew.)**

**THOMAS COSTA**, Assistant Secretary, Unions NSW, affirmed and examined

**MARK MOREY**, Secretary, Unions NSW, affirmed and examined

**EL LEVERINGTON**, Legal/Industrial Officer, Unions NSW, affirmed and examined

**The CHAIR:** I invite any or all representatives to make an opening statement, if they so choose.

**Mr MOREY:** We welcome the opportunity to appear today before this Committee. We think that it is an important Committee. We have been particularly working on the gig economy for the last five years. Five years ago we established a baseline agreement with Airtasker around wages and conditions. Since then we have seen significant changes in the employment market. It is probably beyond the scope of this Committee, but there is what we see as a merging of the Fair Work Act with the migration Act, where we have a number of people in Australia on various visas who are subject to exploitation within the market. Their visas mean that they are unable to bring claims, or are fearful of bringing claims, against employers. That is also further complicated by the category of independent contractors. We do not see these workers as independent contractors. It is a legal fiction for these workers, because the companies that employ them direct where they go, control their pay, control their deliveries, have rules that they subject their riders to and also cover their work health and safety. For all intents and purposes, we believe that they are not independent contractors, they are actually employees, and these large gig economy companies use that grey area to exploit those workers.

One of the other things, which I think your last witnesses touched upon and which is important to note, is that the algorithms are built so that if you do not adhere to what the company wants you to do, you are relegated down the delivery priority list and penalised, and if any other complaints are made around that then workers find they are no longer employed by the companies. Overall, the majority of these workers are speaking a second language in Australia. The majority of them are students and, as we have seen over the past couple of months, there have been a number of deaths in the workplace. These deaths initially were seen as road accidents and not as workplace accidents, and that is another serious problem within the system.

For us, although I note in the report that the gig economy makes up around 8 per cent, we believe that with COVID we will see an exponential increase in the use of the gig economy and apps. We know that in aged care, for example, people who are providing NDIS services are now doing that through the gig economy in a number of areas. More recently, teachers who are casuals and have not got permanent jobs are getting up at six in the morning to log on to apps to find schools where there are vacancies due to sick leave. While I note it is 8 per cent of the economy at this point, I suspect in the coming years it will exponentially increase.

**The Hon. ADAM SEARLE:** We have had submissions that talk very eloquently about the nature of the problem, and one of those is the uncertainty around whether a given worker is actually an employee or somehow an independent contractor. We have one submission from government that says if you are an employee in the private sector then you are covered by the Fair Work Act, but if you are an independent contractor then you are covered by the Independent Contractors Act. Are the people who use these digital platforms in fact independent and work for several contractors all at once? Or do they usually find themselves working for one platform?

**Mr MOREY:** My understanding is they work for a variety of platforms at any one time. As I said in my opening statement, our concern is the term "independent contractor" is actually a legal fiction, because the companies have a level of control. I know there is a control test under the Act, for argument's sake, around all those sorts of things. But one of the conclusions that we have come to is that within the gig economy there needs to be a set of basic minimum standards around pay, conditions, and occupational health and safety. Those are the main three that we look at. Being independent contractors—superannuation is another one—they are not able to access that in that legal fiction. I know there have been suggestions that we should create other categories for these workers, but we do not think that works. We just think that is an independent contractor by a different name. What this sort of industry needs is a basic set of minimum standards for pay and conditions but which also protects the workers in their workplace.

**The Hon. ADAM SEARLE:** Do you see a clear role for the State rather than the Commonwealth in this process?

**Mr MOREY:** I know there have been discussions around chapter 6 of the Industrial Relations Act. I think this is a slightly different problem to that, and while that is a guide, I think people need to think through what sort of conditions they want for these workers. I will be quite honest and frank: I know that for many of them the flexibility is attractive to what they are doing—around their studies or whatever else they are doing—but I think it is a unique problem that needs something more than an extension of chapter 6.

**The Hon. ADAM SEARLE:** Sure. I mean, we have heard that there is no guaranteed minimum amount of work, no guaranteed minimum payments, no sick leave, no superannuation and no workers comp as we understand it. All of those basic conditions that workers have come to expect are just missing. That is not acceptable, is it?

**Mr MOREY:** No, and that is why we argue for a basic set of conditions in this industry. That was the argument we had with Airtasker when we met with them. We asked them to ensure that there was a list of awards on their site so that people were getting the minimum rates of pay, and so that people who were tendering for work knew what they were tendering for and what the rates of pay were. Ironically, I think that model has not necessarily worked for Airtasker—they have moved into another area of what they are doing—but we do need a basic set of rights and conditions for workers.

**The Hon. ADAM SEARLE:** In regard to the part of your submission that deals with workplace surveillance, the laws that we have got were designed at a time before the internet really took off. What are the key areas where you think the State or the Parliament should act in relation to workplace surveillance?

**Mr MOREY:** Significantly for us, it is not just workplace surveillance—and we have made a submission to the cybersecurity inquiry—it is also the collection of data. Surveillance is always going to be an ongoing argument between workers and employers as to whether it is there for safety or there to regulate the workforce for disciplinary measures. That is an area that needs to be looked at, but more importantly I think that it is the amount of data the Government is actually collecting on its workforce; for example, the travelling public as they swipe on with an Opal card. We think government needs to have a process in place on how it is going to manage that data, understanding who actually owns that data and who produces that data, and if that data is going to be used by government, there needs to be some recompense to the workers from whom they are collecting that data. The other thing we would say is that we believe there is a sovereignty issue around that data being kept in Australia and not on servers overseas. Many superannuation funds have a requirement that data is kept on-shore. I think that is a significant issue for government and the way in which it manages its data, particularly its employees' data.

**The Hon. ADAM SEARLE:** There is also an issue with the selling of data to third parties for commercial gain. You touched on that area of concern in your submission.

**Mr MOREY:** Particularly when government is collecting this data on its workforce and the workforce is not necessarily aware that data is actually being collected. My preference for government would be to use that data to improve policy and services and not to be on sold, and obviously if it is on sold then workers need to be advised that their data is being collected and on sold, and they should get some recompense for that as well—if that is to occur. Our starting position is that data should not be sold, it should actually be used to improve policy and services and kept within the New South Wales Government.

**The Hon. ADAM SEARLE:** The data collected through the performance of work is often used to redesign work and redesign industrial processes leading to, in many cases, higher levels of production or certainly higher profits for companies, or other economic value. Should the legal framework be adjusted so that workers have visibility of how that data is being used and also, where it does lead to increased value, that there is a way in which workers can share in that productivity gain?

**Mr MOREY:** There are two answers to that. One is: Yes, that should be something that is shared with the workers, primarily because it is their data being used, notwithstanding that they are in the role of being an employee but they need to be aware that data is being collected and there should be a mechanism for which that value capture is shared—I would argue—and that is a really key point. The second one has just slipped my mind.

**Mr COSTA:** When we have addressed this in the past—and what we did in the cyber security submission—we saw two components in terms of data collection. One is the transparency and visibility around data collection, and that is what Mr Morey has just spoken to. The second is that if data is collected for the purpose of improving efficiencies within an organisation or to be on sold, that is surplus behavioural data that is derived from an employee and that should be compensated to that employee. That can be compensated in two ways. One is that if the data is being on sold, the employee receives some of that value. The other is that if it is going into a productivity increase within the business, then that productivity increase is re-invested into the employee through some form of compensation.

Because we are heading into the automation debate, a third thing that we have suggested in our submission and elsewhere is that there has not been a debate for some time about reducing working hours even though we are seeing increasing efficiencies derived from data being collected from employees. That is something we think needs to be looked at, particularly at a time where the—I was going to say underpayment—non-payment

of overtime is becoming almost the norm in some sectors and industries. As increasing efficiencies are occurring through the collection of behavioural data which is not due to the business actually contributing any particular investment but rather deriving that from the workers, we see that there is a time for us to start talking about either compensating those workers or reducing the unpaid overtime that they are now performing.

**The Hon. ADAM SEARLE:** That is the real issue. It is about unpaid overtime, is it not?

**Mr MOREY:** The other part that I meant to touch on was in relation to the automation part of it. We are looking at and thinking through the provisions around—I think government has a role on this—transitions clauses around how you manage the workforce. As you move into automation, how are you retraining and replacing workers as automation takes control? I think that is going to be a bigger and bigger issue going forward in the next couple of years, particularly with unemployment rates definitely going to go up at this rate—from what we are hearing. There needs to be a process. As automation comes in, how do we retrain our workforce and upskill them so that they are able to take on other job opportunities in other areas?

**Mr DAVID SHOEBRIDGE:** Thank you all for coming and for your detailed submission. I will focus on workers compensation to begin with. We had Mr Salazar in the hearing earlier and he was struck by light rail while he was working. He was offered, I think, 30-days income protection under a contract with Chubb Insurance but no workers compensation. You are all out and about dealing with those kind of workers, is that a normal pattern?

**Mr COSTA:** Yes, unfortunately it is, particularly among independent contractors in the gig economy. I think something that we need to be aware of is that we might call workers "independent contractors" or "employees" and then assign them a whole series of rights based on a legal definition. The reality is that they are workers and the community standard that is out there is that workers deserve certain entitlements and conditions. When we adopted these definitions of "independent contractor", an employee had not seen the iPhone. There was no understanding of where technology was going to take us. The minimum expectation among the community was that people would get paid a minimum wage, they would have decent work health and safety protections, and workers compensation to an adequate level.

What has happened is that there are some employers or platforms—or whatever they call themselves—that now use the independent contracting definition as a way to employ people below that community standard and that leads to situations, at the very worst, where people are injured or killed without compensation because they do not provide those benefits, and at the bare minimum they just do not pay minimum wages. What we need to see is a revision of the law to keep it up to date with the community standard, and that is what we have not seen.

**Mr DAVID SHOEBRIDGE:** At the time these laws were drafted, we never conceived that your boss would be an app and your manager would be an algorithm.

**Mr COSTA:** It was impossible to do so.

**Mr DAVID SHOEBRIDGE:** And that is what we need to confront now.

**Mr MOREY:** Yes.

**Mr DAVID SHOEBRIDGE:** Would one of the obvious ways be to amend the Workers Compensation Act as a starting point and actively rope in those kinds of relationships and say if your boss is an app, if your manager is an algorithm, then you are a worker and that entity has to pay workers compensation premiums for you?

**Mr COSTA:** We agree with that and we think every single worker, regardless of the way that they are engaged, deserves equal protections in that way, yes, definitely.

**Mr MOREY:** And that is why we came to the conclusion that there needs to be a minimum set of standards for workers, no matter what job they are in, to capture that.

**The CHAIR:** You seem to be implying that your access to such entitlements should not turn on how you are classified.

**Mr MOREY:** That is correct, yes.

**The CHAIR:** So rather you are saying that if you perform work you should have access to these benefits however you were working at the time?

**Mr MOREY:** Yes.

**Mr DAVID SHOEBRIDGE:** The Workers Compensation Act, from memory, has a provision that says if you do the bulk of your work with just one entity then you can be a deemed worker, but given that many of these workers work for five or six different platforms, that is a very old-fashioned view of it, is it not?

**Mr MOREY:** It is a very old-fashioned view, and I think the other complicating view, as your last witnesses show, is that for many of these people English is a second language. Having English as your first language and getting through the workers compensation system is a major impediment, let alone having English as a second language. We have had stories where workers have been injured, they have been offered a monetary amount of money not to make a claim—get better, come back and we will look after you sort of stuff going on. So very much the Act needs to be changed to ensure that these workers have a minimum set of standards under the workers compensation Act.

**Mr DAVID SHOEBRIDGE:** My last question. I know you see challenges in using chapter 6 of the New South Wales Industrial Relations Act, but if there are potential opportunities there to extend coverage, do you think Parliament should be looking at that—getting rid of exclusions and the like?

**Mr MOREY:** I think your previous statement about this being a completely new problem is one that I think needs—we were talking about this in the car coming down. We have been to a lot of these inquiries now.

**The Hon. SHAYNE MALLARD:** It is a mere taste.

**Mr MOREY:** I think you need to think outside rather than trying to adapt things that exist, to actually confront the complexity of the problem before us, and if the New South Wales Government was going to do anything I think they need to add another chapter in that actually addresses that. It can be modelled on chapter 6, but I do not think extending chapter 6 will address the problem and it allows for too much scope not to address the problem.

**The CHAIR:** Mr Mallard?

**The Hon. SHAYNE MALLARD:** Good morning. Thank you for coming in. It is good to see you all again. I have a couple of different questions. First of all, you were talking about the independent contractor being a legal fiction. Have Unions NSW or do you know if anyone else has taken legal action to challenge that relationship?

**Mr MOREY:** The Transport Workers Union did. They started a case against Foodora, arguing that those contractors were actually employees and Foodora shut up shop and left Australia.

**The Hon. SHAYNE MALLARD:** They left the country. So it did not get resolved.

**Mr MOREY:** No.

**The Hon. SHAYNE MALLARD:** I am having a little bit of *deja vu* today. In the eighties and nineties, for my sins I worked for Fairfax and we were a competitor against News Limited for the junk mail business, which is huge—billions of dollars. All those kids and mums and dads that put the stuff in your letterboxes on the weekends and that were all on a contract as subcontractors and, tragically, some got killed crossing the road—terribly sad, horrible. So it is not new territory we are in, it is just the technology has changed; it was a fax machine and a phone call back then—I have got a little bit of silver hair there. In your union corporate memory do you know how that relationship between—because we still get junk mail in our letterboxes—that delivery person and the big corporation, Progress Press today or whatever it is, was resolved, or is it still the same?

**Mr MOREY:** I think that the issue for us here is there is an intensification of what was going on there. That was the old paper run or whatever we were doing.

**The Hon. SHAYNE MALLARD:** Yes, but it was big business.

**Mr MOREY:** It was big business, yes. But that is 30, 40 years ago and what we have got now is a much more concentrated city, more people. The app and the algorithm actually drives people. It is not like you are just walking along; you are actually driven and you are measured on the rate at which you make your deliveries and the number of deliveries you make. So there is an incentive within the app to drive you to take more risks to get the better jobs, the shorter jobs, and therefore it puts more pressure and puts people at larger risk than they would have 30-odd years ago.

I agree, it is a similar problem in that legal construct, but in an actual practical application of what is going on, it is much more intense; the risks are much greater and you are being driven by an algorithm rather than your mother telling you to get out there and get those things mailed.

**Mr COSTA:** Can I just add one point to that?

**The Hon. SHAYNE MALLARD:** I think the legal advice, yes.

**Mr COSTA:** I actually did a paper run as a kid and I remember going to pick up those papers, and when I went to pick up those papers I was the only person picking them up. Today, with the app, you have hundreds of people turning up for the same job; it is just done electronically. They turn up and the app automatically figures out how many people want this job, how low can I pay them and where can I send them? If you imagine a paper run or 100 kids turn up at the newsagent every morning and the newsagent came out and said, "What is the lowest that any of you are going to accept?"—

**The Hon. SHAYNE MALLARD:** It could not get any lower than what they were paying in those days.

**The Hon. ADAM SEARLE:** They did not have algorithms.

**The Hon. SHAYNE MALLARD:** Two cents a paper or something.

**Mr COSTA:** If you look at how much some of these roles are getting paid, it gets lower.

**Mr DAVID SHOEBRIDGE:** It is like a digital version of angry mile.

**The CHAIR:** We can all reflect on our history as paper people elsewhere.

**The Hon. GREG DONNELLY:** "Paper boys" please, Mr Chair.

**The Hon. SHAYNE MALLARD:** I would like to hear the legal advice though.

**Ms LEVERINGTON:** I just wanted to have it noted for the record that in the Foodora case they did find that they were employees at law due to the level of control that Foodora was exercising over those workers, and they then withdrew from the market owing quite a bit of money to workers and also some tax debt. The other thing that I wanted to just add on to what has been said, which I think goes to the question of dependence or otherwise of contractors, is that a lot of the gig platforms do incentivise workers to do consecutive trips or consecutive deliveries with the same platform, whether that is an increase in their percentage or maybe an additional \$5 or \$10 when you do three trips in a row.

So whilst in principle you can work between platforms, and often you will get an Uber and they have also got Ola or DiDi or Taxify running, they have the opportunity to earn a little bit more by staying online. The reality of that really, and driven by the fact that they are often not even earning minimum wage by working on a platform is that they could then perhaps reach the limits of what is allowed per day on a particular platform if there is a limit and then go to another one and there are no checks in place to, say, manage fatigue and ensure that correct breaks are being taken. It really goes to the safety issue.

**The Hon. MARK PEARSON:** Could I just ask a question? When there was legal action taken in Foodora and the clerk went out in front of the court and called Foodora, did somebody turn up? And who is Uber Eats? Who is Deliveroo? Who is Foodora?

**Ms LEVERINGTON:** They are parent companies in all different parts of the world, but we understand there are smaller corporate offices in various locations.

**The Hon. MARK PEARSON:** So there is a board or a director who can be called in Australia?

**Ms LEVERINGTON:** In Foodora I am not certain.

**Mr COSTA:** Foodora had an office in Australia. They appeared in court. Right before they left they reduced their directors down to one person and then moved the money out and left the country. Some money was paid to some of the workers of Foodora as a result of that case, but not all of their money that was owed. They are entities that can be sued in their name in this country.

**The CHAIR:** To the extent to which there is a legally incorporated entity to sue.

**Mr COSTA:** That is right.

**The CHAIR:** And to the extent to which they continue to remain solvent.

**Mr COSTA:** Yes.

**The CHAIR:** Ms Houssos, do you have any questions?

**The Hon. COURTNEY HOUSSOS:** Thank you to Mr Morey, Mr Costa and Ms Leverington for your time today and for your very comprehensive submission. I wanted to talk about a slightly different part of your submission, and something that Mr Morey and I have spoken about in the past. When we talk about flexible work, the flexible work that we talk about is very different to the flexibility that was being talked about by the rideshare

workers this morning, which is where it is mutually beneficial—there are benefits for the employer and there are benefits for the employee. We have certainly seen that happen during the pandemic this year, and your submission talks about the opportunity that this gives to regional areas if government workers were able to relocate permanently and to continue to provide the work in the way that they have over the last couple of months, but to have the economic security of knowing that that would be there going forward.

First of all, are you aware of any government department or any decisions that are giving them some certainty about the time frame? We have seen some big American companies that have said, "You guys can work remotely until the middle of 2021, and after that we're going to re-evaluate." Some have even said, "No, we're all working remotely from now on." Have you heard of any of those kinds of discussions in New South Wales or in Australia, and have you heard anything from the Government along those lines?

**Mr COSTA:** In terms of employers that are asking their workers to stay at home because of COVID, yes, it is quite common. Issues that we are concerned about in relation to that: Of course we welcome those decisions if they are made for legitimate health reasons but we are concerned where employees are being asked to work from home and incurring additional cost because of that. For example, I was talking to a member who worked in a company that has made no provision for internet—personal internet or workplace internet—so she has to use her personal wi-fi to log on for work. I know of no workplace that is providing compensation for energy use. I think a number of workers now, having worked from home all through winter, will notice that their energy bills are increasing without any additional payment from their employer.

On top of that, there are some employers that are not even providing computers or laptops at home. And then probably even more concerning is the economic risks from not having appropriate desks and chairs at home. These are not large costs for companies to pay if they choose to. In fact, many companies are probably saving money by having their employees at home. But no company that we know of has actually gone out of its way to ensure that employees are receiving compensation for that.

We are also concerned about employees who are working from home who may be in a domestic violence at-risk situation. For those people, work can often be a safe zone and being at home in that situation without a place to go away from the home and around an abusive partner can be quite a risk. There is some work being done by the Australian Services Union and a number of other unions around this, in educating employers about things that they can do to make sure that those workers have appropriate access to support and services that they need to get support.

Further to that, we are also concerned about bullying and harassment in the workplace. In many workplaces today people work in open-plan offices. That provides a certain amount of safety from bullying and harassment because there are observers to people's conduct. We have heard from members of ours who are working from home who now, because of the one-on-one nature of Zoom calls and phone calls, are having much more difficult confrontations with certain colleagues or managers who are bullies or harassers, and because there is no-one to observe that, proving that conduct becomes a lot harder too. So definitely the sort of dramatic shift to working from home has posed a lot of challenges, and we think there is a lot of work that needs to be done with employers, educating them about this and making sure that there are some practices in place to prevent those issues arising.

**Mr MOREY:** We are launching a guide on the twenty-fifth that has been done by the Australian Services Union in conjunction with the Rape & Domestic Violence Services' Karen Willis. We have asked the Attorney General to launch it. That is on the twenty-fifth. We are happy to forward that resource to you. It is a resource for unions and employers on how to ensure that people are working at home safe and not being subjected to domestic violence. Because that is one of the other things. People have gone home during this pandemic and that question has not been asked, overwhelmingly, by employers as a safety position. As Mr Costa has said, they are worried about ergonomics but they have not thought through that sort of stuff. And that is not from not wanting to. I think it is just one of those things where it is an education and assistance required to help them. So I can forward that guide through to you as well if you would like.

**The Hon. COURTNEY HOUSSOS:** That would be really helpful, thank you.

**The CHAIR:** We will go to Mr Fang or Ms Maclaren-Jones.

**The Hon. NATASHA MACLAREN-JONES:** I want to explore your comments in relation to minimum standards. You used an example of Airtasker. I want to understand more about how a platform and the app like Airtasker would differ from, in very simple terms, something like the Yellow Pages, where you would do a search for a plumber and receive a number of quotes and then choose the provider that was best for your needs.

I understand that Airtasker operates in the same way, where you get a number of quotes and you choose the ones that would best suit. How would what you are proposing operate in the real world?

**Mr MOREY:** There are two aspects to it. One, obviously we have got an agreement with them. It was not an enforceable enterprise agreement. It was more about corporate branding and the standards that they were setting. They were keen to be seen as a model employer in what they were doing. They also take a 15 per cent cut of whatever amount is paid for the job. So us saying, "We want to raise it up to have a minimum set of standards", helped their bottom line as well, so there was an incentive to actually do it. That was our start in trying to work out how you civilise this online app sort of economy.

The other thing that came out of the discussions is, I suppose, under work health and safety. We raised with them, "Your contract—what procedures have you got in place if someone is asking for a plumber to come along or an electrician to do work? How are you regulating that?" And they said, "What do you mean 'regulating that'?" We said, "Well, you actually need a licence to do this work so you're not getting someone who's a cowboy, comes in and doesn't have the skills, wires your house up and then it burns down." So, for us, there were two levels to it. There is the employment level and the employment issues and the safety issues around how you set standards. That is why we came to this idea that there has to be a minimum set of standards in relation to protecting people.

The other problem with Airtasker is they are saying that they are not an employer. So this is how they get round that employer/employee relationship. They say they are creating an online market space where they are bringing people together and those individuals are negotiating their contracts and their employment conditions. They are saying, "We have no responsibility in that marketplace to regulate it. Our responsibility is just to create the marketplace and then we take a 15 per cent clip on the way through." So the issue is—

**The Hon. NATASHA MACLAREN-JONES:** Is that not the same as what the Yellow Pages would do?

**The CHAIR:** The Yellow Pages would not take a clip per work.

**The Hon. NATASHA MACLAREN-JONES:** They do not take a cut but it is the same principle.

**Mr COSTA:** They do not take a cut.

**Mr MOREY:** But the problem is that their model is a blind-bidding market where no-one can see what other people are bidding, so you, as the person who has put the job up, can see what people are offering to pay for it, but if you are looking for the job and you are putting your price up, you cannot see what anyone else is bidding. So it is actually just driving the market down and it is an unfair advantage to the person putting the job up.

**The Hon. NATASHA MACLAREN-JONES:** But is that not the same if you have five quotes provided by five different plumbers? Each plumber would not know the quotes that the others are providing to the individual.

**Mr COSTA:** I think there is some confusion about what Airtasker is now and what Airtasker was when we started negotiating with them. So, when Airtasker was first launched, they had an online auction system in which workers could bid for work but they bid down. So, unlike the Yellow Pages where you call and get a quote from everyone, you would have a situation where you would say, "I want my IKEA chairs built," and 15 people would say, "Well, I'll do it for \$2," or "I'll do it for \$1.50," or whatever. And they would bid down and you would take the lowest bidder. Also at that time Airtasker advertised what it said were decent wages for different types of work. So, they were saying for cleaning an hourly rate of \$16 an hour seemed fair, which was clearly under the minimum wage and the minimum award rates. And that is when we started campaigning against Airtasker and they came to talk to us about how to fix this. Since then they no longer have that option system in which people bid against each other, and they advertise rates for work that can be equivalent to traditional work. They have rates that are consistent with the modern awards and award rates. Airtasker now is very different to what it was when we first started campaigning against it and got our agreement with them.

Also unlike the Yellow Pages, there was a certain different scale at the time at the Yellow Pages. And at that time we had laws that reflected the reality of our society, which was small businesses would advertise in the Yellow Pages and you would call them and they would quote. And when they quoted it would include everything like long service leave, workers compensation payments, all those sorts of things, and they would come and show you their ticket so that you would know that they are a licensed electrician and so forth. Now we have an online platform with no barrier to entry, where thousands and thousands of people can go on there and advertise and say that they do work that they are not qualified to do and for whatever price that they want and that is no longer a

fair comparison anymore. It is not the Yellow Pages anymore. It is basically a sea of workers who will do anything for anything. You need some further regulation to prevent that.

**The Hon. GREG DONNELLY:** Dwelling on some of the evidence we received earlier today, you may have heard some of it in the context of people contacting Unions NSW and talking about their experiences. The challenge that a number of people working via a platform is that they seem not to be able to deal face-to-face with the platform to respond to allegations or questions regarding their work performance. In some evidence earlier today I had an exchange with one of the witnesses looking at what was a photocopy of an exchange that a platform provider had with one of the persons involved in the work and, effectively—and this is a summary of it—there was an allegation regarding that person's performance as a driver carrying out the moving of a person from one location to another; an allegation that the work, the driving, was unsafe; and a claim that the person appeared to be sleepy or tired. Then moving on quickly after making an allegation saying, "If the feedback from your riders going into the future suggests there are further violations of our community guidelines"—whatever they are precisely—"it may lead to the deactivation of your account."

The problem is, and others have said this, that these are used in a way to manage people working on the platform. But those people working on the platform only have a capacity to email or text back responses but not deal face-to-face with these issues or allegations that go to whether or not they may be able to continue this engagement. Has any thought been given to this, or do you see any way forward in which these platforms can be required to deal with responses from aggrieved persons working on the platform, be it through some form of grievance procedure or the like? Does that tie into the points which you made about the provision of conditions, a minimum package of conditions, so there is at least the capacity to have a two-way engagement on issues?

**Mr MOREY:** I think that is one of the fundamental problems with the system. Platforms are showing you are the slave to the algorithm and you can be disciplined without being told you are being disciplined by being relegated down through the algorithm. It is very hard to prove that you are actually being disciplined or bullied or subjected to a problem because they say the algorithm allocates the work. That is what happens. One of the frustrating things is finding contact points within the companies. They are small, they are lean, they rely on the algorithm, the major focus is to on-board people, send them the app and that is it. We were talking about one that does NDIS work in South Australia where a job would come up and you had 30 seconds to get the job or it disappeared and another one came up. That is one of the real issues about how you actually have face-to-face contact. There is a real move to the flexibility of being able to do everything online and manage your work or whatever you are doing in life online, which makes it a lot easier.

But when it comes down to complex things like disciplinary measures, training of staff, doing those sorts of things it is much more complicated and much harder and particularly with workers comp as well. How do you manage those interactions? One thing would be if there is a requirement in which government can establish a process for those interactions. There is a way in which you can actually do that with individuals. That is hard if you do not have an enterprise agreement in place that binds both parties to actually doing that. That is why there is such a reliance on the independent contractor model, because they say that is not up to us, it is all up to the independent contractor. It is about pushing that risk and responsibility onto the worker and de-risking the company in relation to those areas of conflict.

**Ms LEVERINGTON:** Chapter 6 includes a tribunal mechanism for drivers and I think a system like that would be very helpful for workers in the gig economy in the event that they cannot be classified as employees, which we think would be the ideal situation.

**The Hon. WES FANG:** I just wanted to touch on one of the points that was raised, which was incentivisation. Some companies use incentivisation of their employees and it works effectively. In this instance, certainly from previous witnesses and from yourselves, you have applied a negative connotation to it. Is it not a normal practice within the workplace to incentivise and provide additional supports to workers who are providing an extra level of service or providing the company with an extra means of conducting revenue? Is that not, in effect, what the unions would push for, which is where an employee is providing an employer and extra component of service or work or the like that they are rewarded?

**Mr MOREY:** There are two scenarios: You have the normal workplace where you are incentivised to do a better job, provide a better service or whatever it is. You have a base wage or a salary and you know what that is, so your incentive is on top of that. You know you will get a certain amount in the hand every week and you can go above and beyond to be incentivised. That is a positive situation. In this situation there are hundreds and hundreds of people competing for the same job. The incentive is just to be able to earn the same amount that you earned last week. You are not guaranteed a base rate in the system. You actually have to work harder and harder to actually get there. Maybe "incentivise" is not the right term in this. It is about you having to go harder and

harder just to keep yourself up in the algorithm so that you are getting the shorter jobs or the better jobs so you are actually making more money.

Our concern with that model is that, first, there is no guarantee of basic wage or conditions; and, second, the algorithm is pushing people to take, particularly those who are riders or drivers, greater and greater risk to stay up in the algorithm and that produces an unsafe workplace where you have no basic remuneration set. If you slip up, make a mistake, you get relegated down, you get longer jobs, worse jobs and less frequent jobs and you have no guarantee of the basic wage that week. In this model the problem is any certainty around a week to week pay cheque is gone. It is on you taking more and more risks to get up the algorithm, which places people in more and more danger and the employer or the conglomerate that is using these people says we do not have any responsibility for you in the situation you are in because you are an independent contractor.

**The Hon. WES FANG:** But that is every contractor out there, every painter, every carpenter, every self-employed small business owner who takes risks and works harder and gets rewarded for the work.

**Mr MOREY:** But those people you just spoke about there have control over their own businesses and their own business decisions. The painter can say, "Yes, I'll take that job at that rate," or, "I'll take it at a lower rate here." You ebb and flow throughout it. These people do not have that choice because if you do not take the job you are allocated with, you do not go up the algorithm. You go down the algorithm, so you earn less. You have got no control over, "Yes, I want to take that job," or, "No, I don't." If you do not take that job, you are penalised, so you just have to keep taking that job. Whereas, a small business owner has the ability to say, "Yes, I'll do that. I'll shave a bit of this, provide a better service so I get a referral to another friend, and that's how I'll build up my contacts. I have more and more work because I get a good name."

These people who are doing this job are not getting a better name. They are just moving around in a mathematical equation. There is no real incentive other than achieving the minimum rate of pay each week. There is a completely different thing about control and where you sit in the workplace. Your example is right; a small business owner does have that ability to make those decisions. But they have the power to make those decisions on their own basis, in the framework they have set up for their business. These people do not. They are subjected simply to a mathematical equation. If you do not, or you want to be flexible, you lose and you go down the equation.

**Mr DAVID SHOEBRIDGE:** The so-called incentive is just not being punished.

**Mr MOREY:** Yes. The incentive is not to be punished.

**The Hon. WES FANG:** I am not advocating either way for it. I guess I am playing devil's advocate here—

**Mr MOREY:** No, no. It is a good point.

**The Hon. WES FANG:** —and exploring different avenues, because these are the arguments that have been made to me. I am just teasing them out with you because you have a lot more experience and information on the matter. The last point I would make on this issue is, do these people that work for the gig economy companies—I will describe it that way because, while we have talked about the food delivery and rideshare companies, you are right; this is starting to expand across a number of different industries, platforms and the like. Do these people not go in with eyes wide open as to what it is that they are signing up for? If you are a small business owner, you know that you are taking risks and putting your mortgage or your savings on the line. Do these people not do the same when they accept the contract that is put before them and they start working?

**Mr MOREY:** One of the things that we have certainly discovered in our dealings with this—in fact, we have set up a service called Visa Assist. We have paired with a community legal centre to assist people with their immigration issues, particularly around where they have got a workplace problem and immigration. What you are finding is that a very high percentage of these people are either new migrants or working holiday or student visa holders who are here. It is a transitional sort of job. There are not a lot of careerists in delivering food on a bike. And so, the work does in fact, when they start out, suit their flexibility or what they want to do. We are not going to argue that that is not the case, because that is the case.

The problem becomes when you have a group of people who—this is their entry level into the Australian workforce and then they are driven to ensure they keep that job. If you want another job, you have got to get a reference and all those sorts of things, and dictate that sort of stuff. So, it is exploitative on the algorithm, but it is also, we believe, exploitative on the workforce that it is actually targeting. That is why I was talking about that stuff before—our concern with the integration between the Fair Work Act and the migration Act. There are a whole lot of people here—English as a second language. This is their footstep into it. They take it on because they

need the job. They want to get a foothold in Australia. They want to have a go. The algorithm does not take that into account. It just sees them as a statistic and just flogs them.

**The CHAIR:** You are making the point that the immigration law effectively bars them from participation in other forms of work, which might have more rights.

**Mr COSTA:** Yes.

**Mr MOREY:** Yes.

**Mr COSTA:** Could I also just add something to what you were saying? It is also difficult to compare skilled tradies with unskilled migrant workers. The majority of the type of workers in these industries are unskilled and the majority of them are migrant workers. Where you have someone who is a skilled painter or a skilled electrician, they have a certain amount of bargaining and negotiating power when they are dealing with someone as an independent contractor to negotiate their conditions and terms of engagement. Whereas, an unskilled migrant who is here, particularly this year, without receiving JobSeeker or JobKeeper when they lost their jobs—desperate to work to survive, they will accept terms and conditions that are not in their best interests in order to get work.

We have met many migrants through our Visa Assist program who have signed up to ride for companies like Deliveroo and Uber Eats because that is the only work that they can get, but that is not the terms and conditions they want to work on. They just do it because they need the money. Why I say that is particularly bad this year is for obvious reasons; COVID locked down our economy. Australian citizen workers received JobSeeker and JobKeeper. Migrant workers who were stuck in this country received nothing. Whether they had other jobs in hospitality and retail or other areas, they were forced into these types of industry. We saw an actual increase in on-demand work. That meant that they had to accept conditions that are not what they would have otherwise accepted and not what the Australian community expects when we have agreed to minimum wages and conditions.

**The CHAIR:** I am conscious that we have limited time and we have many members angling the Chair for conch. Ms Leverington, did you have something you wanted to add to that?

**Ms LEVERINGTON:** I will very quickly add: I think it is really important to keep in mind that these gig workers are not small-business owners. They are people who work under a contract for service and they are not able to assign work in the way that your more traditional independent contractor is able to assign work. We have heard from a lot of workers who have been barred from a platform or even removed from a platform because they have allowed someone else to use it. It does not have that nature of contract work either, and that is a really important distinction.

**The Hon. COURTNEY HOUSSOS:** The previous witnesses actually said even if you are a good worker or doing the right thing and playing by the rules, you feel like you are constantly being performance managed. The expectation that we have is that if you do well you will be rewarded, but there is just no capacity for that. In fact, the entire system is set up to constantly put people under pressure and under tension even to try and maintain that. Would you agree?

**Mr MOREY:** That is correct. It is an algorithm that pushes people.

**The Hon. MARK PEARSON:** Just a quick question. You refer to the fact that if people are trying to keep themselves up in the algorithm or the app so that they get work, that is a risk to safety. That attracts certain risks and a risk to safety. Can you just expand on that? How?

**Ms LEVERINGTON:** You are constantly being required to work faster and to take more jobs. So, when you are being expected to get from point A to point B quicker than you did last time or quicker than someone else who has done the same journey, you are inevitably going to take more risks, particularly when you are working in all sorts of weather and different levels of traffic.

**Mr COSTA:** I can give you an example. There was a worker we spoke to recently who did not want to ride because it was raining quite heavily and he thought it would be quite dangerous to be riding a bicycle on the roads at night during the rain. He went out, started riding and was hit by a car and knocked over. His priority was to get onto the app and cancel the job because if he did not cancel that job, he could have been kicked off the app altogether. He cancelled the job, received a bad rating and then jumped back on the bike and continued riding so that he could fill that set of hours that he had committed to that day. That is the kind of conduct that people will take in order to stay on the app.

**The CHAIR:** In the remaining four minutes I am going to ask you a series of questions about the policy responses that perhaps we should be adopting. Mr Leverington, Mr Morey and Mr Costa, you said at various points that you think there should be a minimum suit of conditions that are available, regardless of whether or

not—through the form of contract relationship, employment relationship or other forms. I presume you mean a minimum entitlement to minimum pay for time worked?

**Mr MOREY:** Yes.

**Ms LEVERINGTON:** Yes.

**The CHAIR:** Leave accruals?

**Ms LEVERINGTON:** Yes.

**Mr MOREY:** Yes.

**The CHAIR:** So that would be sick, holiday and long service—standard?

**Ms LEVERINGTON:** Yes.

**Mr MOREY:** Yes.

**The CHAIR:** Equally, the right to bring a dispute?

**Ms LEVERINGTON:** Yes.

**Mr MOREY:** Yes.

**The CHAIR:** And the right to have that dispute heard by a third party?

**Mr MOREY:** Yes.

**Ms LEVERINGTON:** Yes.

**The CHAIR:** And, in addition, workers compensation or insurance protection for injuries incurred at work and time lost at work? You would agree with that?

**Mr MOREY:** Yes.

**The CHAIR:** So one of the factors which is distinguishing this form of economy from others is that workers are working simultaneously for a variety of different platforms, which is what distinguishes it from a traditional employment relationship or, in many instances, a contractual relationship. In your submission you make the point that a portable leave scheme might be the way in which you can provide those rights, regardless of who the work is being performed for. Are you calling on us to effectively implement one that allows platforms to pay into it, as opposed to having to store a worker's entitlements on their own balance sheet? Like superannuation, they would be in a position to pay over to a portable leave scheme and to, it follows, the worker, regardless of which platform they are working for. Is that basically what you are saying?

**Mr MOREY:** It is along the model of the long service leave commission model that they use in the construction industry and the cleaning industry. There is a government fund, employers pay into that fund, and then the fund is administered as people take, in this instance, long service leave but we always think it would be better if there is a broader run around leave and sick leave revisions on that.

**The CHAIR:** I presume you would favour an opportunity for people who work in these platforms to act as a collective?

**Mr MOREY:** Of course. We have been working with the Transport Workers Union around organising these employees and trying to negotiate with employers, yes.

**The CHAIR:** And to the extent to which we look at bargaining frameworks that are collective at various levels of law, there is the competition framework and then there is the employment framework. Which one do you think we should be looking at in terms of, if we were to recommend one, how we would construct it?

**Mr MOREY:** It would be in the employment framework. It goes back to our concern that the notion of the independent contractor in this environment is a legal fiction that is used to get around the employers providing a safe workplace with basic conditions.

**The CHAIR:** Finally, Mr Shoebridge was asking some questions about the adaption of workplaces and the workers compensation laws to suit, effectively, work being performed by different platforms at the same time. There is a parallel to be drawn in work health and safety laws. Currently, New South Wales work health and safety laws have this implicit assumption that a PCBU is one entity and the worker is working for only one PCBU at the same time. That is really not the case where people are working on multiple platforms on their app. Do you have

a view that we should be changing workplace health and safety so that the person controlling the business or undertaking is able to reflect a scenario in which a worker is working for multiple PCBUs at the same time?

**Mr MOREY:** There needs to be an investigation about how that would actually be done.

**The CHAIR:** In principle?

**Mr MOREY:** In principle, one of the things we are concerned about is people going from app to app to app with no regulation around fatigue and workers compensation.

**Mr DAVID SHOEBRIDGE:** There is no-one looking at the interaction of safety or other risks of different workplaces.

**Mr MOREY:** No, no-one is looking at the interaction. We would be keen to have—first step—the entities as PCBUs take responsibility for workers compensation as a starting point. The second part then is how does that interact as people move across different platforms.

**The CHAIR:** One of the objections of the big platforms is that they cannot operate like a standard PCBU because a person is working for more than one platform at the time. Therefore, they do not have full control over the workplace health and safety environment. Your view is that we should be modernising WHS laws to account for the fact that that person is capable of working for more than one PCBU at the same time?

**Mr MOREY:** They can ask in a questionnaire, "Are you working for more than one company and what hours are you working" and then manage that.

**The CHAIR:** We managed to get that questioning done in the five minutes I set aside for us. That was the speed dating part of the inquiry.

**The Hon. SHAYNE MALLARD:** All those acronyms.

**The CHAIR:** Yes. Thank you very much for your appearance.

**Mr MOREY:** Thanks to the Committee.

**(The witnesses withdrew.)**

**(Short adjournment)**

**SIMON SMITH**, Managing Director, Ola Australia and New Zealand, affirmed and examined

**ANN TAN**, Head of Business Excellence and Legal, Ola Australia and New Zealand, affirmed and examined

**The CHAIR:** I invite the witnesses to make a short opening statement if they would like.

**Mr SMITH:** Thank you, Chair and members of the Committee. My name is Simon Smith and I am the managing director of Ola Australia. I am here today with my colleague, Ms Ann Tan, Ola's chief of staff and head of legal. Ola is a technology company; we connect people. We harness technology to match consumers who need transport options with drivers who can use an asset they already own, the family car, to generate extra income. Founded in India in 2011, Ola is one of the world's largest and fastest growing rideshare companies, operating in Australia, New Zealand, the United Kingdom and India. One of the keys to our successful growth and global expansion has been our focus on drivers. We give drivers the opportunity to increase their earnings by taking lower commission rates, which allows drivers to make more per ride, meaning they get to keep more money in their pockets.

We also offer more consumer choice, including choice on prices and vehicle types, to help passengers conveniently and safely get from A to B. In Australia and New Zealand we have over one and a half million registered users, and as of July 2020 over 75,000 drivers have served well over 200 million kilometres across 36 locations. Alongside our core rideshare platform, Ola is a key global innovator in the mobility space, investing significantly in emerging transport technologies such as electric vehicles. Ola takes seriously its responsibilities to the communities in which it operates, including tax obligations, regulatory compliance and our responsibilities to the users of the platform, both drivers and riders. We are focused on providing a safe platform for all users and a high-quality experience for everyone who engages via the app. As outlined in our submission, we believe that a number of the issues the Committee seeks to address are public policy considerations for the Federal Government, including issues around employment and contracting.

A large number of our drivers are people looking to make some supplementary income to support their families in the face of the rising cost of living. The varying types of drivers, their need and desire for flexibility, and their cost pressures should also be considered in public policy discussions. I want to acknowledge the global COVID-19 pandemic, and the impact it has had on the gig economy and wider New South Wales and Australian economies. We would also like to note our sympathies for those who have suffered during this crisis, including those who have tragically lost loved ones. Working with the various governments across Australia, Ola sent out messages to our millions of drivers and riders to provide updates on COVID-19 and encouraged people to download the COVID Safe app to do our bit in helping stop the spread of this virus. We also established a driver relief fund to support drivers who needed to self-isolate or who contracted COVID-19.

In reference to this inquiry, Ola recommends that Committee notes that technology is giving people flexibility and choice, which they are looking for to help generate extra income; that the gig economy is not new and is more complex than simply rideshare and food delivery, and any public policy change should recognise the differences between subsections of the on-demand sector; that rideshare and other forms of on-demand work are generating significant economic contributions for the New South Wales economy, including giving people work options which may have otherwise not been forthcoming; and that contracting and employment laws are a matter best addressed by the Federal Government to ensure consistency across the nation, and the current laws are fit for purpose. Ola has been recognised for its collaboration with governments and communities across India to solve local transport issues in innovative and meaningful ways, and we are making purposeful strides to engage with policy makers and thought-leaders here in New South Wales and Australia. With that in mind, I thank the Committee for the opportunity to meet with you today. Ms Tan and I look forward to your questions.

**The CHAIR:** Thank you, Mr Smith, for your opening statement. Do you mind tabling that opening statement so that we can get copies to members.

**Mr SMITH:** Yes.

**Mr DAVID SHOEBRIDGE:** It is very similar to the opening paragraphs in the submission.

**The CHAIR:** Indeed, I had noticed the parallels, but some people might like to have it as well. I will kick off with some basic demographic questions that pick up on details of your submission so we can get a fact base in terms of Ola. Ola has been operating in New South Wales since when?

**Mr SMITH:** Since 2018.

**The CHAIR:** On a typical day, how many drivers are driving with Ola?

**Mr SMITH:** It would be in the thousands. I would have to take the specific details on notice. It would also be commercial in confidence, but it would be in the thousands of drivers.

**The CHAIR:** You can take it on notice. If you would like to keep some of that information confidential, the Committee can look into that later. Since Ola set up in 2018, how many different people have you had go through your platform as drivers? Are we talking 10,000 people, 20,000 people, 30,000 people who have driven for Ola?

**Mr SMITH:** We have had 75,000 drivers across Australia and New Zealand. Obviously, the majority of those—say, 80 per cent—would be in Australia. In New South Wales, maybe 40 per cent of those would be here.

**The CHAIR:** On a typical day, how many hours would a typical driver be driving for Ola, or at least logged into the app?

**Mr SMITH:** When we survey our drivers, 25 per cent of them say that they work full-time, so that would be maybe 35 hours and above. The remainder would be part-time. In terms of the average, again I would take it on notice but the average probably conceals the fact that there are very different segments of drivers. There would be the full-timers, then there would be the people who maybe work 20 hours a week, and then the people who might only work five or six hours a week, fitting it around their other commitments.

**Ms TAN:** Can I just add there is also a big difference between logging in number of hours, as opposed to actively working on the platform.

**The CHAIR:** Do you wish to explain the difference?

**Ms TAN:** By the very reason that they may be logged in but they are driving for other rideshare platforms as well.

**The CHAIR:** Maybe we should talk about drivers who are accepting trips. How many hours are typically being worked per day by an average driver who is accepting trips? A better way of putting it might be how many trips would an average driver perform per day?

**Ms TAN:** We will have to take this on notice.

**Mr SMITH:** We will take that on notice, but our drivers are free to drive on our platform and on the other competing platforms, just as they are free to have other jobs.

**The CHAIR:** Do you have any way of knowing whether they are logged into another app at the same time?

**Mr SMITH:** No. If, say, we look at a driver between 4.00 and 5.00 in the afternoon and she takes one ride on Ola, we do not know whether she has taken one or two or more rides on the competing apps in that same hour.

**The CHAIR:** Turning to the remuneration aspects, do you keep data on how much your drivers are earning on your platform?

**Mr SMITH:** Yes, all of the payments go through our platform.

**The CHAIR:** So you would know how much a typical driver would be earning on a typical trip?

**Mr SMITH:** On trips with us, yes—but, as I say, not their total earnings from rideshare because they are on the other platforms.

**The CHAIR:** Of course, and you cannot be expected to know that because you do not have anything to do with it. I accept that. But we have competing submissions saying how much a driver would earn per hour. Yes, on trip-based work it is hard because you do not know how many trips they are performing or how much time they are waiting and how you would calculate it. It can be quite complicated. But can you shed any light on how much a driver would typically earn through your platform?

**Mr SMITH:** When we have estimated it previously, our numbers look very similar to the estimates coming from the AlphaBeta survey that our rivals tabled but for the fact that we pride ourselves on taking less commission from our drivers. We take 15 per cent commission in New South Wales. Our largest rivals take up to 27.5 per cent. In effect, once the drivers have paid for their expenses, the car depreciation et cetera, that can increase their take-home by as much as 25 per cent. So that would take it from \$21 an hour for the rival up to \$26 or \$25 an hour. But I would note that assumes that they are always driving with us and not with the other guys.

**The CHAIR:** But you do accept that the baseline that AlphaBeta has set, which is \$21 an hour, is not unheard of? It is not widely wrong?

**Mr SMITH:** No, that looks within the range, after expenses.

**The CHAIR:** If I understand your evidence, you are saying you compete with other platforms for drivers by taking less commission.

**Mr SMITH:** There is a variety of ways, but that is the core of our competitive offering, yes.

**The CHAIR:** I just wanted to establish some base facts, which we will be asking all companies, to be fair.

**Mr DAVID SHOEBRIDGE:** Thank you for the submission. I found it really helpful. I will start with fatigue. You have internal policies in terms of the amount of work or length of time that someone is allowed to be available and driving to manage fatigue. Is that right?

**Mr SMITH:** Correct, yes.

**Mr DAVID SHOEBRIDGE:** But you point out that you do not know if the driver has been working for a stint in a taxi beforehand or working with a variety of other rideshare organisations, and so there is a substantial unknown in terms of managing fatigue. Is that right?

**Mr SMITH:** Correct.

**Mr DAVID SHOEBRIDGE:** Your proposal, which seems to me to have significant merit, is to have an online logbook that all drivers have to fill regardless of which platform they are working on.

**Mr SMITH:** Yes. That is based on what happens in New Zealand at the moment. It is not without its own complications but, in effect, that allows the regulator to monitor that drivers are spending an appropriate amount of time on the road.

**Mr DAVID SHOEBRIDGE:** Could you tell me how it works in New Zealand, as best as you know—or, if that is not the best model, how it should work?

**Mr SMITH:** I will simplify it. In effect, drivers are required to keep a logbook. They can keep a paper logbook, but most rideshare drivers keep an electronic logbook, essentially with a kind of monopsony provider. That logbook allows the driver, firstly, to track but also the regulator—sorry, it actually allows us to access their records and make sure that they are spending time driving that is within the legal limits for fatigue.

**Mr DAVID SHOEBRIDGE:** Would you have an issue if a regulated State system was put in place? Would you have an issue with being required to share data from your app or from your drivers onto a common logbook, provided everybody was required to do it?

**Mr SMITH:** Yes, if implemented correctly. It is important to note that it is time spent logged into the app, not time spent driving, so that does not really indicate a player's market share. That is why we would be comfortable with it.

**Mr DAVID SHOEBRIDGE:** Are you measuring time spent logged into the app because that is when someone is alert and ready?

**Mr SMITH:** That is the test, yes.

**Ms TAN:** Also, it is important to remember that it is the driver's obligation and responsibility to manage their own logbook and their own work diary. The onus, really, primarily is on them to make sure that they do it. Nobody else controls that aspect apart from the driver, who knows exactly what they are doing.

**Mr DAVID SHOEBRIDGE:** But if you are already collecting data and you know when the driver is logged on—

**Ms TAN:** For our platform, yes.

**Mr DAVID SHOEBRIDGE:** I assume that that is mirrored across other platforms.

**Mr SMITH:** Yes, all the platforms would know the hours logged on.

**Mr DAVID SHOEBRIDGE:** Therefore, the simplest way of implementing it would be requiring those platforms to put that data in relation to any one driver in a common place. Then you could all access it and there would be fatigue limits.

**Mr SMITH:** Yes. That is our recommendation, yes.

**Ms TAN:** The only problem there in terms of a weakness is the driver may be working for other types of work: McDonald's or any sort of work in that regard. So the onus, again, is on the driver to actually make sure that they follow that.

**The Hon. WES FANG:** Mr Shoebridge, do you mind if I seek a point of clarification?

**Mr DAVID SHOEBRIDGE:** For sure.

**The Hon. WES FANG:** Ms Tan, in relation to what Mr Shoebridge was asking you about the logbooks and your statement that the logbooks are the responsibility of the drivers alone, do you conduct any audits of any drivers? I know you would only have the information for Ola, but certainly you would be able to audit your drivers in relation to Ola entries in that logbook. Do you do that?

**Ms TAN:** Yes.

**The Hon. WES FANG:** You do spot checks? Have you found any non-compliance? How do you handle non-compliance?

**Ms TAN:** We actually have an automatic log-off in relation to the number of hours that we have a driver driving on the platform. For example, if a driver is driving for too long, their app is automatically logged out. In relation to audits, we also do manual checks in terms of audit.

**The Hon. WES FANG:** If you find in their manual entry logbook errors against what Ola has in your records, how do you respond to that with the driver?

**Ms TAN:** We have a series of actions in relation to monitoring, as well as enforcement. Depending on the circumstances, we might contact the driver, provide education in relation to what their obligations are or provide warning, for example, if the driver is not complying. Also looking at whether maybe ultimately we might have no choice but to terminate the driver from the platform.

**The Hon. WES FANG:** My final point on this is that if you are going through a driver's logbook and you note that you have Ola half the time and there might be another rideshare platform, do you contact the other rideshare platform and say, "This driver has been non-compliant on our side; you should do an audit on your side?" Do you share that information and share concerns, or do you just worry about your side?

**Ms TAN:** Unfortunately, due to privacy reasons, we will not be able to do that. We have provided, and I believe it is in the submission as well, a system for the regulators to maintain perhaps a central portal for a platform.

**The Hon. WES FANG:** Thank you. I do not want to take up Mr Shoebridge's time.

**Mr DAVID SHOEBRIDGE:** My understanding of how you monitor your drivers' work hours is not through them manually entering a logbook but rather you collect the data through the app about when they log on and when they drive.

**Mr SMITH:** Yes, and once they have driven for a particular period of time we actually log them off to ensure that they do not—given what we know—drive for longer than they say.

**Mr DAVID SHOEBRIDGE:** Is there then a minimum eight-hour exclusion time?

**Mr SMITH:** Yes.

**Mr DAVID SHOEBRIDGE:** Is it eight hours?

**Ms TAN:** Within the space of 24 hours there is an exclusion time of I believe 10 hours.

**Mr DAVID SHOEBRIDGE:** Is that 10 hours in one go or is it 10 hours broken up?

**Ms TAN:** Ten hours in one go, and the remaining broken up into rest breaks and so on.

**Mr DAVID SHOEBRIDGE:** Could I just ask you about another aspect, which is workers compensation insurance. It is my perspective that when people are driving people around for pay they are performing work. Do we agree that that is work?

**Mr SMITH:** It depends what you mean by "work".

**Mr DAVID SHOEBRIDGE:** If somebody is driving you from Point A to Point B and you are paying them, even if you are paying them through an app, they are performing work for you, are they not?

**Mr SMITH:** They are independent contractors. We establish a platform, if you like marketplace, between the drivers and the passengers. We are regulated as a booking service provider in New South Wales.

**Mr DAVID SHOEBRIDGE:** I do not want to try to trick you or get caught up in an argument about whether or not it is work as defined under the current Workers Compensation Act or employment or the like, I do not think that would be useful, but if all your competitors were required to provide workers compensation coverage for their drivers whilst they were driving for them and you were also required to provide workers compensation coverage for your drivers while they were driving for you, what would be the effect of that, as you see it, on the industry?

**Mr SMITH:** If all of the providers have to provide workers compensation—

**Mr DAVID SHOEBRIDGE:** If it was a universal obligation that, for the period where someone is driving for you, they have to be covered by your workers compensation policy, what would be the effect of that?

**Mr SMITH:** There is the question of who are they covered by if they are just waiting for a ride, but if we put that to one side in effect it would be I guess a small increase in the cost of the industry, and then the various players would decide whether to absorb that increase in their margins—I have to say our margins are very thin—or whether to pass that on to either the riders or the drivers.

**Mr DAVID SHOEBRIDGE:** Have you done any modelling about what that would cost?

**Mr SMITH:** No, we have not.

**Mr DAVID SHOEBRIDGE:** But that would be the effect of it, as you see it; or it may be a combination of factors: A marginal increase in the cost to the consumer; a marginal reduction or soaked up cost from the provider; or potentially a reduction in the remuneration going to the driver.

**Mr SMITH:** Yes.

**The CHAIR:** What are the existing insurance policies that Ola maintains for its drivers?

**Mr SMITH:** We did offer, if you like, an accident insurance last year. That ran out during COVID. We are currently evaluating how best to replace it. We were very surprised by the low number of claims relative to the very high premium, so we are currently evaluating what we should do going forward and we look forward to the recommendation of this Committee to help us.

**The CHAIR:** When you say that you offered it, does that mean that you bought the policy on behalf of drivers as a class, as in you have provided an option for a driver to buy a policy through your platform?

**Mr SMITH:** It was, I guess, included with an offer. They did not have to opt into it or pay any extra.

**The CHAIR:** So you insured them as a class, basically?

**Mr SMITH:** Correct, yes.

**The CHAIR:** That policy expired earlier this year?

**Mr SMITH:** Yes.

**The CHAIR:** That is not uncommon. We have heard of different types of insurances expiring in March because Lloyds changed their policy on a variety of different matters, so right now everyone who is driving with Ola has no coverage for accident or injury?

**Mr SMITH:** They do not have the coverage that we previously provided, unfortunately, no.

**The CHAIR:** So to the extent to which they have coverage through the compulsory third party?

**Mr SMITH:** Yes.

**The CHAIR:** Do you accept an argument that some have mounted that therefore there is a cross-subsidisation taking place between motorists and drivers?

**Mr SMITH:** They have a compulsory third party. I do not have a view on how the compulsory third party is calculated and where the margins are in that business, rideshare versus private drivers. I believe at the moment compulsory third party is per ride whereas obviously the risk is probably more closely related to the number of kilometres driven, so our proposal would be to relate it to that. There are I think issues around taxis being able to calculate it as they also collect the compulsory third party [CTP].

**Mr DAVID SHOEBRIDGE:** There was substantial concern when that was rolled out—was it about two years ago, the fee for rideshare and fee for taxis?

**Ms TAN:** Sorry, I was going to say only because I think it was not possible for the taxis to actually calculate the exact number of kilometres that they were supplying in full as opposed to the waiting times, so I believe that was the reason.

**Mr DAVID SHOEBRIDGE:** It was my understanding that one of your competitors, who has a name not dissimilar to Uber, was not providing the money that they had collected to the State Government because of an ongoing dispute. Are you aware of that?

**Mr SMITH:** No.

**Mr DAVID SHOEBRIDGE:** What is the arrangement that Ola has regarding any funds that you recover?

**Mr SMITH:** We did not enter this market until it was legal, regulated, and we pride ourselves on having great relationships with regulators and law enforcement, and the notion that we would withhold funds like that is quite shocking.

**Ms TAN:** To confirm, all CTP insurance premiums that we collect are all passed on to the State Insurance Regulatory Authority [SIRA].

**Mr DAVID SHOEBRIDGE:** All passed on to SIRA?

**Ms TAN:** Yes.

**Mr DAVID SHOEBRIDGE:** Could you take on notice and give us some indication about the quantum that you pay, the amount that you pay?

**Mr SMITH:** Yes, of course.

**The Hon. MARK BANASIAK:** In your opening statement and previous submissions you class yourself as a technology company. What other technology does your company develop besides the Ola app, and how would that technology relate to this inquiry?

**Mr SMITH:** In India we have quite a large investment in electric vehicles, so we have a battery business and from time to time we have experimented with other kinds of businesses in the mobility space in India.

**The Hon. MARK BANASIAK:** But in Australia, in New South Wales, you are solely the ride hire or rideshare app?

**Mr SMITH:** Correct.

**The Hon. MARK BANASIAK:** In one of the previous sessions one of the witnesses tabled a work allocation algorithm that was reported to be from Ola in terms of calculating a worker's allocation. It has a few things highlighted such as work performance, fraud probability score, cancellation history, acceptance rates, ratings, fuel type, proximity. How would a person using your app—I do not want to call them a worker because we are in disagreement on that—know where they fit in this work allocation algorithm? How would they know their fraud probability score or their work performance? First of all, is this something that you use?

**Mr SMITH:** No. This does not look familiar to me. I do not know where this would be from.

**The Hon. MARK BANASIAK:** It was apparently tabled in a United Kingdom inquiry.

**Mr SMITH:** Yes. I mean I have never seen Ola referred to in internal documents as SoftBankola. SoftBank is one of many investors. This does not look like an internal document from Ola to me.

**The Hon. MARK BANASIAK:** But do you have a work allocation algorithm?

**Mr SMITH:** Yes, we do. It is predominantly based on three things: The proximity of the drivers to the riders; the time it would take for them to pick up the rider; and also what we call a completion rate or the driver's historic completion rate, which is essentially the percentage of trips that we allocate to him or her that he or she then completes.

**The Hon. MARK BANASIAK:** Can they see where they fit in that rating?

**Mr SMITH:** Yes, they can see their completion rate and we give them feedback saying, "You might be getting a bit low, please complete more trips", et cetera. A completion rate is essentially like ordering a plumber. If the plumber says he will arrive and then he does not, it is obviously frustrating for the customer.

**The Hon. MARK BANASIAK:** They also spoke about quest bonuses, which seemed strange. One of the examples was that they get bonuses for achieving three trips in a row. Can you give us some more information about what that looks like? Does Ola put that into their system where you get bonuses for achieving quests? It seems like a bit of a video game thing.

**Mr SMITH:** It is fairly standard for rideshare companies to offer drivers additional incentives over and above their ride earnings so as to get them, for example, to log on at specific times, or rather than take a ride with our competition, wait for another ride with us, and things like that, so quest bonus might have been used in another market, it is not something that is familiar to me here, but the notion of actually giving drivers an incentive to, say, take three trips in an hour or to log on between 8 and 12 is fairly common in the industry here.

**The Hon. MARK BANASIAK:** On notice, would you be able to perhaps table or give us some of the incentives that you offer?

**Mr SMITH:** Yes.

**The Hon. MARK BANASIAK:** Not necessarily the monetary amounts, if there are monetary amounts attached.

**Mr SMITH:** There is no secret to it, they are available in the driver app for drivers to see, but absolutely, yes.

**Mr DAVID SHOEBRIDGE:** There were concerns that they may encourage unsafe behaviour, unsafe driving or riding to meet these arbitrary quest goals. I think that was the context.

**The Hon. MARK BANASIAK:** Yes, the idea that they were maybe pushing themselves beyond safe limits to achieve some of these goals. Ola was not necessarily targeted in that comment; it was just a broad-brush commentary about the different applications.

**Mr SMITH:** I am unable to comment on what our rivals offer. I would say typically when we offer them it is about accepting rides, it is not about driving there quickly to pick them up, so if you are on a ride, you finish, you drop the passenger off, the bonus would then typically be, "Okay, please accept the next ride, and wait at least 10 minutes for it", for example.

**The CHAIR:** You are saying the predominant purpose for Ola offering the benefits is to ensure that they are available to Ola when you might need to dispatch them and not driving for another platform at the same time?

**Mr SMITH:** Correct, yes, so we compete obviously aggressively for customers in this market, but also there is a very high degree of competition for drivers as well.

**The Hon. ADAM SEARLE:** You do not guarantee your drivers any minimum amount of work per day or per week.

**Mr SMITH:** No, we do not.

**The Hon. ADAM SEARLE:** So there is no minimum guarantee of any particular level of pay?

**Mr SMITH:** No.

**The Hon. ADAM SEARLE:** You do not provide superannuation or any paid leave entitlements of any kind.

**Mr SMITH:** No.

**The Hon. ADAM SEARLE:** And it now appears that you do not provide accident insurance.

**Mr SMITH:** Correct.

**The Hon. ADAM SEARLE:** I think your evidence just a few moments ago was that your conception of your business is that you are a digital platform creating a marketplace and that the drivers are providing their services to the customers for a fee; you are just facilitating a transaction between them and you are not really the provider of work. That is your conception, is it not? That is how you look at it.

**Mr SMITH:** We are a booking service provider in New South Wales.

**The Hon. ADAM SEARLE:** In this inquiry, when we are looking at the gig economy, that seems to be the fundamental debate that we have to come to grips with, whether or not that is really what is happening here or whether the drivers who work for you or for Uber or provide deliveries for Fedora or other online digital platforms

are in fact really essentially in the position of a provider of work, an employer, if you like. That is the key issue I think we have to come to grips with, whether we accept your version of the world or whether we take a different view of these transactions. Would you agree with that?

**Mr SMITH:** I have no position on what the Committee's mandate is. I have obviously read the terms of reference.

**The Hon. ADAM SEARLE:** Should all workers not have some kind of minimum level of payment? Is that not a reasonable expectation in the twenty-first century?

**Mr SMITH:** Our view is that our drivers are independent contractors. They are entrepreneurs. They choose to work. They very much value flexibility to choose to work when they like, choose how many hours to work, and whether that is five hours a week or 50 hours a week is up to them. We are a marketplace. We do rely on drivers to act in an entrepreneurial way and figure out where to go to pick up a ride or the best times to drive. We do obviously give them information and help to do that, but we do very much rely on them working in their own self-interest, just as, say, eBay relies on its eBay sellers to figure out what the hot goods are and how to source them cheaply and describe them attractively to their customers.

**The Hon. ADAM SEARLE:** Yes, but many workplaces offer flexible work, whether you work in an office or work from home. Most employers now offer some kind of flexibility around hours and places of work, so you are no different in that regard. That is not a fundamentally different offering to your drivers than most providers will provide.

**Mr SMITH:** I do not know many employers that say you can work exactly when you like, you can work for one hour this week and not do anything for six months and then work for 40 hours. I am not aware of any employers offering that kind of flexibility.

**The Hon. ADAM SEARLE:** Equally many of your drivers may like to work regular hours or at least a consistent number of hours per week in order to make a decent living to pay a mortgage and raise their family, and if you are not guaranteeing any minimum amount of work or pay, it is very difficult for them to have a predictable level of income.

**Mr SMITH:** They are free to work full-time on our platform, and 25 per cent of them do. Generally, as with any marketplace, there are ups and downs, but generally they do average out to what we view—and I think it was the Chair's initial question—as a reasonable income per hour.

**Mr DAVID SHOEBRIDGE:** But yours is not just a neutral marketplace; you are not just providing the stalls for a market exchange, you are actually setting the rates and the conditions and you have a much more active role in it. It is not just a neutral marketplace that you are establishing; you are setting the rates, you are setting the pay, you are setting the conditions. Do you accept the difference?

**Mr SMITH:** There are different sorts of marketplace.

**The CHAIR:** Does a driver have the ability to set their own price under your platform?

**Mr SMITH:** No, we set the prices, either at the base rate or, at busy times, we have what we call peak pricing, so if there is a lot more demand than there is supply the price goes up and that can suppress some demand and then obviously encourages more drivers to drive at that time.

**The CHAIR:** Just to be clear, you are the first people to come and I do not want people to feel that you are the only ones who do it this way, but that is a common practice across your rivals, as you referred to them earlier in the hearing.

**Mr SMITH:** Correct. We call it "peak", but generally it is known as "surge".

**The CHAIR:** But the general proposition that you determine the pricing algorithm is common across all platforms. All platforms determine the price.

**Mr SMITH:** As far as I am aware.

**The CHAIR:** Yes, so you are not alone in that category.

**Mr SMITH:** No.

**The CHAIR:** Do the drivers have the right to bargain with you or to talk to you about changing the rate that you set? That happens in other jurisdictions.

**Mr SMITH:** We welcome approaches from unions. We have been in discussions with only one, the Transport Workers' Union [TWU], which in our view have been generally pretty cordial. We have not, as far as I am aware, been approached by any other unions. When drivers approach us we obviously lend an ear—some of them have my phone number—and we generally will get feedback through both focus groups, driver surveys and also through our driver care operation.

**The CHAIR:** Again, you are not unique in that aspect in that you effectively decide the pricing algorithm without the ability for drivers to bargain per se. That is not a unique circumstance to Ola's common practice across all the platforms. Would you agree?

**Mr SMITH:** Yes. There is a basic standard pricing and then there is, if you like, the peak pricing algorithm on top of that.

**The Hon. ADAM SEARLE:** If there is a dispute between yourself and one of your drivers about pay, or you decide to end the association with that driver, what processes are available for the driver to pursue those disputes with you?

**Mr SMITH:** If a driver thought that he was entitled to be paid and was not paid—is that your question?

**The Hon. ADAM SEARLE:** Yes, that is one of the questions.

**Mr SMITH:** Drivers can complain to driver care. That can get escalated, we would investigate it and if the driver is dissatisfied he can resort to the courts, but generally we have a very clear set of policies, everything is trackable, so disputes do not occur particularly regularly.

**The Hon. ADAM SEARLE:** Just explain to us what driver care is?

**Mr SMITH:** Sorry, that is our driver support.

**The Hon. ADAM SEARLE:** Is there any external auditing process that might be available to a driver if they are dissatisfied with the service from driver care? A worker can go to the Fair Work Ombudsman and an external body can come in and verify whether the proper payments have been made. What is the external oversight of your body?

**Ms TAN:** Generally if drivers are dissatisfied in things like that, they will go to Fair Trading and lodge a complaint.

**The CHAIR:** I think Mr Searle was asking you about one scenario which may or may not lead to termination or dispute. Does Ola retain the right to terminate a person from their platform? I presume you do.

**Mr SMITH:** Yes.

**The CHAIR:** What is your policy on termination? What can drivers be terminated for?

**Mr SMITH:** Generally we do not like to terminate drivers, we compete quite aggressively to get drivers on to our platform and to give them plenty of work. Generally it can be a variety of things, almost entirely around customer service. If a driver, for example, gets consistently bad feedback rating, we will reach out to counsel him or her. We might ask them to do some education. If it still does not improve, we might suspend them from the platform for a matter of days or weeks, and if it still does not improve then in the end we would reluctantly remove them from the platform. If a customer complains about driver behaviour it is obviously a very difficult situation. We always reach out to get the driver's point of view. We have quite a lot of data around, for example, the times, the trip, how fast the driver was driving, et cetera, and whether he followed the correct route or not, but in the end, in some circumstances, we do remove drivers from the platform. I am not aware of any driver being removed from the platform for comments in the media or taking us to court or anything like that.

**The CHAIR:** Again, just to be clear, because you are the first, we are wanting to establish some baselines which we will be asking other companies for. Do you have a policy or a discrete document on this, or is this just part of the standard terms and conditions in the contract?

**Ms TAN:** This is in the contract. The policy is also included in the contract. The contract also says that termination works both ways, so a driver has got the right to terminate Ola as well as Ola having the right to terminate drivers.

**The CHAIR:** On notice, is it possible you could provide us with the policy, and the contract would be useful too.

**Ms TAN:** Yes, certainly.

**The CHAIR:** We can keep it confidential if you so request; or aspects of it can be kept confidential if you so request—I am sure we can talk about that and consider it, but we would at least ask on notice. Mr Smith, you said that a driver who is dissatisfied with a decision may have recourse to a court. Is that an Australian court?

**Mr SMITH:** Yes.

**The CHAIR:** In New South Wales?

**Mr SMITH:** I believe so.

**The CHAIR:** I have encountered other contracts in which, for example, disputes must be heard in the court of the Netherlands, which I think one of your competitors at one point in time said, and it is understandable that a person in Sydney might not want to go to the Netherlands to sue, so I just wanted to establish that base.

**Mr SMITH:** Yes, we do not have any kind of fancy legal framework. You will notice on your Ola invoice it is with Ola Australia. The contract is with Ola Australia, it is not with Ola Cayman Islands or Ola Netherlands or Ola Vanuatu. We obviously have a foreign owner, but we are an Australian company. When we are profitable, we will pay Australian corporation tax, we collect GST, et cetera.

**The CHAIR:** I invite other questions from Committee members, otherwise I am happy to continue.

**The Hon. WES FANG:** You can keep going if you have a line of questioning.

**The CHAIR:** In terms of reforms that may or may not be recommended by this Committee, your general proposition is that you would prefer national regulation. Is that correct?

**Mr SMITH:** Yes.

**The CHAIR:** You would prefer that to be in what respect, an employment respect or contract respect?

**Mr SMITH:** I think pretty much in every respect. We operate in eight jurisdictions in Australia. They are all more or less the same but slightly different and it does generate a huge amount of complexity.

**The CHAIR:** I can imagine. Can I ask about a couple of propositions which have been laid out in some of the submissions that we have received and get your attitude towards them if possible? The first is similar to some of the questions that Mr Searle was asking. Other jurisdiction's gig platforms have favoured the ability and accepted that there are circumstances in which a person can be provided with leave entitlements and minimum pay guarantees, and to be fair to gig companies, they dispute what those mechanisms should be, what the scope of the entitlement is and how it should be paid. Last week, for example, California voted against a certain law but in favour of another which provided a minimum guarantee per trip, or effectively a minimum guarantee of income per trip travelled. Do you have a view as to whether or not that is something which we should be looking into, that is, we would provide a minimum guarantee, or at least establish a right to earn a minimum level of income from work performed, or would you prefer a pure exchange approach?

**Mr SMITH:** Effectively our rates offer a driver not a minimum but a known amount that he or she will earn per kilometre travelled per minute driving.

**The CHAIR:** Do you think drivers should be able to accrue leave entitlements?

**Mr SMITH:** Our view is that our drivers are independent contractors. We take significantly less commission from them so we expect them to plan for their own leave or save for their own leave.

**The CHAIR:** That would cover sickness and holiday?

**Mr SMITH:** Yes.

**The CHAIR:** Can I move on to workers compensation. In other scenarios in which a person is injured while performing work the provider of work can be obliged to provide them with suitable duties to help them to return to work. Is that a proposition that Ola feels would be too onerous to fulfil?

**Mr SMITH:** If it is legally required, we would obviously follow it. At the moment it is not required. We take significantly less commission from our drivers, so we would expect them to make their own provision. We do offer driver counselling, which is a free service, if drivers have any need for that.

**The CHAIR:** You made reference in answer to one of our questions that you have had discussions with a trade union, and you mentioned one specific trade union. Can you tell us more about that and do you have any such arrangement or are you in the process of developing such an arrangement with any union that would allow for a collective bargaining mechanism or at least a dialogue of any form?

**Mr SMITH:** We are in the process with that one union, TWU. I have to say it is a slow process, unfortunately. We are very happy to discuss with unions, and I just introduced myself to Mark as he came out. I think collective bargaining—I guess the challenge is around whether it is currently legal. I believe it will be made legal for our industry and it is something we are definitely open to, but I do believe not many of our drivers are members of a union, but obviously if they were we would be very happy to talk to that union.

**The CHAIR:** Basically am I right to surmise that you have no in-principle objection and you will of course follow the law?

**Mr SMITH:** Yes. I will talk to anybody. We want good relationships with our drivers; we want to know what their concerns are.

**The CHAIR:** Finally, can we turn to tax issues. You made the point that you are obviously compliant with all Federal taxes, which you would expect, but have you been contacted or had any dialogue with Revenue NSW as to whether or not Ola has any responsibilities under New South Wales tax?

**Mr SMITH:** Not that I am aware of.

**Ms TAN:** No.

**The CHAIR:** So you have never been approached by Revenue NSW to talk about whether or not there is a payroll tax liability that may or may not accrue to you?

**Ms TAN:** We pay payroll tax for employees.

**The CHAIR:** For your employees?

**Ms TAN:** Yes.

**The CHAIR:** So you are a registered payroll tax payer under New South Wales laws?

**Ms TAN:** Yes.

**The CHAIR:** Has Revenue NSW ever expressed a view to you that the way in which you engage drivers through your platform could give rise to a payroll tax liability for the work that they perform?

**Mr SMITH:** Not that I am aware of.

**The CHAIR:** They did this with Fedora, which is on the public record; they did inspect and issued a notice of assessment to Fedora to pay payroll tax for the labour performance of the drivers, not the employees in head office, for example. You have not had any like experience?

**Mr SMITH:** No. Fedora was in a different sector and was a different company with different arrangements, but no, we have not been approached by Revenue NSW to discuss payroll tax.

**The CHAIR:** For your drivers?

**Mr SMITH:** For our drivers, or for our employees, I do not think. We just pay it.

**The CHAIR:** Fair enough. Have you ever commissioned legal advice as to whether or not you may attract payroll tax liability under the way in which payroll tax is currently performed for the driving on the platform component?

**Mr SMITH:** That may have been part of the legal advice we got when we launched, but I am not aware of any separate brief.

**The CHAIR:** I am only asking because we are looking to establish a baseline as to what different platforms' experiences have been when it comes to payroll tax. One of our terms of reference is to look at whether or not payroll tax is fit for purpose in this respect, so I was eager to get some information in that respect.

**Mr SMITH:** Sure

**The Hon. NATASHA MACLAREN-JONES:** We had a witness this morning, and it was not your platform, that said that there was a claim against a driver that he was intoxicated and therefore he was terminated without any notice. I am interested to know what processes you have in place where a claim is made against one of your drivers, and also what dispute resolution process?

**Ms TAN:** Generally—and it is also in our agreements, so we have it upfront in terms of our dispute resolution process for drivers—we will review the behaviour and we take down the voice of the driver as well as the voice of the customer, so we try to contact both sides. What we have in relation to any actions that we take, if

we deem it necessary, could either be driver education or, on the other hand, it could be rider education, depending on what the circumstances are, and thereafter, if there is repeated behaviour either on the rider's side or on the driver's side, depending on the circumstances again, we may resort to, for example, suspension on the platform or, unfortunately, termination on the platform as well.

**The Hon. NATASHA MACLAREN-JONES:** Following on from a couple of questions from one of my colleagues in relation to minimum number of hours employed, say a regulation came into place saying that you would need to employ people for four hours. How would that impact on a person's ability to operate across multiple platforms or, if that were to be brought into place, would it mean that people could only be employed by one platform?

**Mr SMITH:** I think it is pretty detrimental to people, pretty much anyone other than people working full-time. It may be easy to carve out two hours here or three hours there when you are looking after kids or you have another job, but four hours is quite a big chunk to leave out in your day. In terms of how you would implement it across platforms, really it would I think push people on to one platform versus another, and probably would inevitably push them on to the bigger platforms, so it would be to the detriment of competition in the driver space.

**The Hon. NATASHA MACLAREN-JONES:** My other question is in relation to rural and regional areas. Do you currently operate in that space and, if not, what scope do you see going into those areas?

**Mr SMITH:** We launched shortly before the pandemic into a number of smaller towns in New South Wales. Our focus at the moment is very much on Sydney.

**The CHAIR:** Can you explain your understanding as to your obligations under workplace health and safety laws in New South Wales?

**Mr SMITH:** I cannot, but my lawyer can.

**Ms TAN:** Under the point to point regulations, all booking service providers have a duty to provide and maintain the health and safety of drivers, riders and the community as a whole, and this is done through a safety management system. Essentially that means managing the risks and ensuring that any risks or hazards are eliminated or, as far as reasonably practicable, reduced or minimised as much as possible. That, essentially, is our duty and our obligation with respect to the community.

**The CHAIR:** But you accept that you have obligations under the Work Health and Safety Act as well, in addition to the point to point laws, as a person controlling a business undertaking in New South Wales?

**Ms TAN:** We have not looked into that aspect because primarily our obligations are governed by the point to point regulations and within that ambit we already have a duty to ensure the health and safety of our drivers anyway, so we would be maintaining, and we have maintained, the obligations and the safety standards in relation to that aspect.

**The CHAIR:** Have you had any contact with SafeWork NSW?

**Ms TAN:** Yes, we have.

**The CHAIR:** In what circumstances did you have that contact?

**Ms TAN:** This was in relation to an offering that we made previously in New South Wales, in Sydney, where we were offering a product called Ola Pro. Maybe Simon would want to talk more about that service.

**Mr SMITH:** We brought that in early on in the pandemic, maybe April, which was an enhanced service. All of our services adhere to COVID best practice. We have reached out and we have educated drivers, we have educated customers, but this was one to give people additional peace of mind, so we provided personal protective equipment [PPE] and sanitiser for drivers, and also fit their cars with a screen, and I believe SafeWork NSW approached us with some concerns about that.

**Ms TAN:** That is right. They were concerned that we were seen to be, I suppose in their words, selling safety, as such. However, we explained the fact that it was generally a product or a service that was brought out for peace of mind over and above all of our safety obligations, which we prioritise anyway, in relation to the community. We submitted a response and they accepted our response.

**The CHAIR:** We heard from some of the drivers and riders this morning about a desire to form work safety groups and elect health and safety representatives at another delivery platform, not your one. Has there been an attempt inside the Ola platform or the Ola community to form any work health and safety groups or to elect any health and safety representatives? Do you have health and safety representatives, for that matter?

**Mr SMITH:** No, we do not, and I am not aware of any drivers reaching out to us to form those groups.

**Ms TAN:** Just to add to that, under the point to point regulations, Ola as a booking service provider has a duty to consult drivers in relation to safety standards. As I think Simon previously mentioned, we have conducted focus groups, for example, and looked into driver feedback from all of the support tickets that we have received from drivers and so on, so we have all of that consultation and built into what we do with respect to our safety management system.

**The CHAIR:** Yes, and to be fair to you and to other people who are in the ridesharing space, you probably have dual obligations—you have the obligations under the point to point legislation, but you also have your obligations under the general workplace health and safety regulations, thus distinguishing you from food delivery which would not have obligations under point to point regulations. One of the issues we had earlier was, given that people are driving for different platforms at the same time, it would be onerous for the platform per se to be responsible for their general workplace health and safety because they do not have full control over how work is being performed. That was one of the concerns that was raised. Do you have a view on that? Do you think that a person driving for Ola and Uber means that we have to change our workplace health and safety laws so that we are actually attaching the obligation to provide a safe workplace to whoever it is that is controlling the work, which could include the driver?

**Mr SMITH:** We spend a lot of time educating our drivers on how to behave safely and monitor themselves, their performance, to make sure they are doing the right thing and can allow customers to be safer. I must admit I do not completely follow your question.

**The CHAIR:** It is a particularly obscure one that has to do with workplace health and safety laws, so I am not offended by that, for what it is worth. I will give it one more attempt and, if it is not possible, then it is probably on me, not on you. Under workplace health and safety laws, any person who is providing work, regardless of whether it is as an employee or a contractor, has an obligation to provide safe workplaces. Do you accept that, or are you aware of that?

**Mr SMITH:** I will take your word for it, yes.

**The CHAIR:** Great. One of the issues that has been flagged is that that is very hard to apply in the gig economy, for example, because if a person is working for Woolworths there is only one employer and they are only dealing with one workplace, they are not working for Woolworths and Coles at the same time, they are working for just one of them. An argument has been made that we have to change our workplace health and safety laws to account for the fact that a person is capable of doing work for two people at the same time, or more than two people at the same time, therefore making it very hard for the provider of work to control the safety environment. Do you recognise that that could be a problem?

**Mr SMITH:** In effect, our drivers can be on both, or more than two, platforms at the same time, but they cannot have more than one set of passengers at the same time.

**The CHAIR:** Yes, fair enough.

**Ms TAN:** Just to add, as the laws currently stand, as you say, we have regulations and we are governed by the point to point regulations as well. That is unique to our rideshare industry, unlike food delivery, and that provides the system for work health and safety.

**The CHAIR:** Am I right to assume that you are saying that, because Ola complies with its requirements under the point to point transport legislation, therefore it probably complies with its obligations under the workplace health and safety laws as well?

**Ms TAN:** Correct, and we believe that the current legislation and current regime under point to point is fit for purpose.

**The CHAIR:** Is there anything further that you would like to add?

**Mr SMITH:** No, thank you.

**The CHAIR:** Thank you very much for your time. We appreciate the evidence that you have provided and we appreciate the fact that you are the first gig company to come and set out a first set of standards for what we can ask. You have taken multiple questions on notice. You have 21 days to provide answers to those questions and, if there is any particular information you would like us to consider keeping confidential, please flag that and we will consider it as a committee and get back to you.

**Mr SMITH:** Thank you very much.

**(The witnesses withdrew.)**

**(Luncheon adjournment)**

**TONG CHEN**, Interpreter, affirmed

**LIHONG WEI**, Widow of Mr Xiaojun Chen, Food Delivery Worker, affirmed and examined through interpreter

**The CHAIR:** We welcome our next guest, Ms Wei, and express to her our condolences for her loss. We invite Ms Wei to make an opening statement, if she so chooses. Ms Wei, you are invited to make an opening statement, if you would like to?

**Ms WEI:** No.

**The CHAIR:** We will proceed to questions. I will ask the first question. Ms Wei, can you explain the circumstances in which your husband passed away?

**Ms WEI:** At 4.00 p.m. on 29 September 2020 I received a phone call from my husband's roommate and he said, "Sister-in-law, brother Chen was hit by a car." I asked him, "Was that serious?" They told me, "It is a bit serious and he is in emergency care in the hospital." After hearing this news our family has been in grief. What we could do is only pray for him from far away in the homeland to hope he can pass this barrier. Our family is a bit special. We have three elderly people and two children under our care. They all depend on my husband. Therefore, my husband's passing away has huge influence on us. After hearing this sad news, my mother has collapsed, totally break down, and my father-in-law, we still would not dare to tell him the news until now. It has been over 40 days since my husband has passed away. Until now he still cannot rest in peace. His passing away has had a huge impact and has been devastating to our family. Until now I still cannot believe that my husband has left us forever, my eight-year-old son has lost his father and the elderly parents with grey hair have lost their son forever. I cannot imagine how we are going to carry on our lives.

**Mr DAVID SHOEBRIDGE:** Thank you so much, Ms Wei, for coming today. We all know how tough it is. Has the company who your husband was working for communicated with you? Have they reached out to you in any way since his death?

**Ms WEI:** We really appreciate them for attending hospital at the earliest possible time, to accompany my husband for the last stage of his life, and they also got in touch with me instantly to offer me precious help. They provided us a return air ticket to Australia, and accommodation and food during the time we are in Australia. We are really grateful.

**Mr DAVID SHOEBRIDGE:** Has that come from the Hungry Panda company?

**Ms WEI:** Yes.

**Mr DAVID SHOEBRIDGE:** Have they told you about any compensation that they may pay to your family? Have they told you about insurance or compensation?

**Ms WEI:** No, not so far.

**Mr DAVID SHOEBRIDGE:** Have they suggested that you go and talk to a lawyer here in Australia about your rights?

**Ms WEI:** Yes, they have.

**Mr DAVID SHOEBRIDGE:** Have you done that, and are you going to see a lawyer, Ms Wei?

**Ms WEI:** I am going to talk to a lawyer.

**Mr DAVID SHOEBRIDGE:** In terms of the income that your husband was previously giving to the family, I assume that has stopped and Hungry Panda is not giving you any income?

**Ms WEI:** Correct.

**Mr DAVID SHOEBRIDGE:** I will finish by saying, first of all, thank you for the work that your husband did in his time here for our society.

**Ms WEI:** I appreciate that.

**Mr DAVID SHOEBRIDGE:** Secondly, we have laws in this place that are meant to protect families like yours when somebody dies at work.

**Mr DAVID SHOEBRIDGE:** What we are doing here today is trying to find out if those laws are good enough, and I strongly urge you to go to see a lawyer and do everything that you can.

**The Hon. COURTNEY HOUSSOS:** Ms Wei, I too convey our sincerest condolences. We can only imagine your loss and what you are going through right now.

**Ms WEI:** I appreciate that.

**The Hon. COURTNEY HOUSSOS:** How long had your husband been working in Australia?

**Ms WEI:** He has been working in Australia for more than two years.

**The Hon. COURTNEY HOUSSOS:** Why did he decide to come here in the first place?

**Ms WEI:** Because he thought that the two of us had been working too hard, and in order to bring a happy life for our children he decided to come to Australia.

**The Hon. COURTNEY HOUSSOS:** Do you have two children?

**Ms WEI:** Yes.

**The Hon. COURTNEY HOUSSOS:** How old are they?

**Ms WEI:** My daughter is 15 years old and my son is eight years old.

**The Hon. COURTNEY HOUSSOS:** Again, we can only imagine your loss and what you are going through, and we are so incredibly sorry. As Mr Shoebridge said, we have laws that should have protected your husband. When you decided as a family that he would come to Australia, did you expect that he would be able to be safe here at work?

**Ms WEI:** No.

**The Hon. GREG DONNELLY:** Ms Wei, once again, can I express my sincere condolences for the tragic loss of your husband and all the grief and pain that it has caused, and which will be there for a long time. Are you aware that there is an investigation that has commenced, or will commence, into the circumstances around your husband's death?

**Ms WEI:** I know.

**The Hon. GREG DONNELLY:** Ms Wei, if you are able to do so, can you explain what you understand is now going to happen with the investigation? Is it a matter that the New South Wales Coroner will be looking at?

**Ms WEI:** I do not know about this.

**The Hon. GREG DONNELLY:** Okay, I understand. With respect to support that you may need with the investigation that may take place, do you have legal support to assist you through that investigation?

**Ms WEI:** I do not understand. I am not sure.

**The Hon. GREG DONNELLY:** May I suggest that if there is to be an investigation into the circumstances around the death of your husband, as Mr Shoebridge said, it is important to have legal support to help guide you through that process. I, like Mr Shoebridge, encourage you to obtain that legal support.

**Ms WEI:** Okay, I really appreciate that.

**The Hon. MARK PEARSON:** Thank you for coming, Ms Wei. Were you in contact every day with your husband when he was working?

**Ms WEI:** Yes. Every day when he was having a meal or having a rest we will have a video chat.

**The Hon. MARK PEARSON:** Did he ever say that he was working very long hours?

**Ms WEI:** My husband is a very nice man. He would share positive, happy events with us. He would not let us know how hard he works, because he does not want us to worry about him.

**The Hon. MARK PEARSON:** Do you think that he was working very long hours?

**Ms WEI:** I think that he is working very hard.

**The Hon. MARK PEARSON:** Did he ever say that the company was putting pressure on him to work long hours?

**Ms WEI:** No.

**The Hon. ADAM SEARLE:** When your husband was working, do you know if he had any guarantee of an amount of work that he would get each day or each week, or did it just depend day to day?

**Ms WEI:** It depends on the day-to-day requirements.

**The Hon. ADAM SEARLE:** Did this work enable your husband to earn a reliable or predictable amount of money each week to support the extended family?

**Ms WEI:** His income has not been stable. He has to work extra hard to earn.

**The Hon. ADAM SEARLE:** When your husband died, was there any benefit paid to you and your family?

**Ms WEI:** No.

**The Hon. ADAM SEARLE:** Is the food delivery company providing you and your family with any kind of ongoing financial support or counselling?

**Ms WEI:** They have provided our return ticket to Australia, and basic food and accommodation.

**The Hon. ADAM SEARLE:** For how long?

**Ms WEI:** During our stay in Australia.

**The Hon. ADAM SEARLE:** Do you know how long that stay will be?

**Ms WEI:** Our plan is to return on 15 November.

**The Hon. ADAM SEARLE:** At that time, how long will you have been here?

**Ms WEI:** About a month's time.

**The Hon. ADAM SEARLE:** While your husband was working, do you know what equipment or support the food delivery company gave him to try to make his work safe?

**Ms WEI:** I am sorry, I do not know about that.

**The Hon. ADAM SEARLE:** Okay, those are my questions. Again, I offer my deepest condolences to you and your family for your loss.

**The CHAIR:** Ms Wei, have you had the opportunity to meet directly with Hungry Panda?

**Ms WEI:** After I arrived in Australia, I thought that I would get contact from them. However, their headquarters are in Melbourne, which had been shut down at the time.

**The CHAIR:** Have you had the opportunity to speak to them via videoconference or telephone?

**Ms WEI:** On Friday we had a videoconference once.

**The CHAIR:** In that meeting, did you ask Hungry Panda for any form of compensation or support?

**Ms WEI:** They said that, according to law, they have no obligation or responsibility to provide that. However, outside of the law they are happy to provide as much support as they can. What I cannot understand is that he has been working for Panda all this time and he has been working so hard, so why is he not entitled to those benefits that every personnel is entitled to?

**The CHAIR:** He has been working with Panda for two years since he got here?

**Ms WEI:** Not really. From March this year—2020, March.

**The CHAIR:** When they said that they are willing to provide support outside of the law, did they specify what type of support they were willing to provide?

**Ms WEI:** No, they have not.

**The CHAIR:** Do you have any other meetings planned with Hungry Panda?

**Ms WEI:** What they expect is, after I find a lawyer, they will deal with this through the lawyer.

**The CHAIR:** What type of support would you like to have from Hungry Panda?

**Ms WEI:** I am really concerned that, according to the legal proceedings in Australia, our case can only expect some compensation after one to two years. My concern is that during this time, within the one to two years,

how can our family survive? My parents are both in their 60s, my father-in-law is in his 70s and my two children are under-age. I am the only one who they can rely on. My husband and I were in a very good relationship. His passing away has a big impact on me. According to my current physical and mental status, I cannot take on any job in the recent period of time. My children pretty much rely on me for their daily life and study. Therefore, I do not know how we are going to live our life.

**Mr DAVID SHOEBRIDGE:** Ms Wei, to be clear: Has Hungry Panda put you in touch with an insurance company of any sort?

**Ms WEI:** No.

**Mr DAVID SHOEBRIDGE:** Again, Ms Wei, can I thank you for coming today. I think all of us cannot comprehend how tough it has been for you, and you have our collective well wishes, of course.

**Ms WEI:** Thank you very much.

**Mr DAVID SHOEBRIDGE:** Would you be so generous as to tell us a little bit about your husband, the man you have lost?

**Ms WEI:** My husband loves life. He has great anticipation to life. A few days before he died he also shared a bright future of our life. He said, "We will watch our daughter grow up and then we will live together until we get old." He is a loving man and he is very helpful. He is very filial to his parents and he is also a loving father to his children. He is very gentle and understanding towards me as well. Among his housemates, he is a big brother who is very helpful as well.

**The CHAIR:** Thank you for your appearance, Ms Wei. We understand the circumstances in which you have come today have been very difficult. We will be hearing from Hungry Panda at the next public hearing next week and we will be asking for their version. We will also be asking questions on the propositions you have made to them, too.

**Ms WEI:** Thank you.

**The CHAIR:** We will make arrangements to inform you in China as to what Hungry Panda says. We will pursue this matter throughout the inquiry and will further explore some of the issues you have raised to provide you with some comfort that we are doing our job properly.

**Ms WEI:** On behalf of the whole family, I really appreciate all of your efforts.

**The CHAIR:** We recognise your courage and once more offer our heartfelt condolences for your loss. We thank you for your appearance today.

**Mr DAVID SHOEBRIDGE:** Thank you, Ms Wei.

**Ms WEI:** Thank you.

**(The witness withdrew.)**

**CHARLIE HEUSTON**, Acting Executive Director, Employee Relations, Community Engagement, Department of Premier and Cabinet, affirmed and examined

**KATHERINE FOY**, Deputy Secretary, Community Engagement, Department of Premier and Cabinet, affirmed and examined

**The CHAIR:** Would either of you like to make a short opening statement?

**Mr HEUSTON:** A brief opening statement, if I may. Employee Relations sits within the Community Engagement group within the Department of Premier and Cabinet. We have provided a submission to this inquiry to address those areas which fall within the scope of the functions of the Employee Relations function, being 1 (g) (i), (ii) and (v) and also 1 (h), both of which relate to current laws and specifically those in relation to the gig economy. The Employee Relations function itself has three functional areas: one being public sector, two being the compliance function and thirdly, a policy function.

The public sector function provides advice to government agencies and government more broadly about those matters which relate to the public sector generally. That includes advice on dispute resolution, industrial instruments, interpretation of awards and the like. The compliance function is the largest of the three areas and is responsible for the promotion and compliance activities with New South Wales laws, and that involves educational services, advisory services and then also, enforcement functions for those laws. That includes legislation, with the main one being the Long Service Leave Act, but also includes the Annual Holidays Act, compliance with the building and construction guidelines and also the Industrial Relations Act, including those areas within chapter 6 which relate to contract carriers and the taxi industry.

The policy function—being the third area—is responsible for providing advice to the Minister around policy, legal developments on employment-related matters and also for the maintenance of various statutes, including the Industrial Relations Act. One of perhaps the most relevant functions of that area is maintaining the relationships with the Commonwealth as it relates to employment laws. That involves consultation and discussion with counterparts in the Federal system on things like changes to Fair Work legislation, ratification of International Labour Organisation conventions and general employment industrial-related issues.

Now that is of particular relevance for this inquiry, given the scope of the Federal laws now apply broadly to industrial matters across the private sector throughout New South Wales, both those of employment, but also in relation to those contractors working in New South Wales in the private sector. As background to that, in recent years the Commonwealth has taken on a much broader role than it had previously. In 2005 the Federal system was expanded to include those incorporations, and in 2009 the remaining private sectors were referred by the States, including New South Wales, so that the Commonwealth then took responsibility for the totality of employment matters in the private sector nationwide.

That, coupled with the application of the Independent Contractors Act, means that for those in the gig economy there would certainly be Commonwealth coverage for the work that is being done by those, in either event even for those who might be considered employees, but similarly those who are contractors. Our view is that if there is a desire to look at a regulatory option for addressing some of the issues that have been debated, that responsibility sits with the Commonwealth, and our role in New South Wales is one that we continue to have, which is consulting with the Commonwealth about any development of any options, and we would do that when that opportunity arose.

**The CHAIR:** Is that a written statement that you are referring to, or you had notes?

**Mr HEUSTON:** It was some scrappy notes and paraphrasing.

**The CHAIR:** Fair enough. I was going to ask you to table it otherwise. I will go to Mr Searle for questions first, because he has some time limits we have to respect.

**The Hon. ADAM SEARLE:** Thank you, Ms Foy and Mr Heuston. In relation to your concise submission to the Committee, you essentially seem to suggest that to the extent that people might be found to be employees, they should be federally regulated, but the Independent Contractors Act would cover all gig workers as well. Is there not an issue around the terminology of whether people are in fact independent contractors? When they are working through these digital platforms they are not independent and we have had evidence from the drivers themselves today that they have no control over what they can charge necessarily or when they can work, although there is a lot of flexibility about being able to refuse work. The substance of the evidence seems to be the income they earn is unpredictable and unreliable. There is no independence around that. Is there any scope for State regulation in this area?

**Mr HEUSTON:** There remains some scope at the moment in relation to chapter 6, which has been excluded from the application of the Independent Contractors Act, and similarly there has been some exclusions for some laws in Victoria, but that is confined to those in the transport industry, and that does not encompass the entirety of the gig economy.

**The Hon. ADAM SEARLE:** No, but in terms of the evidence that we have heard today and a lot of the concerns seem to arise in connection with various forms of transport, not just an Uber but also food delivery and the like, where use of various kinds of transport appear to be at issue. That is an area where the State Government could, if it chose to, have agency and do something to extend chapter 6 in a way that would meet some of these concerns.

**Mr HEUSTON:** The Independent Contractors Act when it commenced operation in 2006 was directed at preserving the existing scope of chapter 6, so if it was a proposal to expand that into additional classes of work, and I think this has been raised previously, at least in the submissions, that then might cause a conflict with the operation of those Federal laws. That would call into question whether or not they can have application.

**The Hon. ADAM SEARLE:** Leaving aside some of the other concerns we have heard about, for example, people not being covered for workers compensation, even though they are clearly performing work. We have had a tragic story from a widow whose husband was killed in the line of work and received no death benefit, as he would have had he been an employee. These are areas where the State could meaningfully provide some action, if it chose to.

**Mr HEUSTON:** I think that the subject matters that you have raised are probably a bit beyond what falls within the area, the scope of the employee relations structure. I am not sure if I can comment on those matters.

**The Hon. ADAM SEARLE:** Has your agency actually obtained detailed legal advice about what scope the State still has to deal with the various parts of the gig economy, or is this based on general understanding of the way in which the various legislative regimes work?

**Mr HEUSTON:** We have not sought specific legal advice about regulation of the gig economy.

**The CHAIR:** I might pick up on that line of questioning. Has the department of Employee Relations undertaken any assessment as to the applicability of the existing chapter 6 provisions to gig economy work, particularly the transport side of gig economy work? Have you reached a determination as to whether it applies?

**Mr HEUSTON:** Each case will turn on the facts of that arrangement. However, the scope of chapter 6 for contract carriers is directed at more of a dependent contractor type relationship. The definition of a contract carrier is one where the owner-driver is performing work for one principal contractor. I think a lot of the discussion from earlier today contemplated arrangements where people would be working for multiple, call them principal contractors, or engaged by multiple people concurrently. On that criteria it does not sound like those types of arrangements generally fall within the definition of a contract carrier. Alternatively, there are a number of exclusions in section 309 of the Act of work that does not fall within the terms of a contract carrier, and that includes the delivery of food to premises or the like. If it is a food delivery type business, then that would not fall within the definition of a contract carrier.

**Mr DAVID SHOEBRIDGE:** But that could be deleted.

**Mr HEUSTON:** It could be deleted, and that would change the scope of chapter 6 and then it might come back to the question about how that changed scope interacts with any Federal laws.

**Mr DAVID SHOEBRIDGE:** A matter on which you have not sought any advice?

**Mr HEUSTON:** We have not sought specific advice on the regulation of the gig economy.

**The CHAIR:** Two aspects arise from that answer. Did you see the Ola evidence?

**Mr HEUSTON:** I saw part of it.

**The CHAIR:** Did you see the part where they said that one-in-four of every person who works on their platform works exclusively for them?

**Mr HEUSTON:** I did not, but I will take you at your word that that is what was said.

**The CHAIR:** Or at least worked equivalent fulltime hours to them, to be fair to their position. They would seem to therefore fall within the scope of chapter 6, or at least that category of workers would have a pretty arguable case that they would. Do you agree?

**Mr HEUSTON:** Each case turns on the facts. The test of employment, similar to the test of being a contract carrier, is going to turn on a range of factors.

**The CHAIR:** The second one, which aligns with the answer you just gave to Mr Searle, and also with your submission, which is that you have a view that the Independent Contractors Act covers the field to the extent to which it purports to, and you will be aware that it excludes chapter 6 from that operation, yes?

**Mr HEUSTON:** Yes.

**The CHAIR:** And you said equally that any adjustment to chapter 6 may well effectively set up a conflict with the Independent Contractors Act or move it outside the scope of the exemption. Is that basically your position?

**Ms FOY:** I think we probably caution against providing advice in that respect, but we would want to certainly if anything is proposed in that respect get advice to determine whether or not a conflict would exist.

**The CHAIR:** It has been a while since I have done statutory interpretation, but the Independent Contractor Act is plain and clear, "Chapter 6 of the Industrial Relations Act of New South Wales and any other provision of that Act to the extent that it relates to or has effect for the purposes of the provision of Chapter 6 is exempt from the Independent Contractors Act."

**The Hon. ADAM SEARLE:** Not as a point in time.

**The CHAIR:** Not as a point in time, as in it is permanent. Equally, if I recall Mr Andrews, the then Minister, in this second reading speech made it explicitly clear that it was not to apply to New South Wales. All of which means that if you file under the Statutory Interpretation Act, where you look at the first instance of the actual Act, secondly the second reading speech, you would lead to the conclusion that chapter 6 has a pretty broad exemption from the Independent Contractors Act, not a narrow exemption at that point in time. Would you agree? Or am I taking too much liberty?

**Mr HEUSTON:** No, I think you are taking me—no, I would not agree. I think that is not entirely clear.

**Mr DAVID SHOEBRIDGE:** But you are basing that just on a gut feel. You have not had any advice on it, Mr Heuston.

**Mr HEUSTON:** We have had advice on some matters that touch on that question, and that indicates a view that the Act itself was intended to preserve the scope of chapter 6 as it was at that time.

**Mr DAVID SHOEBRIDGE:** You have that in writing, have you? Legal advice that it was intended only to preserve the scope of chapter 6 at the time that the Federal Act was passed—have you had that advice in writing?

**Ms FOY:** I am not aware of such advice existing but I am happy to take it on advice.

**Mr HEUSTON:** I am working off my memory here.

**Mr DAVID SHOEBRIDGE:** You can take this on notice.

**The Hon. ADAM SEARLE:** Yes, it is not a guessing game.

**Mr DAVID SHOEBRIDGE:** I do not want you speculating and filling the gap by speculation.

**Ms FOY:** Correct.

**Mr DAVID SHOEBRIDGE:** With all due respect, there has been a bit of speculation, from what I can tell in your answers, Mr Heuston, so I am trying to narrow it down and find out what the situation is.

**Ms FOY:** May I ask your specific question?

**Mr DAVID SHOEBRIDGE:** Was the summary or the sense of the legal position as put by Mr Heuston—has that advice been provided by lawyers in writing to the Government?

**Ms FOY:** We will take that question on notice.

**Mr HEUSTON:** We will take that on notice, thank you.

**The CHAIR:** But you are aware that chapter 6 allows for new parties to make applications for new determinations?

**Mr HEUSTON:** Yes.

**The CHAIR:** Subject to them being able to prove that they are eligible to make such determination, to be fair.

**Mr HEUSTON:** That is what the Act provides.

**The CHAIR:** So, what part of chapter 6 would stop, for example, an Uber or the relevant union bringing an application for a new determination in chapter 6?

**Mr HEUSTON:** That would be a matter for them to decide and for the NSW Industrial Relations Commission to determine.

**The CHAIR:** Right, but you are not aware of any explicit barrier, other than what the commission might decide? There is no other legislative barrier to bringing an application?

**Mr HEUSTON:** If they have standing to make an application, then they can make an application.

**The CHAIR:** Sure.

**Mr DAVID SHOEBRIDGE:** Mr Heuston, were you the primary author of this submission?

**Mr HEUSTON:** No, it was prepared in consultation with the policy team.

**Mr DAVID SHOEBRIDGE:** I just find it a little confusing, and I will give you an example. Paragraph 10 of the submission states:

Gig economy work arrangements are considered to **not** be employee-employer arrangements, but to instead involve a principal-contractor arrangement, with individual workers having the status of independent contractors.

Do you stand by that? Do you think that is true?

**Mr HEUSTON:** I think if you read the remaining part of the submission, it elaborates on that and points out that of those cases where that issue has been explored before the Fair Work Commission, a vast majority of those have come to the conclusion that those relationships are one of contractor, rather than one of employment.

**Mr DAVID SHOEBRIDGE:** With all due respect, there is a set of cases in relation to one arrangement, which is Uber, which have gone one way, and there is a case in relation to another arrangement, which is Foodora, which has gone the other way.

**Mr HEUSTON:** Yes.

**Mr DAVID SHOEBRIDGE:** I just do not understand how you can assert that position, as you do in paragraph 10. Is what is there in paragraph 10 the legal understanding of your department?

**Mr HEUSTON:** If you refer to paragraph 12 through to 15, it goes into detail on each of those cases. So it does not ignore the Foodora example.

**Mr DAVID SHOEBRIDGE:** You bolded "not", emphasising that in paragraph 10. It is plainly not made out, even by your own submission. I just do not understand. You stand by paragraph 10?

**Mr HEUSTON:** That is the prevailing view of the Fair Work Commission.

**Mr DAVID SHOEBRIDGE:** No, it is not. In relation to the Uber arrangements, it has gone one way. In relation to Foodora, it has gone in another way. How do you tell me that the prevailing position in the Fair Work Commission is what you put in paragraph 10? It is just plain wrong.

**Mr HEUSTON:** Collectively, if you look at each of those cases, five of the six have come to that conclusion, if you are going to bundle up those matters.

**Mr DAVID SHOEBRIDGE:** Do you not understand that one is in relation to one set of arrangements, which is Uber, which went in one direction, and the other is in relation to another set of arrangements, which was Foodora, which went in the opposite direction.

**The Hon. SHAYNE MALLARD:** And have left the country. They are not even here now.

**Mr DAVID SHOEBRIDGE:** You do not just add five to one and one to the other and put them on a scale. Do you not concede that paragraph 10 is just wrong?

**Mr HEUSTON:** No, it is a paragraph written about the gig economy, and if you accept that Foodora and Uber are part of the gig economy, the majority of the cases where that has been contested arrived at the conclusion that it was not an employment relationship.

**Mr DAVID SHOEBRIDGE:** So, Mr Heuston, are you giving advice to the New South Wales Government consistent with paragraph 10? Is your department seriously giving the New South Wales Government advice consistent with paragraph 10? Is that the policy position in the department?

**Mr HEUSTON:** I think if you read through the entirety of the submission, rather than one sentence, it is clear that there are different results but for the most part for those contested matters in the gig economy the determinations of the Fair Work Commission have been that they are not employment relationships.

**Mr DAVID SHOEBRIDGE:** I am asking you about the paragraph. The only paragraph I can see where you have bolded emphasis—

**The Hon. SHAYNE MALLARD:** Point of order—

**Mr DAVID SHOEBRIDGE:** —if that is the basis of the advice you are giving—

**The CHAIR:** I will hear the point of order.

**The Hon. SHAYNE MALLARD:** My point of order is under procedural fairness. Mr Heuston has answered the question five or six times. He is being badgered now by Mr Shoebridge. He should move on to other questioning. My point of order is that the witness has answered the question five or six times, he stands by the submission and Mr Shoebridge should move on.

**The CHAIR:** I will allow a little more leeway. I think both Mr Heuston and Mr Shoebridge are acquitting themselves quite well. But I take your point. I am sure Mr Shoebridge does too. If Mr Shoebridge has any further evidence to be gained, perhaps he can try one more time and we will see if we can move on.

**Mr DAVID SHOEBRIDGE:** Mr Heuston, you heard the question. Is that the policy position and is that the advice the department is giving the New South Wales Government, consistent with that bolded, emphasised position in paragraph 10 of the department's submission?

**Mr HEUSTON:** The advice we are giving is consistent with the submission to this inquiry. It is broader than just that one sentence.

**Mr DAVID SHOEBRIDGE:** Sorry, I stand corrected. You have also emphasised the same effective point at the bottom of paragraph 12 where you have underlined "of" rather than "for", so that is distinguishing between employment and non-employment. So you have emphasised it twice.

**Mr HEUSTON:** I think it is a critical point: whether it is a contract of service or a contract for service.

**Mr DAVID SHOEBRIDGE:** The question is whether it is right though, Mr Heuston, and you have not—

**The Hon. SHAYNE MALLARD:** He has answered it.

**Mr HEUSTON:** The Fair Work Commission has come to one determination on five occasions.

**Mr DAVID SHOEBRIDGE:** It is not a maths problem, though, is it? It is a legal problem.

**Mr HEUSTON:** Whether we have a view one way or the other, that is what the determinations have been.

**Mr DAVID SHOEBRIDGE:** May I ask one question before I hand over?

**The CHAIR:** Yes, one.

**Mr DAVID SHOEBRIDGE:** The submission states:

... the NSW Government reaffirms its commitment to ensuring that all workers are fairly treated and free from exploitation.

What has the New South Wales Government done, consistent with that commitment, to protect gig workers?

**Mr HEUSTON:** Through the submission, and I think I have stated this already, is that for the vast majority of those in the gig economy the regulation of those terms and conditions are now covered by Federal laws. The role of the employee relations area is to consult with the Commonwealth, should there be initiatives to do something to address the issues that you have raised.

**Mr DAVID SHOEBRIDGE:** I am going to read that as "nothing" because you have not identified anything, Mr Heuston. If that is an unfair reading of your answer, please let me know.

**Mr HEUSTON:** I think it is an unfair reading of it.

**Mr DAVID SHOEBRIDGE:** You will not explain how?

**Mr HEUSTON:** In our compliance function we will regularly provide advice to employees and employers about a range of industrial matters.

**Mr DAVID SHOEBRIDGE:** You told them they are dead in the water—any employee—have you not?

**The CHAIR:** We will move on now. Mr Shoebridge, perhaps we will save our reflections for the deliberative. We will move to questioning from Government members.

**The Hon. SHAYNE MALLARD:** I will start with some questions. Thank you for your submission, which I find informative, recognising that I am not a lawyer. I am interested in the issue of the transferral of industrial relations powers to Canberra in 2009. In your submission you suggest that any legislation by our State or any other State to try to move the gig economy workers into an employer-employee relationship—if I am reading this right from your submission—is vulnerable to constitutional challenge from Canberra. Do you want to elaborate on that, first of all?

**Mr HEUSTON:** Stepping back to 2005, there was a decision by the Commonwealth to expand the reliance on its corporations powers to expand the coverage of Federal laws to corporations. That meant that there still remained some private sector coverage within the State for those people who were not employed by corporations. The decision was made by the Government in 2009 to refer those remaining matters to the Commonwealth, which means that the State system as it is now really is confined in its application to those in local Government—

**The Hon. SHAYNE MALLARD:** Public sector.

**Mr HEUSTON:** —public sector workers and also those in chapter 6, which we have talked about. So that is the context and the background to how that occurred. Similar States, of course, took a similar approach by referring remaining powers across to the Commonwealth. Victoria had done so earlier for a large extent back in the early nineties, I think it was. But the overall policy objective, of which I am sure there was more than one, was to provide for a national system across Australia in terms of workplace relations laws.

**The Hon. SHAYNE MALLARD:** So any legislative changes in New South Wales, or any other State examining this area, would reopen this issue?

**Mr HEUSTON:** Yes, so the Act provides that where there is an inconsistency between the Fair Work Act and industrial laws in New South Wales, the Federal laws would apply.

**The Hon. SHAYNE MALLARD:** If New South Wales was—

**The CHAIR:** Sorry, when you say "the Act provides", are you meaning the Act that referred the powers?

**Mr DAVID SHOEBRIDGE:** The big Act. The Constitution provides it.

**The CHAIR:** Yes, just to be clear, or the Act of referral?

**Mr HEUSTON:** I am talking about the Fair Work Act.

**The CHAIR:** Yes, fair enough, thank you—not the Constitution.

**The Hon. SHAYNE MALLARD:** There is no need to ridicule the witness. This is hypothetical but if New South Wales was to somehow be able to legislate within the workers compensation area to try to pick up some workers compensation coverage for these workers or these subcontractors, would that somehow trigger some problems with the national situation?

**Mr HEUSTON:** I cannot comment on workers compensation matters. That is a world of its own that I am not familiar with.

**The Hon. SHAYNE MALLARD:** Yes, we know that.

**Mr HEUSTON:** But industrially, if there were laws made about terms and conditions that were industrial, if they were to conflict with the Federal laws, the Federal laws would prevail, and there are decisions where this has been contested.

**The Hon. SHAYNE MALLARD:** And the trigger to move these subcontractors, for want of a better term, into some protection under industrial relations laws would be to redefine that relationship, which is a Canberra issue. The employer-employee relationship would have to be something that the national Government would have to consider.

**Mr HEUSTON:** What we have at the moment is a multi-factor test where there will be a range of criteria that will be examined, rather than a checklist type approach, and then the totality of that relationship will determine whether or not someone is a contractor or an employee. There are different tests applied in different countries but that is what we have at the moment.

**The Hon. SHAYNE MALLARD:** And that goes to Mr Shoebridge's interrogation around the five Uber cases and the one Foodora case. That was a multi—

**Mr HEUSTON:** That is right.

**The CHAIR:** To be clear, that is the *Hollis v Vabu* test, is it not?

**Mr HEUSTON:** There is a collection of them.

**The CHAIR:** But that era of common law?

**Mr HEUSTON:** Yes.

**The CHAIR:** Yes, and so it does not necessarily discreetly apply to gig workers; it applies to all contracts for service, or to assess whether a contract "for" service is in place as opposed to a contract "of" service.

**Mr HEUSTON:** Yes.

**The CHAIR:** Yes, fair enough. I am testing my 2006 labour law subject.

**The Hon. SHAYNE MALLARD:** It is very enlightening. That is the end of my line of investigation.

**The CHAIR:** Ms Houssos?

**The Hon. SHAYNE MALLARD:** Other Government members, my colleagues?

**The CHAIR:** We just went to Mr Mallard. We will go to Ms Houssos and then we will go to Government members. Do not worry. I am keeping an eye on it.

**The Hon. COURTNEY HOUSSOS:** I am not sure whether these questions are for you, Mr Heuston, or for you, Ms Foy. Ms Foy and I have talked about flexible work previously in a different inquiry. I am interested in the arrangements going forward and in what certainty has been given to government employees who are currently working at home. I think the advice that was provided previously by yourself and Mr Reardon was that you would adhere to the public health orders.

**Ms FOY:** Yes.

**The Hon. COURTNEY HOUSSOS:** Have you made any other planning other than that?

**Ms FOY:** Fundamental is the public health orders. That will guide how we operate in a COVID-safe way. They still stand and they will stand for the period of time that they are established. I might take us back in time a bit if that is okay.

**The Hon. COURTNEY HOUSSOS:** Yes.

**Ms FOY:** When we spoke, it was very much about protecting our workforce, protecting customers, protecting the community. A large number of our public sector workforce are working at home. Certainly, we would have seen the Treasurer, the planning Minister and the customer service Minister, I think, in recent weeks talking about rebalancing to be able to support both our public sector working flexibly and also ensuring that workers are part of the broader economy and the stimulation of the economy, with the proviso that we do so against those public health orders.

I might reflect a bit on the Department of Premier and Cabinet if that is okay. We were talking about this this morning. We have been watching very carefully and working with both our staff in Premier and Cabinet, which I think is over 1,100 people in the department, working very carefully to make sure there is the right balance between working flexibly at home or from another location, be it a regional office or another department, as well as working in the office. So we have a number of offices throughout the State, which are affected in different ways in terms of COVID safety. I think we have Aboriginal affairs offices in Dubbo. We have offices in Wollongong et cetera. Over the last couple of weeks we have been moving between having 30 per cent occupancy in the office to 40 per cent occupancy, and we will continue to work with our staff so they have face time with their peers, their colleagues and management as well as having the opportunity to work flexibly. I am sure you would have seen yesterday Minister Ayres' release around COVID safety. Those types of insights and the directions being taken are guiding the way we are working with our public sector workforce.

**The Hon. COURTNEY HOUSSOS:** So you do not have an end date? You have not said, "You can work from home until this point"? There are some big American companies that have said, "Mid-2021, you guys will be working from home until then", which obviously allows employees to plan their lives appropriately. Other large American companies have said, "You can work from home for forever". There are some big advantages for regional New South Wales, in particular, if government employees are able to relocate with that certainty of being able to work remotely.

**Ms FOY:** I think the certainty is certainly around making sure that we are COVID-safe in a way in Australia and the successes we have seen in the States and Territories in Australia with managing to work in a COVID-safe environment. Certainly we support our workforce to work flexibly and we will absolutely continue to do so, whether that is one day a week, two days a week or more working from another location. We certainly will support people being able to live and work in regional New South Wales. That is incredibly important and, equally, supporting our workforce to be working from the office, where appropriate, because offices are important places for collaboration, for connection. We saw that—the importance of that connection—in the report that came out of the Productivity Commission yesterday. We are not going to set an end date. We have not done so. We are working against the health orders and what the health orders require us to do.

**The Hon. COURTNEY HOUSSOS:** Is the Government currently investigating any plans to allow workers to relocate to regional areas and still continue to do their current jobs?

**Ms FOY:** We have a department of regional New South Wales and we have a public sector commission that looks at all of the workforce issues and the importance of regional New South Wales. I might refer that specific question to them but I am very happy to come back to you with some detail on that.

**The Hon. COURTNEY HOUSSOS:** That would be great. I have one final question. In today's *The Daily Telegraph* they talked about a large contractor—I think it was John Holland—that talked about the need for flexible working as part of construction projects. Is that something that you are looking at at the moment?

**Ms FOY:** I am not aware of it. On the quick read of the work that was released yesterday by Minister Ayres, I see a range of commentary about different industries. That is some work that Treasury and the council are doing there. I am happy to try to come back with some more information.

**The Hon. COURTNEY HOUSSOS:** That would be very helpful, thank you.

**The CHAIR:** Any Government member?

**The Hon. NATASHA MACLAREN-JONES:** I have one question in relation to a submission that was put in requesting or suggesting that rideshare vehicles would be allowed to use taxi lanes. Do you have a comment on that?

**Mr DAVID SHOEBRIDGE:** I think bus lanes and taxi stops.

**The Hon. NATASHA MACLAREN-JONES:** Yes, bus lanes.

**Ms FOY:** I am afraid I do not. I suspect that that would be within the Transport portfolio as it relates to the use of roadways again but I would be very happy to come back with some detail if that is helpful.

**The Hon. NATASHA MACLAREN-JONES:** That would be great, thank you.

**Mr DAVID SHOEBRIDGE:** If you are doing that, the other point they asked was about getting some guaranteed drop-off and pick-up points when major events have been run.

**Ms FOY:** Okay, sure.

**The CHAIR:** For what it is worth, Portfolio Committee No. 6—Transport and Customer Service is looking into that matter right now as we speak.

**The Hon. NATASHA MACLAREN-JONES:** Everything is crossing over.

**The CHAIR:** Indeed. Mr Donnelly?

**The Hon. GREG DONNELLY:** Through you to the witnesses, thank you for the submission. I cannot find within it, unless I have missed it, any reference to the relevance or otherwise of New South Wales workplace health and safety laws and the gig economy—the intersection or not, as the case may be. Do you have any comment in that regard?

**Ms FOY:** I suspect because that would fall outside of our portfolio responsibilities. So we have attempted to keep within our bailiwick, to be honest. I am not sure if Mr Heuston would have any—

**Mr HEUSTON:** That is right.

**The Hon. GREG DONNELLY:** So how would we—I think that was essentially the comment with respect to workers compensation as well. It is not within your direct purview so we should be looking somewhere else for some input from the Government. Is that what you are saying?

**Ms FOY:** With respect to work health and safety—

**The Hon. GREG DONNELLY:** Let us deal with workers compensation first because that got raised earlier. Who should the Committee be talking to in terms of the Government with respect to the matter of the relationship between workers compensation law and people working in the gig economy in New South Wales?

**Mr HEUSTON:** I might be needing to take that on notice, I think.

**The CHAIR:** Could I invite you? Is it the NSW State Insurance Regulatory Authority [SIRA] and icare?

**Mr HEUSTON:** That is my first thought but I am not quite sure.

**The CHAIR:** Rest assured. They are coming next week because they think they are.

**The Hon. GREG DONNELLY:** Okay, that is good.

**Ms FOY:** But rather than waiting for something on notice, if it is helpful—

**The Hon. GREG DONNELLY:** We are working out what the boundary lines are. That is good. No, that is fine. So, with respect to workplace health and safety laws, who will have a stab at who we are likely to have to talk to?

**Ms FOY:** Work health and safety laws: That would be through, I believe, the Department of Customer Service. But rather than take something on notice and have the normal time, I am very happy to work with the committee secretariat to provide advice about where that might be.

**The Hon. GREG DONNELLY:** Sure. Just with some precision so we know who we might be directing it to.

**Ms FOY:** Yes, of course.

**The Hon. GREG DONNELLY:** Thank you.

**Ms FOY:** No problem.

**The CHAIR:** I invite Mr Fang or Mr Pearson to ask any questions?

**The Hon. MARK PEARSON:** No, I do not, thank you.

**The CHAIR:** We will go to Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** One of the issues that has arisen is the question of fatigue in rideshare operations, in particular, and the ability of any particular operator to monitor how much the people who work for them are working. Are you aware of that issue, either Ms Foy or Mr Heuston?

**Mr HEUSTON:** I did hear some of the proceedings earlier today. I think it was with Ola when they were talking about the monitoring of log-on times and interactions with what that meant with driving times and the sharing of that information.

**Mr DAVID SHOEBRIDGE:** Yes, and obviously keeping gig workers safe would be part of the Government's general concern to ensure that all workers, including those in the gig economy, are treated fairly and free from exploitation. The New South Wales Government has a concern in that regard, does it?

**Mr HEUSTON:** I think if it is about workplace health and safety, it is probably outside the scope of what we would be responsible for.

**Mr DAVID SHOEBRIDGE:** What about the requirement to ensure that different—I will call them employers for shorthand but rest assured I am not asking you to agree with that characterisation, but the principal contractors or employers. We will call them the contracting entity. There are these different contracting entities who all have different, in this case, drivers working for them, and they are not able to communicate with each other because of privacy issues so as they can understand the cumulative fatigue. Getting those entities to talk to each other and share information would be something the New South Wales Government could assist with, would it not?

**Mr HEUSTON:** I think that would be a matter for government policy. I think it probably goes a bit beyond the employee relations function but I understand the point you are making.

**Ms FOY:** I think if the principle is whether the work health and safety of workers is important—all workers, absolutely. I am afraid we cannot—I would be very hesitant to comment on a solution around being able to connect employers and employees in terms of managing fatigue, and I suspect that that would be best answered by our work health and safety people or others. But the principle about work health and safety is incredibly important, obviously.

**Mr DAVID SHOEBRIDGE:** It is not just the principle. One of the major operators said that they wanted this so as they could keep their drivers and their passengers safe, and I assume the rest of us safe. They actually want it. Are you aware of them wanting this?

**Mr HEUSTON:** I heard them say that in the proceedings yesterday.

**Mr DAVID SHOEBRIDGE:** Where you say that "as an active partner in the national Fair Work System, the NSW Government will continue to monitor this issue"—"this issue" being ensuring that gig workers are fairly treated and free from exploitation—this has not been something you have been monitoring?

**Mr HEUSTON:** It is not something I am aware of—that they had that view.

**Mr DAVID SHOEBRIDGE:** Is anybody in government joining the dots between the different entities to keep an eye on the gig economy? Or is some of it being done over in Customer Service, some of it being done over in SIRA, some of it being done over in Premier and Cabinet? Is there anyone joining the dots?

**Ms FOY:** I think that is the great utility of having an inquiry like this; that it provides us with a range of evidence from the sector. So, of course, we try to connect as many dots as we can, particularly being Premier and Cabinet, but it will be the benefit of considering the Committee's report so that if there are gaps we can address those in any respect.

**The Hon. SHAYNE MALLARD:** Good answer.

**Mr DAVID SHOEBRIDGE:** Given that an increasing proportion of the people who work in the State—on one figure it is 20 per cent of people in the transport sector, 9 per cent of people across the economy—is there nobody in government who is joining the dots? I assume that is your job; you are Premier and Cabinet.

**Ms FOY:** It is akin to asking me if I would like world peace, but I am very—

**Mr DAVID SHOEBRIDGE:** I am not asking about world peace. To be quite frank, it is—

**Ms FOY:** Sorry, I withdraw that.

**The Hon. WES FANG:** Point of order—

**Ms FOY:** Mr Shoebridge—

**Mr DAVID SHOEBRIDGE:** I am not asking about world peace.

**The CHAIR:** Cease proceedings. A point of order has been taken.

**The Hon. WES FANG:** The witness is trying to address a question asked by Mr David Shoebridge.

**Mr DAVID SHOEBRIDGE:** She has taken issue with the question.

**The Hon. WES FANG:** The witness is trying to answer a question asked by Mr David Shoebridge, who is continuing to interject over the top of her. I would ask the Chair to ask him to allow the witness to answer in fullness before he continues on with the question.

**Mr DAVID SHOEBRIDGE:** To the point of order: I simply say that when the witness takes issue with the question and compares it to a request for world peace, it is unnecessarily provocative of the witness. I accept that I should not bite and I will allow a silly answer to be on the record.

**The CHAIR:** We have had a very respectful session so far, certainly by our standards—certainly by your standards and my standards, David—

**The Hon. COURTNEY HOUSSOS:** That is what happens when you go to the Chair.

**The CHAIR:** —so I would encourage us all to continue in that spirit today. A question has been asked. The witness is allowed to respond without being further interrupted by any commentary or otherwise. Of course, the witness will be directly responsive to the question asked.

**Ms FOY:** Please allow me to withdraw that comment. I am very keen, and that is why we put in a submission, it is why we appear today, because there are emerging issues around this. I mean we do watch things very carefully. As Mr Heuston said in his evidence, we look at what is happening in the Commonwealth space under the Fair Work Act. I am very conscious about the witness that we follow and the impact on people's lives, and I am very keen to see what comes out of this Committee's report, and we will give it absolute consideration. In being part of the central part of government in the Department of Premier and Cabinet, we will work very hard, from our industrial relations and employee relations team, to attempt to connect the dots and provide advice back to government.

**The CHAIR:** Thank you, Ms Foy. I have some questions to ask both of you about the policy-making functions of your team if that is possible?

**Ms FOY:** Sure, of course.

**The CHAIR:** You would be aware that the Victorian Government commissioned an inquiry to look at the on-demand workforce, yes?

**Ms FOY:** Yes, the team has been monitoring that.

**The CHAIR:** Did you engage in that, by any chance, with the Victorian Government or with the inquirer, Ms Natalie James?

**Ms FOY:** I have not directly.

**Mr HEUSTON:** No.

**The CHAIR:** But you are aware that, as part of that inquiry, Ms James gathered information on the nature of the on-demand workforce in Victoria and, to some extent, in Australia?

**Mr HEUSTON:** Yes.

**The CHAIR:** She made certain statistical and/or demographic findings, namely, 13 per cent of Australians have worked in the gig economy, gig economy workers are overwhelmingly tertiary educated, young workers make up 20 per cent of the gig economy and 14.8 per cent of workers now work in the gig economy.

**Ms FOY:** Yes.

**The CHAIR:** You are aware of those findings that she made?

**Mr HEUSTON:** Yes, I have read the report. I cannot recall the exact statistics that she reported.

**The CHAIR:** Fair enough. You cannot be expected to recall the exact statistics. I am asking whether we have any comparable data in New South Wales that you are aware of, either that the Government has commissioned or collected or that you are aware that others are commissioning or collecting?

**Ms FOY:** Not that I am aware of but I am happy to go back and check if that is the case.

**Mr HEUSTON:** Not in New South Wales. There is some data available from overseas jurisdictions about the extent that the gig economy is underway but I think, in terms of New South Wales, I am not aware of any other dataset that is specific to New South Wales, other than what is in the Victorian report.

**The CHAIR:** The information in the Victorian report was gathered at the behest of the Victorian Government. Have you made any representations to the Government that it should be collecting such evidence or commissioning such studies?

**Ms FOY:** Not at this point; no, we have not.

**The CHAIR:** Is there a reason why you have not made such a recommendation?

**Mr DAVID SHOEBRIDGE:** Actively monitoring.

**Mr HEUSTON:** I might take that on notice if I may?

**The CHAIR:** Of course. Ms James also found that more than one in 10 gig economy workers earn near or below the Federal minimum wage. Do you have any comparable data that you can point to in New South Wales that would lead us to reject that finding, or should we accept that as being fair and representative of what might be happening in New South Wales as well?

**Mr HEUSTON:** I am not aware of any data that goes to that point one way or the other.

**Ms FOY:** But we might go back and check.

**The CHAIR:** Ms James' study did encompass New South Wales, so what I am asking, therefore, is whether or not you are aware of anything else that would cause us to not take Ms James' finding effectively at its word.

**Ms FOY:** If we could check because Treasury may hold such data but I am not sure. I apologise that I am not—

**The CHAIR:** Would you like to take that on notice?

**Ms FOY:** Yes, of course.

**The CHAIR:** That would be appreciated. Mr Heuston, you made some reference to the ability of the New South Wales Government have some input into Federal deliberations on these matters. Do you recall?

**Mr HEUSTON:** Yes.

**The CHAIR:** What input have we had in the last three years in any Commonwealth deliberations on these matters?

**Mr HEUSTON:** Generally, if the Commonwealth is proposing changes to legislation, they will undertake a consultation process with referring States, which will be our opportunity to contribute to whatever they are proposing.

**The CHAIR:** Has the Commonwealth sought the input of the New South Wales Government in any such respect that you are aware of?

**Mr HEUSTON:** In relation to the gig economy?

**The CHAIR:** Yes.

**Mr HEUSTON:** Not in relation to the gig economy, no.

**The CHAIR:** Has the New South Wales Government or any New South Wales Government Minister or any Commonwealth forum said to the Commonwealth that this should be a matter that needs to be looked at?

**Mr HEUSTON:** I do not know.

**The CHAIR:** Okay, fair enough. Is it possible that you could take that on notice to see if you could find out?

**Mr HEUSTON:** I will take it on notice. I am not sure how much success I will have, but yes.

**The CHAIR:** Of course, the department engages with your Federal department's counterpart in ministerial councils, do you not?

**Mr HEUSTON:** Our area does not directly have input into that.

**The CHAIR:** The Department of Premier and Cabinet does.

**Mr HEUSTON:** The Department of Premier and Cabinet; not employee relations, though.

**The CHAIR:** Okay. Can you take on notice whether or not the Department of Premier and Cabinet has initiated any discussion at a Commonwealth level about reform of Commonwealth laws in respect to the gig economy? I will ask any other members whether they have questions. Otherwise, I will continue.

**The Hon. COURTNEY HOUSSOS:** I have one that is unrelated. Ms Foy, can you tell me if the Department of Premier and Cabinet has a standard paid parental leave policy that goes across the whole of government or is it just for DPC?

**Ms FOY:** Mr Heuston is best placed for that one.

**Mr HEUSTON:** Generally, the parental leave arrangements are included in awards, of which there are many across the public sector. For the most part they are fairly comparable, providing 14 weeks' paid maternity leave and one week of other-parent leave. There are some variations to that, which have been negotiated at enterprise level, but for the most part they are the key elements that would be common across most of government.

**The Hon. COURTNEY HOUSSOS:** Sorry, you said it is fairly common. Can you tell me if there are any others that have more than one week for other-parent leave?

**Mr HEUSTON:** I will take that on notice.

**The Hon. COURTNEY HOUSSOS:** Yes, that is fine. I am happy for you to take this on notice again: Do you have a DPC policy or guide about what is best practice?

**Ms FOY:** For?

**The Hon. COURTNEY HOUSSOS:** For paid parental leave, what it should be. That would be great, thank you.

**The CHAIR:** I turn now to some of the propositions that have been advanced by others in their submissions. Have you, by any chance, had the opportunity to have a look at Unions NSW's submission?

**Ms FOY:** I had a brief look at the Public Service Association one last week.

**Mr HEUSTON:** I have, yes.

**The CHAIR:** You are aware that one of the reforms that it calls for is the establishment of portable leave entitlement schemes in general?

**Mr HEUSTON:** Yes.

**The CHAIR:** And are you aware that it says that an example of that should be pursued with respect to gig work as well?

**Mr HEUSTON:** I am aware of that recommendation.

**The CHAIR:** That is not a proposition that has been—I guess, somewhat resisted but not heavily resisted by gig companies. You might disagree with me on that view. If you have a different view, please tell me. Do you see any barriers in New South Wales being able to establish such a scheme for gig workers? If it is designed for contractors and not designed as an employment?

**Mr HEUSTON:** I do not have a view about that. It is really a matter for government policy.

**The CHAIR:** But are there any legal barriers that you are aware of that would preclude the ability of the State to legislate to establish one?

**Ms FOY:** I am afraid neither of us are lawyers. Are you a lawyer, Mr Heuston?

**Mr HEUSTON:** No.

**Ms FOY:** No. Neither of us are lawyers but—

**Mr HEUSTON:** But the long service leave corporation is the government agency responsible for portable long service leave schemes in relation to the building and cleaning industry, so they would be the better agency to comment on that sort of scheme.

**The CHAIR:** Yes, okay. That is part of what brings me to the questions. They are a part of Treasury, are they not—the cluster?

**Mr HEUSTON:** I believe it is Customer Service.

**The CHAIR:** Fair enough. It is hard to keep up. One of the propositions that is being advanced is that therefore that is proof that we would have the legal authority to create without encountering the Independent Contractors Act 2006, because we do do that it in the building industry for contract relationships. Do you have any insight or any expertise on such a question or should we put that to the long service leave corporation?

**Mr HEUSTON:** "No" is the answer to the first question.

**The CHAIR:** You do not have any expertise?

**Mr HEUSTON:** I do not know so it is better directed towards the long service leave corporation or the Department of Customer Service.

**The CHAIR:** Are there any other questions? Otherwise, I will keep going. I want to turn back to the Independent Contractors Act and what it does and does not allow us to regulate. We have explored the chapter 6 dimensions of it. But are you aware that the Independent Contractors Act says that superannuation and workers compensation is not a workplace relations matter?

**Mr HEUSTON:** I do not have it in front of me but I understand there is a list of exemptions and that sounds familiar.

**The CHAIR:** I will read it to you. Section 8 (2) states:

(2) None of the following is a *workplace relations matter*:

...

(b) superannuation;

(c) workers compensation;

...

So you accept that that is probably a fair reading of the law?

**Mr HEUSTON:** Yes.

**The CHAIR:** Great. And therefore, to the extent to which the State Government has power to establish superannuation entitlements for people who are on contracts for services, do you expect there to be any issue with the Independent Contractors Act?

**Mr HEUSTON:** I am not able to—I might take that on notice.

**The CHAIR:** Could you?

**Mr HEUSTON:** I am not sure if that is something that I can answer now.

**The CHAIR:** Yes, fair enough.

**Mr HEUSTON:** It may also be an item that better fits within another area of government that we may need to consult. The superannuation policy responsibility is not one that falls within employee relations and neither is workers compensation.

**The CHAIR:** Yes, I accept that. And if you would take it on notice, I would appreciate that. The Independent Contractors Act also says that States are precluded from making laws in this respect of workplace relations matters that are akin to, effectively, the leave entitlements of employees of an independent contractor. To the best of my knowledge, it is not tested. You might be able to explain to me whether this is right or wrong. At the time the Independent Contractors Act was written it was envisaged that the most common scenario would be one contract providing, effectively, a contract for service to one contractor; one principal, one contractor. It is not clear whether the Independent Contractors Act also contemplates whether or not multiple contracts for service being executed at the same time means that it is more akin to a small business relationship, as opposed to a contract relationship. Do you follow the logic?

**Mr HEUSTON:** I understand what you are saying.

**The CHAIR:** If you then accept the definition that if a person who is providing multiple services to multiple agencies is more like a business and then it is within the power of trading laws and trade practice laws to cover them, would you accept that there is an interaction with trade practice laws?

**Mr HEUSTON:** I do not think I am in a position to comment on the interpretation of the Independent Contractors Act and interactions with trade practices.

**The CHAIR:** Does the New South Wales Government have any expertise in this that the Committee can call upon, because it is a complicated question which, to be fair, Commonwealth authorities have not looked at either?

**Ms FOY:** Would it be more helpful, again, for us to liaise with the committee secretariat—

**The CHAIR:** Yes, it would be.

**Ms FOY:** —rather than wait for an answer on notice?

**The CHAIR:** Yes, it would be most helpful in that respect as well.

**Ms FOY:** Yes, thank you. We will do that.

**The CHAIR:** In terms of dispute resolution procedures that could be available under the New South Wales laws, do you have a view that we have referred our powers to establish any dispute resolution procedures, other than chapter 6?

**Mr HEUSTON:** Sorry, can you repeat the question?

**The CHAIR:** To the extent to which we are able to establish a dispute resolution function, be it through the NSW Civil and Administrative Tribunal or otherwise, is it your view that there are any legal-ish barriers for us being able to establish such a scheme for gig workers that we should be aware of?

**Ms FOY:** I am afraid I have to plead ignorance on that one and, again, get advice on where that would be appropriate because our domain is fairly narrow. Again I would not want to give legal opinion, not being a lawyer et cetera. But I am very happy to come back with some advice on that one.

**The CHAIR:** Mr Heuston, one thing that you said you do is provide services and advice about compliance with New South Wales law.

**Mr HEUSTON:** That is right.

**The CHAIR:** How many requests for advice have you had from gig workers?

**Mr HEUSTON:** Very few, if any.

**Ms FOY:** It is very small.

**Mr HEUSTON:** But I can take that on notice.

**The CHAIR:** Fair enough. Have you had contact with any platform or gig company itself that sought any advice or assistance about its compliance obligations under New South Wales law?

**Mr HEUSTON:** Not that I am aware of but I will take that on notice because I might just not know about it.

**The CHAIR:** Fair enough.

**Mr HEUSTON:** But we also do get inquiries through to our phone service of people that do not necessarily declare who they are when they are seeking advice so it may well be that people have sought advice without us knowing where they are from or who they are representing.

**Ms FOY:** We have moved to provide some online training facilities as well so there may be people accessing that as a matter of course.

**The CHAIR:** Are you aware of any public sector agency that is using gig platforms to source labour?

**Mr HEUSTON:** I am not aware.

**The CHAIR:** Would they contact you?

**Mr HEUSTON:** But it is not surprising that I would not be aware because the procurement function—

**The CHAIR:** Is for Treasury.

**Mr HEUSTON:** It is not something that would be through employee relations. It might be done by individual agencies or it might go through NSW Procurement.

**The CHAIR:** Yes, and that is part of the reason I was asking. But you would make the point that you are responsible for compliance with New South Wales laws and, equally, you are somewhat responsible for compliance with the public sector awards and determinations. Would you agree?

**Mr HEUSTON:** Industrial laws; not as far as fair trading or workers compensation.

**The CHAIR:** Yes, sure, industrial laws. But to the extent to which any public sector agency is engaging gig platform work, it would be your responsibility to ensure that that is compliant with the award, would it not?

**Ms FOY:** Is that such as Uber or—

**The CHAIR:** So, for example, if NSW Health was looking to source people from Mabel, for example. I am not saying that they are. I am saying that could be one incidence of a public sector agency using it. Equally if a local government was responsible for seeking to hire labour through Airtasker, for example, is that something that you would be responsible for?

**Ms FOY:** No, we would not be responsible. We are not aware. That would generally come down to— so while Treasury has NSW Procurement and provides that kind of centralised coordination and support, agencies have their own procurement practices. To be perfectly honest, I have not heard of anyone using such platform, but it is not something that we monitor at all.

**The CHAIR:** Okay, fair enough.

**Ms FOY:** But if there is that information captured by agencies, again I am very happy to ask the question.

**The CHAIR:** Fair enough. Does the Committee have any other questions for these witnesses? We thank you very much for your time and for your responsiveness to the questions today. You have taken a multitude of questions on notice.

**Ms FOY:** Yes, we have, thank you.

**The CHAIR:** You will have 21 days to provide a response. We also appreciate you liaising with the secretariat to point us to other government agencies who can experience similar treatment to you.

**Ms FOY:** Yes, no problem. I figure that that is more efficient.

**The CHAIR:** Thank you very much for your appearance.

**(The witnesses withdrew.)**

**LUIS IZZO**, Representative, Australian Business Industrial, affirmed and examined

**MARK FROST**, Chief Economist, Business NSW, affirmed and examined

**The CHAIR:** We welcome our next witnesses, representatives from Business NSW. We thank you for your appearance. Would either of you like to make an opening statement?

**Mr FROST:** Yes, please. Thank you, Chair. Thank you for the opportunity for Business NSW to appear before the inquiry into the impact of technological and other change on the future of work and workers in New South Wales. Formerly the NSW Business Chamber, Business NSW is the peak body representing over 20,000 New South Wales businesses with an alliance network of more than 200 chambers of commerce across New South Wales. I am joined today by my colleague Luis Izzo, who is appearing in his capacity as a representative of Australian Business Industrial. Australian Business Industrial comprises of those Business NSW members who specifically seek membership of a federally registered employer organisation.

We welcome the forward-looking nature of this inquiry so we can all better understand and prepare for the potential impact that may arise due to changing work patterns and technological change. We believe regulatory frameworks should evolve according to the environment in which they operate. Our view would be that regulatory interventions should seek to minimise unintended impacts on decisions about how firms choose to structure or operate their business. This means ensuring there is an even playing field such that incumbent businesses and new entrants compete on the value position they provide to their customers, rather than their ability to avoid regulatory or other requirements. It also means creating an environment where innovative business models that create value and economic opportunity can prosper. In the context of the current pandemic, this is as important as ever.

While we are unaware of any precise definition of "gig economy" or "on-demand work", we interpret these concepts as referring to work arrangements facilitated by new technologies and digital platforms. With this framing in mind, we note that workers participating in the on-demand or gig economy account for only a subset of those working as independent contractors and are an even smaller subset of the total labour force. Trends relating to this type of work have not given rise to an increase in independent contracting, with Australian Bureau of Statistics data indicating a decline in main job independent contractors over the five years to August 2019.

According to a recent national survey, only 7.1 per cent reported performing work through a digital platform in the past 12 months. Yet, even still, the typical worker using these platforms works only limited hours, uses this type of work to supplement other sources of income and does not regard this income as essential to meeting their basic needs. For these reasons, we do not see the gig economy as having sufficient weight to fundamentally alter the New South Wales labour market today or in the foreseeable future. We do not see the gig economy as challenging traditional employment. Much of the activity which underpins our economy relies on forms of collaboration that can be more easily achieved through employment. Given the relative stability of independent contracting, we do not see the gig economy as giving rise to any new or urgent need to reconsider policy settings relating to work status, though we welcome this inquiry as an opportunity to uncover ways to improve regulatory settings where challenges are identified. Thank you again for the opportunity for Mr Izzo and myself to appear before you today, and we would be happy to answer any of your questions. Thank you very much.

**The CHAIR:** Thank you. Mr Izzo, do you have an opening statement?

**Mr IZZO:** No.

**The CHAIR:** Mr Frost, would you be able to table your opening statement?

**Mr FROST:** Sure.

**The CHAIR:** I will commence the questioning. You made some reference in your opening remarks to some data. Was the source of that predominantly the Australian Bureau of Statistics [ABS]?

**Mr FROST:** The data relating to independent contractors is from the ABS, yes. There is also reference to a survey, which was commissioned by the Victorian Government in 2019 titled—

**The CHAIR:** Inquiry into the Victorian On-Demand Workforce?

**Mr FROST:** Yes. The survey was *Digital Platform Work in Australia: Prevalence, Nature and Impact*, from November last year.

**The CHAIR:** My questions go to the findings that you make reference to in your submission. You are aware that Ms James, who completed that report for the Victorian Government, found that more than 13 per cent of Australians have worked in the gig economy?

**Mr FROST:** That particular finding was combining those people who have in their entire life, for lack of a better way of putting it. The reference we included in our submission was referring to the last 12 months. We would believe that is probably the most appropriate figure when you look at traditional measures of employment, which in the case of, let us say, the labour force survey, it would pertain to the previous month. We believe that is the appropriate figure to rely on.

**The CHAIR:** Fair enough. That is reasonable, but the point is that 14 per cent of people have at some time in their career worked in the gig economy. You do not disagree with that finding?

**Mr FROST:** That is the finding of that survey, yes.

**The CHAIR:** Your argument is effectively that 7.1 per cent is not enough for us to think it is effectively on the margins of the labour force. Is that incorrect?

**Mr FROST:** When you take the fact that there is a subset of the entire labour force that have participated in the gig economy, combined with that they tend to work only limited hours. If you measure their impact on, let us say an hours-worked basis, we do not have good, comprehensive data about that. But if you consider that around half of gig economy workers work fewer than five hours, for example, in terms of a weight that it has, or a cumulative impact it has on the labour force, it is relatively low compared to traditional employment.

**The CHAIR:** Did you see some of the ABS data that came out last quarter reporting on the first three months of the pandemic?

**Mr FROST:** Yes.

**The CHAIR:** Are you aware to the extent to which the ABS reported employment growth it said that overwhelmingly that was in, effectively, the gig economy, or the hours gained were performed by labour in the gig economy?

**Mr FROST:** Not the specifics, but that would not be a surprising thing to hear.

**The CHAIR:** You would agree therefore that people turn to the gig economy as a form of resilient labour in circumstances where they have lost jobs? That is not a bad thing, by any means.

**Mr FROST:** Yes. We made a similar statement in our submission, indeed that when we look at the context of the current pandemic, it is actually a good thing that there are opportunities for people to acquire some work, yes.

**The CHAIR:** Yes, you agree. Other than the digital platform prevalence report that was prepared for the Victorian Government's inquiry are you aware of any other data that is New South Wales specific?

**Mr FROST:** Not New South Wales specific data. I know that there are other estimates, and work undertaken by the Productivity Commission at a Federal level, but not specifically as it pertains to New South Wales.

**The CHAIR:** Do you think for our purposes it is fine for us to rely on that as being the latest, most comprehensive data available to us?

**Mr FROST:** My understanding is that survey is the most comprehensive national survey. It does include some New South Wales data, but obviously it is predominantly presented at a national level, but I think the trends that it illustrates and highlights would not be dissimilar in New South Wales relative to the rest of the country.

**The CHAIR:** Do you think one of the recommendations we should make would be to gather further data about it in New South Wales?

**Mr FROST:** I think so. A few years back we put out a report on the sharing economy, and one of the key policy principles that we reinforced in that report was the importance of data and having a much better understanding of trends and what is occurring in this particular cohort.

**The CHAIR:** Finally, before I ask other members to ask their questions, are you aware that that report found that more than one-in-10 gig economy workers earned near or below the Federal minimum wage?

**Mr FROST:** I am not aware of any specific findings. I know that they did ask questions relating to how much people made on those platforms, and there were a range of different figures reported. Just as a general

statement, one of the things that I think is inherent in gig economy work is that there is actually—at the end of the day if they are an independent contractor, let us say for example, they are determining the nature and the way that they work. They also determine whether they want to work for a full hour, for example, whether they want to work for part of a period of time, and I think that may be one factor that gives rise to some of the figures reported at the lower end of that spectrum. But, that is a general statement. I cannot provide any—

**The CHAIR:** Are you aware that Uber in its submission to this inquiry has said that effectively the data that they collect shows that their drivers on average would earn \$21 an hour after costs?

**Mr FROST:** I am not aware of that specific statement in their submission.

**The CHAIR:** The two data points show a common scenario, that gig workers are earning close or below the Federal minimum wage. Am I right in understanding that your position is that should not be of concern because they are independent contractors and therefore that is something that they have effectively chosen? Is that unfair?

**Mr FROST:** No. I think what I would say is that if it is the case that an individual worker using a gig economy platform who has, for whatever reason, happened to work a certain number of jobs in that period of time, whatever the particular circumstances that give rise to that, that would be a matter for them and their engagement with the platform. There are probably a lot of factors, a lot of complex aspects of it.

**The CHAIR:** Basically, your view is we should not be benchmarking what an independent contractor earns to what an employee earns. Is that a logical deduction?

**Mr FROST:** I just think it depends on the nature of the work, how the work is carried out, the preferences of the person using the platform.

**The CHAIR:** Should we be worried that people are earning near or below the Federal minimum wage through gig work?

**Mr FROST:** What we would not want it to be, as noted in my opening statement, we would not want it to be that this structure is being used to have some false advantage or some, I guess, competitive advantage that is not based on the value proposition that they provide to their customers.

**The CHAIR:** That brings me to the core of the question I am asking you. From the perspective of Business NSW do you foresee scenarios in which your members could be put at a competitive disadvantage because they are paying at least the Federal minimum wage and they are competing with people who are not?

**Mr FROST:** I think it would just depend. I do not have any specific knowledge of that.

**The CHAIR:** It is not a concern that has been raised by any of your members?

**Mr FROST:** We would have individual members who may raise those concerns, but I do not have any specific knowledge off the top of my head, no.

**The Hon. SHAYNE MALLARD:** Just to follow that up to be clear, the Federal minimum wage applies to employees and not to subcontractors. Is that right?

**Mr FROST:** Well, unless Mr Izzo wants to correct me—

**The Hon. SHAYNE MALLARD:** This is your ideal chance for you to make a contribution.

**Mr IZZO:** That is correct, yes.

**The Hon. SHAYNE MALLARD:** That is correct, yes. Let us be clear on that. The emergence of the gig economy—this is probably one for the economists—would you not say that is a response to the labour market looking for flexibility of work?

**Mr FROST:** I actually see it a little bit differently. I would conceive of it as technology enabling new markets that previously could not exist in the sense that the transaction costs associated with establishing these types of markets would have been prohibitively high absent the technological innovation, such that you just simply would not have had suppliers of the services and the customers who demand those services having emerged. It really is a technology that facilitates new markets. We do not necessarily see it creeping into other parts of the economy in some sort of zero sum sense, it is actually enabling and unlocking new economic capacity that may not have existed before.

To give a concrete example of that, UberPool is an example of a model that it would be very hard to think of how that could happen, or how such an arrangement could safely and efficiently occur absent the technological innovation that Uber was able to offer. That would be how I would see it. Of course, some of these business

models are more suited to the types of arrangements that they use. If they do indeed use an independent contracting arrangement, their business model is more compatible with that model.

**The Hon. SHAYNE MALLARD:** It is part of the digital revolution that is going on, that has brought the demise of Fairfax and brought the gig economy into its own. Would you agree with that, as economists, they are the sorts of changes that we have seen going on?

**Mr FROST:** Sorry, can you clarify?

**The Hon. SHAYNE MALLARD:** It is part of the digital revolution, for want of a better term, I do not like the term "revolution". The dramatic digital change in the last five to 10 years in the economy, in the workforce and also businesses, the gig economy is part of that overall change?

**Mr FROST:** Absolutely, yes.

**The Hon. SHAYNE MALLARD:** Do you think that the gig economy is filling an important gap in the employment/labour market?

**Mr FROST:** Yes, I would agree with that in the sense that when we look at, let us say that survey that we were talking about earlier and the nature of some of the feedback provided by gig economy workers themselves, was that there was really high evaluation of the ability to work additional hours, supplementary to other sources of income. Very few, according to that survey at least, relied on it as sort of an essential source of their income, but it was the ability to work additional hours, and I think that could through that lens it is certainly a valuable innovation for workers and for customers and for the whole of society I would have thought.

**The Hon. SHAYNE MALLARD:** I have a habit of asking the Uber drivers, when I get them, a bit of their life story. I have found women who have kids, or artists supplementing their income. Is there any research around the diversity of people who find it attractive to work in that gig economy?

**Mr FROST:** Again, going back to that survey, I think that is from a contemporary—

**The Hon. SHAYNE MALLARD:** This is the Victorian survey?

**Mr FROST:** The Victorian—it was actually a national survey, but commissioned by the Victorian Government. As far as I am aware that is the most comprehensive survey and they did unpack some of the details of which demographics and what types of people tend to gravitate towards those platforms.

**The Hon. SHAYNE MALLARD:** In the context of COVID, I have been impressed how the gig economy has really stepped up to the mark there. We have all seen the rapid growth of cyclists around the city delivering meals. It has been a positive thing in the context of our pandemic. Would you agree with that?

**Mr FROST:** Yes, I would.

**The Hon. SHAYNE MALLARD:** Why would you say that?

**Mr FROST:** At the end of the day if we look at the economic impacts of COVID and we think about where are they most felt. It is the human costs associated with people not having work, and not just from an economic perspective either, there are other non-economic benefits to work. We are probably getting into the anecdotal, but I just remember watching, I think it was *A Current Affair*, where you had people saying, "I'm able to get out there and work. I don't have to sit at home. I can do things." It might be a stepping stone to another opportunity for that person.

In light of the economic impacts—and we still have elevated unemployment in New South Wales, albeit I think 64 per cent of jobs or employed persons at the height of the crisis have now found work—but to have the gig economy supplementing the availability of work options I think is good. Not to mention the fact that the very nature of COVID-19 has required us to socially distance and has actually enabled us to consume things that we wanted to consume, whether you are looking to get a meal from a cafe or whatever, and this has been a lifesaver for many businesses. Of course, it does not replace the ability to operate normally, but I am sure that for many businesses in the case of food courier services—and of course the gig economy is much broader than that—but particularly in that example and that instance it has been very beneficial.

**The Hon. SHAYNE MALLARD:** Would you agree, for a lot of your business members it has added a new product offering without a big overhead for them? The local cafe around the corner from me would never have delivered coffee and breakfast to people, but does it though Uber Eats, I think. That must be the case, there has been a whole expansion of opportunities in businesses?

**Mr FROST:** It has put an option on the table for businesses looking to pivot, whether temporarily or permanently, it has put new opportunities on the table that did not exist prior to—well, you could just imagine a world where we did not have these platforms, they would not have any source of income, many businesses.

**The Hon. SHAYNE MALLARD:** I go to that point, the local Thai restaurant had to employ a person or pay someone—dare I say cash in hand maybe—to do the deliveries for their Thai restaurant from the phone calls. It is a whole different world now, and a more cannibal world too, in the context of how that relationship may have been operating, as opposed to at least we have got a transparent platform process.

**Mr FROST:** To that point, one of the things I would seek to emphasise is that it is not like home delivery of food is a new thing, it has been around for many, many years. But, you only need to look at the number of food courier services on the streets to realise there has been a massive explosion of this service. This has created value that, for whatever reason, consumers previously there was an apprehension to pick up the phone and call. Whereas you click on an app, you have pictures. There is a certain customer experience innovation that has built and created a new market, and businesses have benefited from that at the other end of the platform.

**The CHAIR:** Mr Mallard, if it is okay, I will hand over to Mr Donnelly?

**The Hon. SHAYNE MALLARD:** That is fine.

**The CHAIR:** There is time. You will have more opportunity.

**The Hon. SHAYNE MALLARD:** I was about to hand over.

**The Hon. GREG DONNELLY:** Thank you, gentlemen, for coming along this afternoon. Can I take you to page 3 of your submission, specifically the third paragraph where it states:

The current regulatory framework adopts the common law principles for determining whether a workforce arrangement is a "contract of service" or a "contract for services" in a manner best suited to underlying policy objectives.

From the point of view of Business NSW, the correct weighting of that is that the way in which it is operating at the moment, treating it effectively as an independent contract arrangement, using that sort of phrase, that is satisfactory presently? Is that your position?

**Mr IZZO:** That is the position, and I think for two reasons. One, you have a relatively long standing history of principles that apply to determining whether someone is a contractor or an employee. And one of the critical elements of that test is it looks at the substance of the arrangement, as opposed to the form. And what that enables is a court, in any particular circumstance, to drill down and say, "Well, I have looked at everything involved here, I have looked at the levels of control, I have looked at the extent to which the person chooses when they perform their services, how they perform it, all of that regime." Then they form a determination. It is not necessarily the case that every principal in the gig economy is not an employer, it is not necessarily the case that every worker is not an employee. You might have a circumstance where the factors are such that it results in an employment relationship being found, but on the other hand, you may well have circumstances where no employment relationship is found. And what the existing regulatory framework allows is an analysis of the individual circumstances of every case to get to that conclusion. What we say is that is an appropriate and satisfactory approach to drawing the distinction.

**The Hon. GREG DONNELLY:** Thank you for that. As we know, and it is trite to say, this innovation is moving rapidly. We can almost see it in front of our eyes. Who knows what is going on down the pipeline. For example, we have had evidence today—and I think we have heard it elsewhere as well—of the model of the gig economy of having a platform whereby people can obtain an app and through the utilisation of the app seek job lots or work to do. It has already moved into aged care and teaching. As far as I know, that was not the case a year or so ago, so it has moved very rapidly. What is exercising, certainly my mind and perhaps other Committee members minds, is this is moving quite rapidly and we certainly are aware from the point of view of people doing this gig work that it is not all blue sky and that there is a real risk in, dare I say, Business NSW of just sitting and saying, "Let's just leave the status quo, and leave the whole thing to open up and move out in all sorts of directions."

It creates a big problem because if ultimately a consensus is reached at a point that there needs to be proper workplace health and safety regulations applied, other matters that might involve things like leave entitlements and superannuation and matters which are not normally attached to a contractor for employment, that is going to be a much bigger job to deal with that far down the track than perhaps trying to turn our minds to it now. Your position is essentially to sit and just watch. Is that a fair characterisation? I am not trying to put you into a corner, but that is essentially what you are saying, that what has happened thus far appears to be working

reasonably okay, my words not yours. It would be pre-emptive to get in there and try to regulate it in some fashion. The proposition is to just sit and let it unfold.

**Mr IZZO:** I think the position, broadly speaking, is that the status quo—if that is how we want to refer to the existing regulatory framework—is okay, is satisfactory. There are concerns about being pre-emptive in trying to make moves, and I think it is exemplified in some of the examples you gave. I was not aware that the gig economy, for instance, has moved into teachers and aged care. But let us say it has, and you have a school that starts issuing its jobs, if you like, through some kind of online platform. This is where the existing framework can actually work quite well, because if it is one school that is consistently offering shifts in a particular way that we have the same teacher, week in, week out performing the same type of hours for the same school, they have a high level of control over the types of ways the teaching is taught, all those sorts of things, you will start to have in substance an arrangement that a court might say, "Well, this looks a lot like employment and you are entitled to certain benefits."

But equally, if you have someone freelancing, offering their skills at large to a different employer every single day, you may have a different determination that might be appropriate in the circumstances. The beauty of the current regime is there is no one rigid rule. There is no fixed rule about who is and who is not. We look at the substance. I suppose the concern is that if you do seek to be pre-emptive and put in place a regime to address a new market that you are concerned about, there are really two concerns. One, you might constrain employment in certain ways, impose costs that are not necessarily able to be sustained by the relevant business model. The other thing you need to be very careful about is you might start to elevate form over substance.

What I mean by that is in many areas we have, particularly in the Federal workplace relations industrial landscape, it is quite rules-based now. You need to take industrial action to enter a site, you need to do A, B, C and D, then once those boxes are checked you have rights E, F, and G. Once you start to regulate, if you start to say that for these workers a, b, and c will apply, you will also have a market response that people will either check the boxes or not check the boxes so as to be deemed either a contractor or an employee, whatever suits them. Whereas the current regime works through all of that, and it actually just says we are going to look at the substance and practical reality of the relationship. I think there is attraction to the current regime for that reason, and danger in moving forward with a fixed approach.

**The CHAIR:** Mr Izzo, to summarise your position, you prefer that the current common law test prevailed and not be disturbed. Is that a short summary?

**Mr IZZO:** That is the position that Business NSW and Australian Business starts from, yes.

**The CHAIR:** So are we to infer therefore that the recommendation that Ms James made to the Victorian Government that the Commonwealth Government should be replacing the common law test with statutory indicia should be rejected?

**Mr IZZO:** It would depend on the statutory indicia. If they are to broadly reflect the existing common law you might not have much of a distinction. It would depend on what that test looks like. But I think the moment—let us say there is a recommendation that the Federal Government intervene and define an employee, if the definition starts to diverge from the common law, I think you will end up with a scenario where form starts to take more importance than substance.

**The CHAIR:** I digress, but I believe that the Fair Work Act does define what an employee is. Either way—

**Mr IZZO:** No, it does not.

**The CHAIR:** You might be right on that. It has been a while since I have read it.

**Mr IZZO:** It defines who a national system employee is, but employee has its common law meaning.

**The CHAIR:** No, to be fair, it creates a statutory definition and also allows the common law test to prevail as well, it does not override it, was my understanding. But look, I defer to your superior knowledge. But either way, are you aware that that call for a statutory definition actually arose in the Victorian Government from the companies, as much as it did from workers because they advanced a case that they did not want their business model to be vulnerable to court interpretation?

**Mr IZZO:** I was not aware of that, but I am not surprised.

**The CHAIR:** Are you aware that part of the reason why they advanced that proposition was because employment law defines employee in one respect, taxation law defines it as another, competition law defines it as another, and their view is that because there are three or four different prevailing views as to what an employee

is, depending on which law you are trying to apply, that creates such uncertainty that their business model cannot prevail?

**Mr IZZO:** I am not sure about the last part, which is that their business model cannot prevail.

**The CHAIR:** It is a big danger, is their view.

**Mr IZZO:** I am not surprised that some employers will lament the fact that the common law test has a level of—

**The CHAIR:** Uncertainty.

**Mr IZZO:** —uncertainty or ambiguity about it depending on a particular case.

**The CHAIR:** So therefore, to the extent to which we are being asked to nominate support for a clear statutory definition, it is not necessarily arising simply for the purposes of providing a person with benefits that they would accrue as an employee, it is equally to provide certainty to businesses so they can invest. Do you accept that is an argument that has been—

**Mr IZZO:** It is inevitable that if you provide a fixed definition of what an employee is, you will provide certainty. That is inevitable.

**The CHAIR:** I am not saying that we are providing a fixed definition. My question is that the demand for a definition, do you accept that that can lead to certainty enough for business to increase investment?

**Mr IZZO:** It will depend enormously on what the definition is. And if you all of a sudden just start inserting indicia in—if you look at the Federal regime, when the Federal regime defines what is reasonable overtime, if you look at the Federal regime when it defines what is grounds for refusing flexible work arrangements, the factors, particularly for say reasonable overtime, are very large. There are about eight different factors they consider. You do not necessarily end up with that much more certainty if you are going to enshrine—

**The CHAIR:** I do not think we are in disagreement. I think there is a difference between whether or not you define it, and then if you define it what rights do you accrue. I think you are talking about the second. But I am asking about the first.

**Mr IZZO:** No, what I am saying is that I do not know what the Federal definition would look like. What I am saying is if it looks somewhat like other definitions that are adopted in other areas there is still going to be a level of uncertainty, absolutely.

**The CHAIR:** I go to the matter of workers compensation. In your view is the existing New South Wales legislation clear as to whether or not a gig company needs to be paying into the premium pool that supports workers compensation?

**Mr FROST:** I guess the first part is that it hinges on whether or not they satisfy the employee or independent contractor test to begin with. I guess each individual gig economy platform is quite different, so I am not sure that it is possible to make a blanket statement about that.

**The CHAIR:** Do you think that a person who dies while performing work in the gig economy should be entitled to workers compensation, or a benefit similar to workers compensation? I will put both questions.

**Mr FROST:** If I can just answer it slightly differently. Insurance for gig economy workers is pretty important, and I think there is a role for gig economy platforms to encourage and ensure that they are conducting their platforms and their activities in a way that has regard to the risks posed by people using their platform. I understand different platforms have proposed different things to this inquiry. We would support further engagement with that part of the sector, or the parts of the sector that we are particularly concerned by, or particularly concerned by to see what opportunities there are to—

**The CHAIR:** But I infer from that that you support the idea that there should be insurance, whether it is called workers compensation or something else is a different matter, but a person who is performing work in the gig economy should be insured for injury and loss of life?

**Mr FROST:** I would say that that is a prudent decision to make, that is as an individual. Whether or not there should be some imposition or some determination made that all people participating in these platforms should be required to, I think you would have to do some further work to understand what are actually the preferences of those using these platforms, is there some sort of failure to properly advise people or for them to be properly aware of what the risks involve. I think that requires more work. I do not have any particular answers for you today.

**The CHAIR:** That is fair. I am not asking this question to be provocative, but one concern that has been raised with me directly by gig companies is that the barrier to them being able to provide that insurance is that they run the risk that they could be deemed to be employees, therefore they are asking for—

**The Hon. GREG DONNELLY:** Employers?

**The CHAIR:** Employees, as in if they were to provide such insurance to their people who are performing work through their platform, that a court may interpret that as being an employment relationship. Therefore, they are saying that they require workers compensation laws to create a new category to cover them so they can provide that without the risk that Mr Izzo has pointed to. Does Business NSW have any views as to whether or not we should be creating a new category under the workers compensation law that would allow them to provide insurance coverage without disturbing a court method of interpretation?

**Mr IZZO:** I think there are a couple of things in response to that. I think if the definition of employee/contractor is operating as a disincentive to provide insurance or safety training or those types of things, that is not desirable. I know there have been submissions to this inquiry that have talked about the fact that it would be preferable if the provision of certain types of entitlements or certain types of matters, whether it be insurance, safety training, even perhaps protective equipment, be excised from the analysis of whether someone is an employer or not. Now, if that was able to be done—

**The CHAIR:** You would support it.

**Mr IZZO:** I cannot see why we would not support that. I think it needs to be done though Federally. I am not sure if doing it just in the workers compensation regime is going to assist if the decision as to whether someone is an employee or not is still governed by the common law and we have got a Federal Fair Work Act that presumably adopts that common law definition. The question is whether—

**The CHAIR:** There is not really a Federal workers compensation scheme for them to enter.

**Mr IZZO:** Sorry, I am not talking about Federal workers compensation, what I mean is that the concern is if you have a workers compensation law, for instance, that says you should provide x to an employee, or you have any other law at the State level that says you should provide y, it would be helpful—

**The CHAIR:** To excise that.

**Mr IZZO:** —at the Federal level those factors were excised from the consideration of what is or what is not an employee.

**The CHAIR:** In a similar vein, various gig companies have said that they would be willing to provide entitlements akin to sick leave, annual leave, or forms of entitlements, or pay into a scheme, or buy insurance coverage, or any of the ways in which you could provide coverage, if they could have the excisement that you point to, Mr Izzo. That is if they were to provide such coverage it would not cause a court to deem them as employees. Is that something that you would also recognise that if it can be done in a way which is excising them from any employment test that you would support?

**Mr IZZO:** I think we would. I only have this caveat on that comment; there is going to become a point when you start excising things that you start to excise more and more factors from the original common law definition that all of a sudden there will be a point at which the original test might become unworkable. I think there is one category which relates to insurance, another which relates to safety, that I think you tackle first and second. Then there may be others. But I suspect whilst we would support it, there is going to be a point that others are going to start to say that you are effectively denuding the definition of so much of its force or its operation that—

**The CHAIR:** Yes, I accept your point.

**Mr IZZO:** —it is no longer the same.

**The CHAIR:** To be fair, some of this is arising because there is bargaining going on between platforms and their workers and the fact that they are coming to agreements on what models could look like.

**Mr IZZO:** And that is why I am broadly supportive of it all. I am just saying at some point there is going to be objection from others saying you have completely denuded their common law test.

**The CHAIR:** Turning to another matter; tax and payroll tax. I have heard various people—actually some of your members—come to me and say that they are of the view that they are at a disadvantage to their competitors who are providing gig work because they have to pay payroll tax and the gig economy is configured in a way that means that the group contractor provisions of the existing payroll tax does not group them, and even

more labour is being performed through their platforms in their particular business, the gig platforms do not pay payroll tax but they do. I accept Business NSW general view that payroll tax should be abolished, and accept that as given from our perspective. If your answer is can we abolish it for all, do you have a view as to whether or not payroll tax needs to be reformed, or the grouping provisions of payroll tax should be reformed to account for gig work and how gig work is being discharged?

**Mr FROST:** We have previously advocated for a simpler payroll tax system on the basis that we observe that payroll tax administration costs and just the general complexity associated with payroll tax, particularly when a previously non-liable for payroll tax business becomes liable and they have to get across all of the new requirements, particularly the contractor provisions and any particular issues that that gives rise for that particular business. What we have said is that we do believe there should be a look at the contractor provisions of the Payroll Tax Act. What that specifically means I think that there is more work to be done, I guess, to better understand what alternative scenarios might look like. As a national chamber movement we have been looking at and talking about the potential for national tax reform in this context, and looking at payroll tax and is there a better way to do it by looking at partnerships between other States and Territories but also with the Commonwealth. Payroll tax for the chamber movement is certainly core to what we believe in, in terms of the need for reform.

**The CHAIR:** On notice, are you able to provide us specific views as to how you think the New South Wales contractor provisions of payroll tax can change or should change to account for the emergence of the gig economy, or not change? Up to you, whatever you wish to say, and that any general views on payroll tax, given we have got the remit to make recommendations, would also be really useful. I know Business NSW has done a lot of work on this and a lot of your work is very good and we would love to have access if you could tender it formally so we can accept it into the evidence file and provide us specifically that response as to what you think contractors' provision should change to emerge. Similarly competition laws. A lot of your members equally have come forward and said that they do not have the ability to bargain with platforms, particularly food platforms, on the rate that the platforms charge for them to access their services.

The evidence that has been adduced in the media is, for example, that some platforms take 35 per cent of the bill. There are various groups, like the Restaurant and Catering Industry Association have made public comment that says they do not have the ability to meaningfully bargain with these platforms and the Australian Competition and Consumer Commission exemption processes which would allow them to collectively bargain are useless, is effectively the core of their position. I do not want to verbal them too much but that is how I interpreted their position. Do you have a view as to whether or not the bargaining between businesses and these platforms is fair, and whether the competition laws are working for businesses, especially small businesses who wish to compete?

**Mr FROST:** I might speak to the broader market dynamics. I think we are seeing essentially a relatively new business model that has emerged with, to begin with, a few relatively significant players. This is an early stage of the evolution of this part of the gig economy, but this is actually a contestable market. One of the unique, I think, aspects of particularly food courier services is that you have people delivering with multiple platforms. The ability for new entrants to enter that market I think over time should provide some changes. It may very well be that there are some underlying fundamental costs associated with running these platforms that you can never really get rid of and it may end up being that that is the part that you are left with and there might be some grievances about that, but to the extent that there are concerns about the competitive dynamic in this market, we would sort of see it as a contestable market. I would hope that over time with new entrants and the potential for new entrants that the ability for any single platform to, for lack of a better phrase, extract monopoly profits or super profits out of the arrangement, I think would diminish over time.

**The CHAIR:** I have to disappear. Thank you very much for your appearance. The Hon. Mark Banasiak will take over as Deputy Chair for the remaining five minutes of your evidence. I appreciate your time.

**The Hon. NATASHA MACLAREN-JONES:** Earlier today we had a witness from Unions NSW who touched on some of these platforms with concerns that they have people using them advertising services that the individuals may not be qualified for and are not registered. I am interested to hear your views about that, whether or not it is the responsibility of the platform to ensure that anyone that advertises a service is qualified to carry out the task, or is it the consumer that is responsible, or do you think there is currently enough legislation or laws around the protections to prevent abuse of it in some way?

**Mr FROST:** No doubt that will depend on the specific types of work that we are talking about. I think there is probably a point at which you have got to give, if people are using platforms in a malfeasant way, there is a certain point where it is probably difficult for a platform operator to wholly regulate their systems. But I guess, again, it probably does depend on the type of work that is conducted and I would imagine that there is some

degree—what that means in practice I do not know—of responsibility for a platform to make sure that if it is work that requires a licence, electrician work for example, I would imagine that there is some responsibility, or should be, for them to make sure that they are doing everything within their remit to protect against that. But, as I said, if there is malfeasant activity on the part of those engaging in it, there will be some natural limits to their ability to do that.

**The Hon. NATASHA MACLAREN-JONES:** The other thing is in relation to your submission where you suggest that we look at the future of work in a broader context, particularly in relation to opportunities in our regions. That is on page 3 of your submission. I am interested in relation to your comments—and this might lead on from questions asked by my colleague—where you say there are opportunities to develop a seamless State economy, particularly in relation to the COVID recovery. Could you elaborate more, particularly in relation to your report?

**Mr FROST:** Sure. In July we released a report called *Back on track*, which was, for lack of an alternative, our vision for our recovery from COVID-19. One of the things that just in observing some of the trends that were happening at that time, particularly people working from home, that there was actually an opportunity for, particularly regional New South Wales, and people living in regional New South Wales, to benefit from some of the economic opportunity that is currently centred in metropolitan areas, and the benefits go both ways too. If you think about the New South Wales public service, the ability to recruit capable people from the whole of the State rather than just a single geographic boundary, that this is really something that, there is an opportunity for government to be a leader on and to pilot different initiatives.

One idea that we have been championing as a chamber movement is this idea of remote worker hubs, where, now look last week there was a report released by the Productivity Council stating that there are some benefits to working from home, but there are also some costs. So this idea of having remote worker hubs removes some of those costs, the collaboration space, the ability for people to get in a room together and talk things through and share ideas through osmosis. The idea of a remote worker hub in terms of how we present it in the report is that you will have potentially a regional centre that will then have a New South Wales Government office and there will be the ability for multiple departments to have staff work out of those hubs and then over time you might build that up and open it to other private sector or not-for-profit entities as well. That is how we conceive it and broadening our view of what a labour market is, it is not just those within commutable distance from 52 Martin Place, or wherever else, that we can actually start to share some of these opportunities throughout the State.

**The Hon. NATASHA MACLAREN-JONES:** The only other question I had is under "Improve employee skills and capabilities" you said that there are key reasons for people being unprepared for the workforce. One of the first points you note is poor attitude, which I found interesting as one of the key things. I assume you did a survey. Was any reason particularly given for there being a poor attitude for wanting to work, or is it wanting to study, or looking at opportunities?

**Mr FROST:** I might just clarify, that would be the feedback we get from some of our members, it is not necessarily—we can only report back the feedback that we get.

**The Hon. NATASHA MACLAREN-JONES:** I understand.

**Mr FROST:** I think the essence of it is probably that there are certain stages, or you think about what is the value of an education system. It is not just that you finish school or university or TAFE, or whatever your academic prowess after that. It is some of the broader sociability skills, conscientiousness, those types of things, knowing how to collaborate with others in a team. Those are the types of things that our members seek, from young people particularly, as they come out of the education system. We as a chamber movement have been championing concepts like productivity boot camp, which is a model where young people, particularly from disadvantaged or lower socioeconomic status areas, can go and get those basic kind of job-ready skills. So it is not that they necessarily get into the more technical aspects of the role, but even those first fundamental—how to turn up to a job interview, for example. We see that as important. And that would be the general spirit of the feedback that we receive from our members.

**The Hon. MARK BANASIAK:** Would you say there has been a decline in those employability skills coming through in young people?

**Mr FROST:** I would probably be reluctant myself to make a judgment on that question.

**The Hon. MARK BANASIAK:** Have you received that feedback from your members?

**Mr FROST:** Yes, I think our members would probably say that, but at the end of the day these things are more kind of the vibe. I do not have any systemic or comprehensive—

**The Hon. MARK BANASIAK:** Empirical data.

**Mr FROST:** That is right, yes.

**The Hon. SHAYNE MALLARD:** Every generation says that about the younger generation.

**The Hon. GREG DONNELLY:** The good old days.

**The Hon. MARK BANASIAK:** That brings us to the end of this session. Thank you very much for your time. The information you have provided has been much appreciated. If you have taken any questions on notice you will have 21 days to return the responses. Thank you.

**Mr FROST:** Thank you.

**Mr IZZO:** Thank you.

**(The witnesses withdrew.)**

**The Committee adjourned at 16:07.**